

St. Joseph Hospital & Medical Center; Menorah Medical Center; Kansas City Lutheran Home & Hospital Association, d/b/a Trinity Lutheran Hospital; Research Hospital & Medical Center, Employer-Petitioners and Operating Engineers, Local No. 6-6A-6B, affiliated with the International Union of Operating Engineers, AFL-CIO¹

Menorah Medical Center, Employer-Petitioner and International Brotherhood of Firemen & Oilers, Maintenance Mechanics, Production Workers and Operators, Local No. 1, AFL-CIO,² Cases 17-RM-547, 17-RM-549, 17-RM-550, 17-RM-551, and 17-RM-548

July 30, 1975

DECISION AND ORDER

CHAIRMAN MURPHY AND MEMBERS FANNING,
JENKINS, AND PENELLO

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer William Bevan III. Pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 17, this case was transferred to the National Labor Relations Board for decision. Thereafter, all parties in the above proceeding filed briefs in support of their respective positions.

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

Upon the entire record in this case, including the briefs filed by the parties, the Board finds:

1. The parties stipulated, and we find, that the Employer-Petitioners, which are health care institutions within the meaning of Section 2(14) of the Act, are engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The parties stipulated, and we find, that Operating Engineers, Local No. 6-6A-6B, affiliated with the International Union of Operating Engineers, AFL-CIO (hereinafter referred to as Local 6), and International Brotherhood of Firemen and Oilers, Maintenance Mechanics, Production Workers and Operators, Local No. 1, AFL-CIO (hereinafter referred to as Local 1), are labor organizations within the meaning of the Act.

3. The record establishes that Local 6 and Local 1

represent separate units of various maintenance employees at the Employer-Petitioners' hospitals.³ The Unions were voluntarily recognized by each of the Employer-Petitioners and the record establishes that the Unions and the Employer-Petitioners have maintained continuous and harmonious collective-bargaining relationships for periods ranging from 6 to 30 years.⁴ It is undisputed that the Unions have represented and continue to represent a majority of the employees in their respective units.⁵

The Employer-Petitioners filed the instant petitions,⁶ contending that the currently recognized units are no longer appropriate because they are repugnant to congressional policy of not proliferating bargaining units in the health care industry and to Board policy as enunciated in *Shriners Hospital for Crippled Children*, 217 NLRB No. 138 (1975). In addition, the Employer-Petitioners contend that the history of bargaining in each of the existing units is irrelevant inasmuch as it preceded the recent health care amendments to the Act and the enunciated congressional policy.

The Unions, on the other hand, contend that the instant petitions do not raise any questions concerning representation because the Employer-Petitioners do not question the Unions' majority status in any of the units involved herein. In addition, the Unions maintain that bargaining history in each of the units is relevant and controlling, and that Congress did not intend the Board to ignore such collective-bargaining history in establishing units in the health care industry. Based on the above arguments, Local 6 filed motions to dismiss the petitions in Cases 17-RM-547, 549, 550, and 551. For the reasons hereinafter expressed, we shall grant the motions to dismiss and shall dismiss the petition in Case 17-RM-548.

We agree with the Unions' contention that the instant petitions do not raise any questions concerning representation cognizable under Section 9(c)(1) and

³ At St. Joseph Hospital, Trinity Lutheran Hospital, and Research Hospital, Local 6 represents separate units consisting of operating engineers and maintenance engineers. At Menorah Medical Center, Local 6 represents a unit of operating engineers and Local 1 represents a unit of maintenance engineers.

⁴ The record establishes that Local 6 has represented maintenance employees at St. Joseph Hospital since at least 1946, at Menorah Medical Center since 1947, at Trinity Lutheran Hospital since 1969, and at Research Hospital since 1948. The record also indicates that Local 1 has represented the operating engineers at Menorah since 1969.

⁵ The parties stipulated as to the Unions' majority status in all cases except Case 17-RM-551 where, however, the Employer-Petitioner therein did not question Local 6's majority status.

⁶ The instant petitions were filed following the Regional Director's administrative dismissal on April 10, 1975, of five identical petitions, solely for contract-bar reasons. The original petitions were filed 92 days before the expiration of the respective contracts. On appeal, the Board reversed the Regional Director's ruling, modified the length of the insulated period for contracts in health care institutions, but determined not to reinstate the original petitions in view of the fact that the current petitions were being processed. *Trinity Lutheran Hospital, et al*, 218 NLRB No. 34 (1975).

¹ The name of the Union appears as amended at the hearing.

² The name of the Union appears as amended at the hearing.

Section 2(6) and (7) of the Act. Thus, the Employer-Petitioners do not question the Unions' majority status in any of the units involved herein. Therefore, we can only conclude that the Employer-Petitioners have not demonstrated any reasonable doubts that the Unions herein represent a majority of the employees in their respective bargaining units, and, in the absence of such "objective considerations that [they have] some reasonable grounds for believing that the [Unions have] lost [their] majority status," we find that there is no legal basis upon which to direct an election, and the instant petitions must therefore fail.⁷

We also agree with the Unions' contention that the bargaining history herein is relevant and controlling. Thus, we are reluctant to disturb bargaining units which have been established by the mutual agreement of the parties and in which there have been long histories of continuous and harmonious collective bargaining. In the instant cases, the record establishes that the Employer-Petitioners voluntarily recognized and bargained with the Unions dating as far back as the 1940's without ever having challenged or questioned the appropriateness of the units. It has not been our policy to invalidate as inappropriate historically established units unless required to do so by the dictates of the Act or other compelling circumstances.⁸ We find no such circumstance merely

because one party at a much later date challenges the continuing appropriateness of the unit.

Nor do we find merit in the contention that the Act precludes such units in this industry. Rather, in the health care industry, the Board permits the parties "the broadest possible latitude to mutually define the context in which collective bargaining should take place."⁹ While such mutually defined units may not be the same as the units which the Board may have found had the matter not been agreed upon by the parties, the Board is reluctant to disturb bargaining units in the health care industry which have been mutually agreed upon by the parties so long as such units do not contravene the Act or established Board policy.¹⁰

Accordingly, for the aforementioned reasons, we conclude that the instant petitions are without merit and we shall therefore dismiss the petitions.

ORDER

It is hereby ordered that the petitions herein be, and they hereby are, dismissed.

cent Drugs No 3, Inc., 144 NLRB 1247, 1252 (1963).

⁹ *Otis Hospital, Inc.*, 219 NLRB 164 (1975). See also the discussion of the legislative history of the health care amendments in *Otis* which indicates that Congress intended to permit employers and labor organizations "the broadest possible latitude in agreeing on unit compositions."

¹⁰ *Ibid* We therefore reject the Employer-Petitioners' argument that the instant case is controlled by the decision in *Shriners Hospital, supra*, where the parties had not engaged in a long history of continuous and harmonious collective-bargaining relations and there was no background of voluntarily established units.

⁷ See *United States Gypsum Company*, 157 NLRB 652 (1966).

⁸ See, e.g., *The Great Atlantic & Pacific Tea Company, Inc.*, 153 NLRB 1549 (1965). *Harvey Russel*, 145 NLRB 1486, 1488 (1964). Cf. *Retail Clerks Union Local No. 324, Retail Clerks International Association, AFL-CIO (Vin-*