

**Association of Hospitals of Santa Clara County,
Employer-Petitioner, and International Union of
Operating Engineers, Stationary Engineers Local
39, AFL-CIO. Case 20-UC-120**

March 22, 1977

DECISION AND ORDER

BY MEMBERS FANNING, PENELLO, AND
WALTHER

Upon a petition for clarification of unit duly filed on August 6, 1976, under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Jonathan J. Seagle on September 22 and October 1 and 7, 1976. Following the hearing and 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 20, this proceeding was transferred to the Board for decision. Thereafter, briefs were filed by the Petitioner and the Union.

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 Petitioner, a California corporation, is a multiemployer association which includes four private nonprofit hospitals and one public municipal hospital (El Camino Hospital District of Santa Clara County). Each of the private nonprofit hospitals has an annual gross revenue of at least \$250,000 and has received an annual amount of Medicare payments exceeding \$10,000.

2. The parties stipulated, and we find, that the Union involved herein is a labor organization within the meaning of Section 2(5) of the Act.

3. The history of collective bargaining between the Petitioner and the Union dates back to 1968 when the Association was formed. The most recent contract between the parties, which extended from October 15, 1973, to October 14, 1976, covered a unit certified by the California State Conciliation Service in 1968 and included chief engineers, assistant chief engineers, watch maintenance engineers, utility maintenance engineers, utility maintenance men, and biomedical technicians.

The Petitioner filed the unit clarification petition on August 6, 1976, and requested that the Board clarify the bargaining unit to exclude alleged supervisors. Petitioner contends that the job classifications of

"Chief Engineer" and "Assistant Chief Engineer," which have been treated by the parties as part of the bargaining unit, are supervisory and should therefore be excluded from the unit. Petitioner notes that prior to 1974, when the Act was extended to cover nonprofit institutions, there were no guidelines as to what was an appropriate employee unit or what employees were or were not supervisory and, accordingly, exempt from the unit. Such determinations, Petitioner claims, were dependent upon bargaining strength or weakness of the parties.

The Union takes the position that history of collective bargaining and the state certification cannot be used as a basis for justifying a partial multiemployer unit in this case, hence the petition should be dismissed. In footnote 1 of its brief it refers to the fact that no evidence was taken as to the disputed classifications at one of the hospitals, El Camino, because it is not an employer within the meaning of Section 2(2) of the Act. Also, it takes the position that the chief engineers and assistant chief engineers (where employed) are not supervisors in any event.

Thus, there is a question of whether the multiemployer association involved herein is an "employer" within the meaning of Section 2(2) of the Act, as Petitioner contends, or whether, as the Union contends, it is an entity exempt from Board jurisdiction by virtue of El Camino's inclusion, since that hospital is a political subdivision of the State of California.

We have held that entities are entitled to the statutory exemption from political subdivisions under Section 2(2) if they are either (1) created directly by the State, or (2) administered by individuals who are responsible to public officials or the general electorate. See *Camden-Clark Memorial Hospital*, 221 NLRB 945 (1975). Although a stipulation regarding El Camino's status was refused, testimony indicates that it was formed on October 30, 1976, pursuant to section 32000 of the Health and Safety Code of California as a political subdivision of the State and is tax supported. Accordingly, as a political subdivision of a State, El Camino is exempt from our Act by virtue of Section 2(2).

Having determined that association member El Camino is exempt from the Board's jurisdiction, and it appearing that all five employers continue to support the five hospital multiemployer unit of engineers certified by the State, we conclude that the multiemployer unit sought herein is inappropriate because of the inclusion of a nonstatutory employer.

For lack of an appropriate unit we shall not assert jurisdiction in this proceeding.¹

¹ Cf. *Peerless Publications, Inc.*, 190 NLRB 658, 659 (1971), to the effect that it is appropriate for the Board to clarify where unit inclusions of the parties are contrary to our Act. This, however, presupposes an appropriate unit.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Employer's petition herein be dismissed.