

**Woods Schools and American Federation of Teachers,  
AFL-CIO, Petitioner. Case 4-RC-11507**

July 18, 1975

**DECISION AND DIRECTION OF ELECTION**

BY MEMBERS FANNING, JENKINS, AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Francis W. Hoerber. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, this case was transferred to the Board for decision. Thereafter, the Petitioner and the Employer filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

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

1. The Employer is a nonprofit Pennsylvania corporation which provides educational services and treatment on a year-round basis to mentally retarded, multiply handicapped, developmentally disabled, or learning disabled children and adults. It is licensed by the Pennsylvania Department of Education to operate a private academic school and by the Pennsylvania Department of Welfare to operate a facility for the mentally handicapped.

The Petitioner urges the Board to assert jurisdiction herein, contending that the Employer falls within the definition of a "health care institution" under the recent amendments to the Act,<sup>1</sup> or that alternatively it is a school as the Employer contends, and that the impact of the Employer's operations on commerce is sufficiently substantial to warrant the assertion of the Board's jurisdiction. The Employer, however, contends that its facility is not a "health care institution" within the meaning of the Act; that it is a school but should not be governed by the jurisdictional standards applied to private in-residence schools for "normal" students; and that, as a matter of policy, the Board should decline to assert jurisdiction under the rationale of its decision in *Ming Quong Children's Center*.<sup>2</sup> For the reasons set forth

below, we find that the assertion of the Board's jurisdiction is warranted herein.

The record discloses the following financial data with respect to the Employer's operations: For the fiscal year ending June 30, 1974, the Employer had gross revenues of approximately \$4.5 million, not including \$650,000 in pledges received for donations for capital improvements. The tuition and board for 59 percent of the students is paid by their parents or guardians, and the tuition and board for the remaining students is paid by the States from which they have been sent. The fee for each student varies according to a determination by the Employer as to the specialized needs of the individual. In addition to income from tuition and board, the Employer received a \$50,000 Federal Government grant for vocational training, and it also receives a Federal milk subsidy of \$1,000 per month. For the 1974 calendar year, the Employer purchased goods and services in excess of \$1,800,000, of which approximately \$360,000 originated outside the Commonwealth of Pennsylvania.<sup>3</sup> Additionally, 82 students are from the Commonwealth of Pennsylvania and the remainder come from a total of 37 other States.

At the time of the hearing, the Employer had 430 "students" enrolled at its facility, 400 of whom resided at the premises and all of whom suffered from a mental or cognitive disability in which the brain and nervous system is not able to achieve the levels or norms which have been established by society. Fifty percent of these individuals were over age 21, and the youngest student was 5 years of age. The Employer's programs consist of regular classroom instruction dealing with early childhood education; secondary education; deaf, multihandicapped, and vocational education; and workshops in self-help and socialization groups. Additionally, the Employer provides individualized clinical treatment and various recreational activities. The goal of the programs is to help the handicapped individual to become more functional as a human being and to become more capable of moving into higher levels of independent living. Although many students eventually leave the school based on a joint decision by the institution's staff, the parents, and the individual, some students live most of their adult lives at the school.

The Employer's facility, situated on 300 acres, includes residential cottages, school buildings, service and maintenance buildings, administration buildings, an infirmary, and a clinic. The Employer has a staff of approximately 500 employees, of whom approximately 50 are teachers and approximately 200

<sup>2</sup> 210 NLRB 899 (1974).

<sup>3</sup> The Employer's only available figures for expenditures were for the 1974 calendar year rather than the 1974 fiscal year.

<sup>1</sup> Public Law 93-360 (July 26, 1974).

are "house parents" who serve as surrogate parents providing the normal daily needs of children and adults in a typical home environment. There are also approximately 75 service and maintenance employees.

The infirmary is used for children or adults who are ill and unable to continue to reside in their residences and need some medical attention on a short-term basis. In the event of a serious illness or injury, the student is taken to a local general hospital for treatment. There is one registered nurse (sometimes two) on duty at all times in the infirmary, but there is no doctor present on a full-time basis. A dentist serves the infirmary on a part-time basis. Aside from its typical functions as described above, the infirmary is also used for students with behavioral problems which cannot be handled in the classroom or in the residence. They are placed in the infirmary for supervision and care until they can be stabilized in such a manner that they can adjust to their environment and other people.

In addition to the registered nurses who work in the infirmary, there are nine other registered nurses assigned to the residences for the purpose of reviewing and examining the physical condition of the children and adults. The Employer's clinic is located adjacent to the infirmary. There are approximately 30 full-time and part-time employees working in the clinic; they include two psychiatrists, six psychologists, four speech and hearing specialists, four psychiatric social workers, and an art therapist, all of whom work with individual students (as opposed to groups in a classroom setting) according to a regular schedule and program established by the Employer to meet the special needs of each student.

It is clear from the broad language of the recent health care amendments to the Act,<sup>4</sup> as well as the legislative history of the amendments,<sup>5</sup> that Congress

<sup>4</sup> Under the new Sec. 2(14) of the Act, the term "health care institution" is defined as including

any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.

<sup>5</sup> Of particular significance in the instant case is that portion of the legislative history in which Congressman Thompson and Ashbrook, cosponsors of the House bill, engaged in the following discussion with Congressman Dellenback:

Mr. Dellenback: Mr. Chairman, for the purpose of establishing legislative intent, I would like to ask the gentleman from New Jersey [Rep. Thompson] a few questions about the provisions of H. R. 13678. . . . Is my assumption correct that the definition of health care institution would not include health spas or diet clinics and the sort; is that the gentleman's understanding as well?

Mr. Thompson of New Jersey: Yes. One might add certain kinds of halls. I would agree that those commercially operated muscle-building organizations, or those that provide only health services for weight loss, outside of any patient care function, would not come within our definition of health care organization.

When we use that term we are looking to real patient care and health

specifically intended that the coverage of the National Labor Relations Act be extended to include the very type of operation involved herein; namely, facilities providing educational services and treatment on a year-round basis to mentally retarded, multiply handicapped, developmentally disabled, or learning disabled children and adults. We therefore conclude that the Employer's facility falls within the definition of a health care institution within the meaning of Section 2(14) of the Act.

As noted above, the Employer's gross annual income exceeds \$4.5 million. Inasmuch as this amount exceeds the \$250,000 discretionary jurisdictional standard we apply to nonprofit health care institutions,<sup>6</sup> we find that the impact of the Employer's operations on commerce is sufficient to warrant the assertion of jurisdiction herein and that it will effectuate the purposes of the Act to do so.<sup>7</sup>

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All teachers, counselors, evaluators and teacher aides employed by the Employer at its Langhorne, Pennsylvania, facility, including teachers at the "Larchwood" unit, excluding the part-time adult education teacher, office clerical, custodial and confidential employees, guards and supervisors as defined in the Act.

Accordingly, we shall direct that an election be held among the employees in the unit found appropriate.

[Direction of Election and *Excelsior* footnote omitted from publication.]

service delivery, whether inpatient or outpatient. In addition, we do not mean it just as to the sick or aged. *We mean it also to apply to specialty health services, to private institutions caring for the mentally retarded, and the like* [Emphasis supplied.]

Mr. Dellenback: May I ask the gentleman from Ohio [Rep. Ashbrook] whether his understanding agrees with that of the gentleman from New Jersey?

Mr. Ashbrook: I would say the statement made by the gentleman from New Jersey would be absolutely accurate

Cong. Rec.—House, H 4594 (daily ed., May 30, 1974); "Legislative History of the Coverage of Nonprofit Hospitals Under the National Labor Relations Act, 1974, Public Law 93-360 (S.3203)," pp. 305-306.

<sup>6</sup> *East Oakland Community Health Alliance*, 218 NLRB No. 193 (1975).

<sup>7</sup> Since we find that the Employer's facility falls within the definition of a health care institution under the meaning of Sec. 2(14) of the Act (see also, *Lutheran Association for Retarded Children, d/b/a Home of Guiding Hands*, 218 NLRB No. 195 (1975), *Beverly Farms Foundation*, 218 NLRB No. 194 (1975)), we find it unnecessary to consider whether the Employer is also an educational institution.