

**Alexian Brothers of Elizabeth, Inc. d/b/a Alexian Brothers Hospital<sup>1</sup> and District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO,<sup>2</sup> Petitioner. Cases 22-RC-6181, 22-RC-6189, and 22-RC-6195**

August 14, 1975

**DECISION, ORDER, AND DIRECTION OF ELECTIONS**

**BY CHAIRMAN MURPHY AND MEMBERS FANNING AND JENKINS**

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held on September 24, October 10, 11, 16, and 30, and November 14, 1974, before Hearing Officer Bruce Taylor. Pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Acting Regional Director for Region 22, this case was transferred to the National Labor Relations Board for decision. Thereafter, the Employer and the Petitioner 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, the Board finds:

1. Alexian Brothers of Elizabeth, Inc., is a New Jersey corporation that operates a 210-bed hospital in Elizabeth, New Jersey. In the past 12 months the Hospital has received gross revenues in excess of \$250,000. During the same period the Hospital has purchased goods valued in excess of \$50,000 from suppliers located outside the State of New Jersey. The parties stipulated, and we find, that the Hospital is engaged in commerce within the meaning of the Act. Accordingly, we shall assert jurisdiction here.

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

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

4. In three separate petitions District 1199 sought elections for service and maintenance employees (22-RC-6189); licensed practical nurses (22-RC-6195); and technical employees (22-RC-6181). At the hearing the Hospital declined to take a posi-

tion concerning the appropriateness of the units sought but thereafter, in its brief, maintained that only an overall unit consisting of the Hospital's non-professional employees was appropriate.

In accordance with our recent decisions concerning the health care industry we find that a separate bargaining unit consisting solely of licensed practical nurses as petitioned for in Case 22-RC-6195 is inappropriate and we shall dismiss the petition in that case.<sup>3</sup> However, we find that an appropriate bargaining unit in Case 22-RC-6181 consists of all of the Hospital's technical employees, including the licensed practical nurses.<sup>4</sup> We shall include in the technical unit, in addition to the licensed practical nurses, the following employee classifications: X-ray technologist, blood bank technologist, laboratory technician II, and respiratory therapy technician. With the exceptions of certain respiratory therapy technicians,<sup>5</sup> all employees in these classifications are certified, registered, or licensed.<sup>6</sup>

<sup>3</sup> See *St. Catherine's Hospital of Dominican Sisters of Kenosha, Wisconsin, Inc.*, 217 NLRB No. 133 (1975).

<sup>4</sup> *St. Catherine's Hospital, supra*; *Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Memorial Hospital Center*, 217 NLRB No. 132 (1975).

<sup>5</sup> The Hospital employs both certified and noncertified respiratory therapy technicians. Both are responsible for administering oxygen treatments and performing related tests. In connection with these duties, both operate respirators and ventilators (the noncertified technicians operate ventilators only under supervision) and both perform blood gas and pulmonary function tests. The Hospital requires that the noncertified respiratory therapy technician have a high school education and be eligible for certification, that is, have at least 1 year of experience in the field. We conclude that the noncertified respiratory therapy technicians share a community of interest with other technical employees and we shall, therefore, include them in the technical unit. See *Barnert Memorial Hospital Center, supra*; *Trumbull Memorial Hospital*, 218 NLRB No. 122 (1975).

<sup>6</sup> At the hearing and in its brief to the Board the Petitioner maintained that the nuclear medicine or radioisotope technologist classification should be included in the technical unit found appropriate. At present, however, the hospital employs only one person in this classification and the parties stipulated that he is a supervisor. As such, we shall exclude the nuclear medicine or radioisotope technologist from any unit found appropriate.

We shall also exclude from any unit found appropriate the physical therapist and the laboratory technologist.

For the position of physical therapist the Hospital requires a degree in physical therapy from a 4-year college, a 1-year internship, and successful completion of a test for both state and national registry. The physical therapist sets goals for patients requiring therapy and plans therapeutic programs to achieve these goals. The therapist engages in a variety of treatments and regularly consults with, and makes effective recommendations to, doctors regarding the care of patients. The method and degree of treatment varies from patient to patient, and it appears that the therapist exercises substantial discretion and judgment in treating patients.

The Hospital's educational requirements for the position of laboratory technologist include a bachelor of science degree and 1 year of clinical experience. The Hospital also requires laboratory technologists to be registered with the American Society of Clinical Pathologists or to be in the process of obtaining registry. The laboratory technologists work principally in the laboratory in processing and testing blood which they obtain from patients in the nursing units. The laboratory technologists also perform serology tests, urinalysis, cytology examinations, and other special chemical tests and are responsible for accurately gathering and reporting information provided by the tests.

We conclude that the work of the physical therapist and the laboratory technologist is predominantly intellectual in content, that it involves the exercise of discretion and judgment, and that it requires knowledge of an advanced type. Accordingly, we find these two classifications are profes-

<sup>1</sup> The Employer's name appears as corrected at the hearing.

<sup>2</sup> The Petitioner's name appears as corrected at the hearing.

As indicated previously, in Case 22-RC-6189 Petitioner sought a unit consisting of all of the Employer's service and maintenance employees. We find such a unit appropriate for collective bargaining within the meaning of the Act and we shall direct an election therein. We shall include in the service and maintenance unit, in addition to the employee classifications enumerated in the petition in Case 22-RC-6189,<sup>7</sup> all employees who are not technicals, professionals, or office clericals,<sup>8</sup> viz: darkroom, EKG, and EEG technicians, laboratory technician I, physical therapy technician, operating room technician, respiratory therapy technician trainee, pulmonary function technician, X-ray receptionist, medical transcriber, medical records clerk, storeroom stock clerks, social service secretary, outpatient service center clerk, timeclock clerk in the nursing service department, and inservice secretary.

Based upon the foregoing, we find the following groups of employees constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(c) of the Act:

*In Case 22-RC-6181:* All regular full-time and part-time practical nurses, X-ray technologists, blood bank technologists, laboratory technicians II, and respiratory therapy technicians employed by the Employer at its hospital facility located at 655 E. Jersey Street, Elizabeth, New Jersey, but excluding all administrators, professional, confidential, office and clerical employees, registered nurses, pharmacists, social workers, therapists, dieticians, medical record librarians, service and maintenance employees,

guards, and supervisors as defined in the Act, and all other employees not included.

*In Case 22-RC-6189:* All regular full-time and part-time employees in the service and maintenance areas including nurses aides and orderlies; dietary employees, cafeteria employees, housekeeping employees, central supply employees; laundry and linen employees; maintenance and engineering employees; messengers; ward clerks, aides in laboratory, operating room, pharmacy, EKG and EEG department medical records, physical therapy, recovery room, respiratory therapy, X-ray; elevator operators, clerk-receptionist in the blood bank/laboratory, chauffeurs, medical-surgical technicians, laboratory clerks, equipment technicians, darkroom technicians, EKG technicians, EEG technicians, laboratory technician I, physical therapy technicians, operating room technicians, respiratory therapy technician trainee, pulmonary function technicians, X-ray receptionists, medical transcribers, medical record clerks, storeroom stock clerks, social service secretary, outpatient service center clerk, timeclock clerk in the nursing service department, and inservice secretary, employed by the Employer at its hospital facility located at 655 E. Jersey Street, Elizabeth, New Jersey, but excluding administrators, professional, confidential, business office clerical and technical employees, registered nurses, pharmacists, social workers, therapists, dieticians, medical record librarian, guards, and supervisors as defined in the Act, and all other employees not included.

## ORDER

It is hereby ordered that the petition filed in Case 22-RC-6195 be, and it hereby is, dismissed.

[Direction of Elections<sup>9</sup> and *Excelsior* footnote omitted from publication.]

<sup>9</sup> Inasmuch as the elections being directed in Cases 22-RC-6181 and 22-RC-6189 are in broader units than the units petitioned for by the Petitioner, and because it is not clear from the record whether the Petitioner is willing to proceed to elections in such units, Petitioner may now wish to reconsider whether it wishes to proceed to elections in the units directed. If it does wish to so proceed, it will be necessary for the Petitioner to submit to the Regional Office an adequate showing of interest in such units. Accordingly, we direct that the Petitioner advise the Regional Director whether or not it wishes to proceed to an election, and, if it does desire to do so and does not already have a sufficient showing of interest, submit its additional interest showing. Failure to submit sufficient additional interest showing or, alternatively, a request to withdraw petition within 10 days from the date of this Decision will result in dismissal of the petition.

sional and hence we shall exclude them from any unit found appropriate. Cf. *Barnert Memorial Hospital, supra* at *Medical Technologists*.

<sup>7</sup> The petition in Case 22-RC-6189 includes the classification of elevator operator. At the hearing the Employer maintained that as of March 4, 1974, the elevator operator classification was discontinued and all elevator operators were reclassified as security officers (although the former elevator operators apparently retained responsibility for operating elevators in a "Code 4" or cardiac arrest emergency situation). In its brief the Employer asserts that this limited responsibility ended with the installation of an automatic recall system on the elevators on November 11, 1974. The Petitioner's brief is silent on the issue. On the basis of the record before us we conclude that the former elevator operators should be excluded from the unit as guards.

<sup>8</sup> Although employees in certain classifications included in the service and maintenance unit perform some duties that are "clerical," it is clear from the record that they work alongside and share a close functional relationship with other employees who are more immediately involved with patient care. Accordingly, we conclude that employees in these classifications are not "business office" clericals who should be excluded from a service and maintenance unit. See, generally, *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB No. 131 (1975); *Trumbull Memorial Hospital, supra*.