

Yale-New Haven Hospital, Employer-Petitioner and District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO. Case 1-RM-926

July 17, 1975

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MURPHY AND MEMBERS JENKINS AND KENNEDY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer S. Anthony DiCiero of the National Labor Relations Board. Following the close of the hearing, the Regional Director for Region 1 transferred this case to the Board for decision. Thereafter, the Employer-Petitioner filed a brief and an appendix.

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. They are hereby affirmed.

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

1. The Employer is engaged in the operation of a nonprofit general hospital in New Haven, Connecticut. The Employer had gross annual revenues in excess of \$60 million and annually receives \$50,000 worth of goods from outside the State of Connecticut. We find that the Employer is engaged in commerce and that it will effectuate the purposes of the Act to assert jurisdiction herein.¹

2. District 1199 and the Intervenor² are labor organizations within the meaning of the Act who claim to represent certain employees of the Employer.

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

4. The Employer filed the instant petition for an

election in a unit, which coincided with District 1199's demand for recognition, limited to about 150 employees in the building service department. However, at the hearing the Employer expanded its unit request to include about 800 service and maintenance employees in several departments throughout the hospital. The Employer would exclude all registered nurses (RN's), licensed practical nurses (LPN's), and technical employees on the ground that they are "professional type" employees. The Employer, in agreement with District 1199, would exclude employees in the dietary department because they are already represented by District 1199 in a separate unit pursuant to a certification from the State of Connecticut.

The record shows that the unit in which District 1199 demanded recognition constitutes only a small portion of all service and maintenance employees and is clearly an inappropriate unit. District 1199 contends that employees in the building service department constitute an appropriate unit and that the Board should not direct an election in the unit requested by the Employer. District 1199 did not express disagreement with excluding the RN's, LPN's, and technicals. The Intervenor contends that a unit of maintenance department employees is appropriate. There is no history of collective bargaining for the unit of employees requested by the Employer.

The record shows that the Employer has a uniform personnel policy applicable to all employees which is centrally administered by the personnel office. All employees generally work under the same terms and conditions of employment and receive the same vacations, holidays, and leave benefits. The Employer has a uniform pension and insurance plan, and the latter includes life and health and accident insurance for all employees. The Employer has a standard salary and wage scale for all service and maintenance employees and a uniform method for periodic reviews for merit increases. The Employer has a uniform grievance procedure for all employees. All employees share various facilities in common throughout the hospital, such as the employee locker rooms, lounges, and cafeteria.

The various service classifications sought to be included in the unit, such as clerks, maids, porters, orderlies, etc., are employed in several departments, and there is daily contact among the employees throughout the entire hospital complex. These employees perform primarily manual and routine job functions. Job vacancies are posted throughout the hospital and are open to bid by all qualified employees. There is evidence of transfer by employees from one department to another and in such cases there is no loss of "credit for the years of experience . . . for

¹ District 1199's motion to dismiss the present petition "because the bargaining history . . . justifies that the [Board] permit the Connecticut State Board" to process its petition for a unit of the Employer's building service department employees filed prior to the enactment of P.L. 93-360, which added Sec. 2(14) to the Act, is denied. Such a unit is on its face at variance with the policies enunciated by Congress in the National Labor Relations Act. *Brookhaven Memorial Hospital*, 214 NLRB No. 159 (1974); *Nathan and Miriam Barnert Memorial Hospital Association, d/b/a/ Barnert Memorial Hospital Center*, 217 NLRB No. 132 (1975); *Newington Children's Hospital*, 217 NLRB No. 134 (1975).

² International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 443, was allowed to intervene.

fringe benefit purposes.”

In *Newington Children's Hospital, supra*,³ we stated that a “service and maintenance unit in a service industry is the analogue to the plantwide production and maintenance unit in the industrial sector, and as such is the classic appropriate unit.” So it is here. However, in this case, because of a separate bargaining history pursuant to a State Board certification and the parties' agreement to exclude them, we shall exclude the dietary employees from the unit found appropriate herein.

Accordingly, 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 service and maintenance employees, excluding dietary employees, business office clericals, registered nurses, licensed practical nurses, technical employees, managerial employees,

professional employees, guards and supervisors as defined in the Act.

[Direction of Election⁴ and *Excelsior* footnote omitted from publication.]

MEMBER KENNEDY, dissenting:

For the reasons set forth in my dissent in *Barnert Memorial Hospital Center*, 217 NLRB No. 132 (1975), I also dissent in this case. I would not find appropriate a service and maintenance unit which excludes technical employees and licensed practical nurses, but rather I would find the appropriate unit to be all service and maintenance employees including technical employees and licensed practical nurses, but excluding business office clericals and all other employees.

⁴ As the Intervenor has stated that it does not desire to participate in an election in the unit herein found appropriate, it will not be placed on the ballot. As District 1199 has not withdrawn its request for recognition of employees in the unit found appropriate, it will be placed on the ballot. It may, however, withdraw from the election if it so desires, upon written notice to the Regional Director and the Employer with 10 days disclaiming representation interest of the employees in the unit found appropriate. See Sec. 102.69(a) of the Board's Rules and Regulations

³ See *Barnert Memorial Hospital Center, supra*.