

The Leonard Hospital¹ and Licensed Practical Nurses Benevolent Association of the City of Troy, New York and Licensed Practical Nurses of New York, Inc. Case 3-RD-462

October 3, 1975

DECISION ON REVIEW

On March 14, 1975, the Regional Director for Region 3 issued his Decision and Direction of Election in the above-entitled proceeding, in which he directed an election in a unit of all licensed practical nurses and graduate practical nurses employed by the Employer at its Troy, New York, hospital. Thereafter, the Union, in accordance with the National Labor Relations Board's Rules and Regulations, Series 8, as amended, filed a timely request for review of the Regional Director's decision. The Union and the Employer were parties to a collective-bargaining agreement which was effective from November 1, 1973, to October 31, 1974. The instant petition was filed on January 30, 1975. At the time of filing the petition, the Union and Employer were, apparently, involved in negotiations toward a new contract and were in the process of mediation before the Federal Mediation and Conciliation Service. Although the Union conceded that no contract was in existence which would bar the petition filed on January 30, it contended that the recent health care amendments of the Act required the Board, in the interests of stability of bargaining relationships in the health care industry, to set forth a modification of our contract-bar rules which would bar rival petitions filed at a time when parties to an expired agreement were in the process of mediation before the Federal Mediation and Conciliation Service.

By telegraphic order dated April 29, 1975, we granted review to consider the Union's argument. A further basis for review was the fact that the instant case arose at a time when the Board was actively considering the scope of bargaining units generally in the health care industry, and the collateral question of whether the Board would give effect to unit stipulations not in conformity with the eventual unit determinations made via the lead case issued on May 5, 1975.²

¹ The Employer's name appears as amended at the hearing.

² See *Otis Hospital, Inc.*, 219 NLRB No. 55 (issued July 16, 1975) at fn. 7, for a listing of these cases. The parties in the instant proceeding stipulated that the appropriate unit for purposes of this case was a unit composed exclusively of licensed practical nurses. At the time review was granted

First, with regard to the Union's contention that the health care amendments envisaged a modification of our contract-bar rules, in *Trinity Lutheran Hospital et al.*, 218 NLRB No. 34, issued June 3, 1975, we announced a modification of the open period for filing petitions in cases involving health care institutions by ruling that the open period would no longer be 90-60 days prior to expiration of the existing contract but, to accommodate the notice requirements of the amended Act, would be 120-90 days prior to expiration. The ruling had the effect of insulating parties to a contract from the threat of pending petitions for a period of 90 days immediately prior to expiration of contract. However, we further stated that we saw no reason to provide more than a 30-day open period or to extend the insulated period beyond the expiration date of the contract. We reaffirm that conclusion here. The instant petition was filed some 90 days after expiration of the Union's contract. It is easily seen that to set forth a rule which would bar rival petitions not only for 90 days prior to expiration of an existing contract but for a further indeterminate period, extending in some cases, such as this one, as far as 3 months beyond expiration of contract, would not merely "prevent the threat of rivalry and uncertainty" for a reasonable period of time during which parties to a contract could engage in meaningful bargaining but would further amount to an unwarranted intrusion upon the legitimate interests of both the employees involved and those who would seek to represent them.

With regard to the appropriateness of the unit involved herein, in *Otis Hospital, supra*, we announced that unit stipulations setting forth compositions different from those set forth by the Board in the contested lead cases decided May 5, 1975, would be given effect if the stipulated unit did not contravene either the provisions of the Act or established Board policies. That particular case involved, among other stipulations, a stipulation as to the appropriateness of a unit composed exclusively of licensed practical nurses. We directed, on the basis of the stipulation, an election in that unit. For the reasons set forth in that decision we shall likewise do so here.

Accordingly, we remand these proceedings to the Regional Director for Region 3 for the purposes of conducting an immediate election, with the proviso that the payroll period for determining eligibility shall be that immediately preceding the date of issuance of this Decision on Review.

herein the Board was considering both the appropriateness of such a unit and whether, if such a unit were ultimately found to be generally inappropriate in contested cases, such inappropriateness could be overcome by stipulation of the parties that such unit was appropriate in the circumstances of their case.