Peninsula Hospital Center and Peninsula General Nursing Home Corp., Employer-Petitioner *and* District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL–CIO. Case 29–UC–55

July 15, 1975

DECISION AND ORDER

This decision arises from a petition for clarification of a unit duly filed by Peninsula Hospital Center and Peninsula General Nursing Home Corp. on September 18, 1974. A hearing was held on October 15, 17, 21, and 25, 1974, before Hearing Officer Richard Epifanio. On December 11, 1974, the Regional Director for Region 29 issued an order transferring the case to the Board for decision.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. Peninsula Hospital Center and Peninsula General Nursing Home Corp. are New York corporations having their principal places of business located at Far Rockaway, New York. The parties stipulated, and we find, that they have a common labor relations policy, and that they constitute a single employer. The Employer is engaged in the operation of a private, nonprofit, health care facility. It has a gross annual revenue exceeding $1 million annually and receives goods from outside the State of New York having an annual value exceeding $50,000. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of the Act. We further find that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The parties stipulated, and we find, that District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL–CIO, is a labor organization within the meaning of the National Labor Relations Act and is the currently recognized representative of various categories of employees: service and maintenance, guards, clerical, technical, social workers, and pharmacists.

3. The Employer does not question the status of the Union as the bargaining representative of the employees in the categories described above. It alleges, however, that "guards" perform the duties of "guards" as described in Section 9(b)(3) of the Act, and it has invoked the Board's clarification proceedings for the purposes of clarifying its legal obligations, under the statute, to continue recognizing the Union as the representative of any unit which includes its guards. Its petition defines the currently recognized status of the Union as embracing all the above-described employees in one single unit.

The Union does not concede that the Employer's guards do in fact fall within this statutory definition of "guards" contained in Section 9(b)(3) of the Act. But it contends that, in any event, dismissal of the petition is warranted on any one or more of the following asserted grounds:

(1) It currently represents guards as a separate and distinct bargaining unit rather than a mixed unit of guards and nonguards and there is therefore no unit dispute of a kind appropriate for resolution via the clarification route.

(2) The Employer is a member of the League of Voluntary Hospitals and Homes of New York (hereinafter the League),[1] which bargains with District 1199 on a multiemployer rather than on a single-employer basis and the Employer cannot appropriately invoke the clarification procedure herein without the consent of the other parties.

(3) The instant petition should be dismissed as untimely because, as a result of the negotiations conducted by and between the League and the Union and culminating in a contract agreed to on or about July 26, 1974, some 2 months before the instant petition was filed the Employer became bound by that contract—one covering its represented employees (including guards) as of October 1, 1974.

For the reasons hereafter set forth, we find, contrary to the Union, that the Employer's clarification request should be granted.

As a threshold matter, we find, in accord with the Employer's position, that the employees classified as "guards" fall within the statutory definition of the quoted term. The undisputed evidence plainly established that the individuals so classified by the Employer do in fact "enforce against employees and other persons rules to protect property of the Employer [and] to protect the safety of persons on the Employer's premises."

We have, of course, frequently held that given an appropriately filed petition by any interested party this Board may properly effect the exclusion of guards from any recognized mixed unit of guards and nonguards via the clarification route.[2] The Union contends the result should be otherwise in this case. Giving due consideration to the contentions of the Union, we nonetheless find these decisions applicable herein. We discuss the Union's contentions *seriatim.*

[1] The League was invited to but did not become party to the instant proceeding

[2] *Worcester Polytechnic Institute,* 207 NLRB 1061 (1973), *Libbey-Owens-Ford Glass Company,* 169 NLRB 126 (1968), *Sonotone Corporation,* 100 NLRB 1127 (1952)

First, we find no persuasive evidence to support the Union's claim that the Employer's current bargaining relationship with it is conducted on the basis of unit lines which separate the "guards" from all other employees. The relevant facts establish that the Union achieved its representative status in 1964 as a result of a privately supervised election in which the Employer's guards and nonguard employees voted as one group. For a number of years thereafter the parties admittedly treated all such employees as one single bargaining unit. But, according to the Union, the parties changed the unit structure in 1969 and again in 1970. Pointing to certain "unit" language inserted in the 1969 contract the Union asserts that the parties then agreed to separate the represented employees into three bargaining units, respectively, captioned service and maintenance employees, technical employees, and clerical employees. Further in 1970, the parties established three additional units, one confined to guards, and the other two to social workers and pharmacists, respectively. However other evidence tends to indicate that this language was not intended to define unit lines, but rather to list the job categories of all represented employees who, as noted, are admittedly organized as a single unit. We note, in this respect, that no separate negotiations have ever been conducted for any one portion of the represented employees, and that the wage rate for guards is listed in the most recent agreement which Peninsula has signed under a schedule titled "Service and Maintenance." We note also that all employees, including guards, joined in a strike conducted in 1973 as if in a single unit.

In the above circumstances, it may well be that the guards here in question have been and are bargained for as part of a mixed unit of guards and nonguards. In any event, we have some doubts where the outside parameters of the unit in which they are included begin and end. Resolution of that doubt is not essential where, as here, the only determination we are called upon to make is one excluding guards from any unit or units in which the parties currently maintain their bargaining relationship. If, in fact, the guards are already represented in a unit separate from that of other employees, our decision here is merely a reaffirmation of the propriety of the guards' exclusion from that other unit or units.

To the extent that the remaining contentions of the Union question the Employer's standing to file the petition, we find those contentions unpersuasive. The direct and immediate interests of the Employer in the unit status of its guard employees make it an interested party to the proceeding involved herein. And its standing to obtain the relief it seeks through this petition is not, in our view, negated by the fact that it is a member of the League of Voluntary Hospitals and has authorized the League to bargain with the Union in its behalf on some, if not all, mandatory subjects of bargaining. In so finding, we are mindful of the Union's claim that—because of the authorization granted by the Employer to the League and the League's conduct of its bargaining on behalf of all its members at one time—all the Employer's employees for whom the Union is the recognized agent are now part of a multiemployer unit extending in scope to all employer-members of the League. However, we need not decide the factual merit of this union claim. The League has not objected to the Employer's petition,[3] no other of its members has expressed any interest in intervening in the matter,[4] and grant of the Employer's petition could neither add to nor detract from the right of any other employer who is a member of the League to maintain the status quo in conducting its relationship with the Union.[5]

The final contention of the Union is that a grant of the requested clarification would be contrary to the holding in *Wallace-Murray Corporation,* 192 NLRB 1090 (1971)—a case in which we dismissed an employer's clarification petition seeking the exclusion of guards from an historically recognized unit including other employees where the petitioner-employer: (a) filed its petition midway between the term of an agreement effective for a 2-year period; and (b) had entered into that contract despite the facts establishing its awareness that it had the statutory privilege to discontinue according the union recognition so long as it insisted on representing the guards as well as the nonguard employees. The Union argues that case is applicable because the League and the Union agreed to a master contract purporting to cover the employees here in issue on July 26, 1974, and this petition was not filed until some 2 months later on September 18, 1974. However, the prior contract, as it applied to Peninsula, did not expire until October 1, 1974, and the new contract did not apply to Peninsula until that date. Hence, the instant petition was filed shortly before the expiration of the last applicable collective-bargaining agreement. Moreover, the new health care amendments to the Act did not become effective until August 25, 1974; no UC peti-

[3] The League was served with notice but did not avail itself of the opportunity then afforded it to intervene in this proceeding Furthermore, the League's president appeared at the hearing as a witness, and at that time expressed no opposition to the grant of the Employer's petition

[4] We note, however, that some 5 months after this proceeding was transferred to the Board the League and Brookdale Hospital Medical Center requested to file briefs *amicus curiae* By telegram dated June 6, 1975, the Board's Executive Secretary denied their requests on the ground that to permit the filing of such briefs would unduly delay the Board's decision

[5] See *Anheuser-Busch, Inc*, 116 NLRB 1988, 1992 (1952)

tion could have been filed with the Board before this date. The instant petition, as indicated, was filed shortly thereafter, on September 18, 1974. We believe the procedure followed in *Worcester Polytechnic Institute,* 207 NLRB 1061 (1973), and in *Peerless Publications, Inc.,* 190 NLRB 658, 659 (1971), is applicable to the facts herein and for the reasons stated in those cases we shall exclude the guards from the unit of employees recognized by the Employer.

ORDER

It is hereby ordered that the existing, recognized unit of guards and nonguard employees employed by Peninsula Hospital Center and Peninsula General Nursing Home Corp., and represented by District 1199, National Union of Hospital and Health Care Employees RWDSU, AFL–CIO, be, and it hereby is, clarified to exclude the job classifications of guards as defined in the Act.