

**Duke University and International Union of Operating Engineers, Local Union No. 465, AFL-CIO,<sup>1</sup> Petitioner.** Case 11-RC-4212

January 28, 1977

**DECISION AND DIRECTION OF ELECTION**

BY CHAIRMAN MURPHY AND MEMBERS  
JENKINS AND WALTHER

On June 17, 1976, the International Union of Operating Engineers, Local Union No. 465, AFL-CIO, filed a petition seeking to represent certain employees of Duke University. Pursuant to the direction of the Regional Director for Region 11, Hearing Officer George Carson II held a hearing on July 8, 1976. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director transferred this case to the Board for a decision. The Employer filed a brief which the Board has received and has considered along with the entire record in this case.

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.

1. The parties stipulated, and we find, that during the past year the Employer received gross revenues in excess of \$1 million from its educational and related activities in North Carolina, and purchased and received goods valued in excess of \$50,000 directly from outside the State of North Carolina. We therefore find that the Employer is engaged in commerce within the meaning of the Act, and to assert jurisdiction in this matter will effectuate the purposes of the Act.

2. The parties stipulated, and we find, that the Petitioner is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

<sup>1</sup> The names of the Employer and the Petitioner appear as amended at the hearing.

<sup>2</sup> The unit that is requested in the instant petition, as amended at the hearing by the Petitioner with the consent of the Employer, is as follows: all maintenance mechanics, senior electricians, electricians, trades helpers, senior carpenters, carpenters, senior plaster masons, plaster masons, senior painters, painters, senior refrigeration and air conditioning mechanics, refrigeration and air conditioning mechanics, senior plumbers, plumbers, insulation mechanics, insulation mechanics senior, medical equipment servicemen senior, medical equipment servicemen, senior sheet metal mechanic, electronics technician, electronic technician senior, and animal laboratory isolation facility maintenance coordinator at the Employer's Medical Center, but excluding all office clerical employees, supervisors,

3. We find that 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 appropriateness of the unit sought by Petitioner is in issue. As noted, on June 17, 1976, the Petitioner filed a petition to represent all maintenance employees in the medical center of the Employer.<sup>2</sup>

The Petitioner contends that the petitioned-for unit of medical center maintenance employees is appropriate for the purposes of collective bargaining and requests that an election be ordered for this unit. The Petitioner further argues that in the event the Board is unwilling to direct an election solely in the petitioned-for unit, then the medical center maintenance employees should be given a *Globe* election<sup>3</sup> to determine whether they desire to be placed in the existing unit of campus maintenance employees or in the petitioned-for unit. Lastly, the Petitioner indicated at the hearing that it might withdraw its petition should the Board only provide the petitioned-for employees a choice of being included in the existing unit or remaining unrepresented.

In contrast, the Employer contends that the petitioned-for employees should be included in the existing campuswide maintenance unit because all of the affected employees share a community of interest. The Employer contests the Petitioner's claim and presented evidence to demonstrate that a separate unit of medical center employees would be inappropriate.

The Board has recently decided that a maintenance unit at a health care facility may constitute a separate appropriate unit.<sup>4</sup> In order to warrant such a finding, the Board's traditional community of interest standards must be satisfied.<sup>5</sup> In addition, any such determination must be viewed against the background of the congressional admonition to avoid undue proliferation of units in the health care industry.<sup>6</sup> Accordingly, it is necessary to analyze the employment characteristics of the employees in the petitioned-for unit in order to ascertain whether a separate unit of medical center maintenance employees is appropriate for the purposes of collective bargaining.

foremen, executive housekeepers, housekeepers, fire and safety coordinators, safety instructor, manager of Medical Center parking and traffic, parking supervisor, parking lot attendants, bus drivers, professional employees, guards and watchmen, as defined in the Act.

<sup>3</sup> See *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937)

<sup>4</sup> See, e.g., *The Jewish Hospital Association of Cincinnati d/b/a/ Jewish Hospital of Cincinnati*, 223 NLRB 614 (1976).

<sup>5</sup> *Id.*, at 616 In essence, the Board must decide that the maintenance employees possess a community of interest sufficiently separate and distinct from the broader community of interest which they share with other employees to warrant inclusion in a separate unit

<sup>6</sup> *Id.*, at 616

We note that Duke University is a nonprofit corporation which is located in Durham, North Carolina. A medical center is located at the University and employs approximately 7,000 employees, of whom approximately 6,000 are biweekly/hourly paid nonacademic, and nonprofessional employees. The Petitioner currently represents the "campus" maintenance employees. The unit that the Petitioner seeks to represent in the present proceeding consists of 102 maintenance employees at the medical center, which is physically located on the Duke campus in close proximity to the main campus.

We note that personnel policies and labor relations functions of the University are centrally administered by the University's personnel department for both medical center employees and campus employees. This department handles wages, salaries, benefits, records, employment, and training for all of the biweekly employees including the medical center maintenance employees. Similarly, hiring for the campus and medical center maintenance operations is administered centrally by one office that screens applicants and then refers them to the office where the opening exists for a further interview.

The maintenance employees in both the medical center and the campus area work out of satellite shops that are located throughout the University. These employees are jointly responsible for maintaining certain buildings and therefore have occasion to work in close proximity with each other. Although the maintenance employees at the medical center and throughout the campus are independently supervised at the initial level, they share the same ultimate supervision. The job classifications, skills, and functions are essentially the same for each group except for certain positions which provide opportunities to learn some new skills. We note, too, that the campus and medical center maintenance employees in similar job classifications are paid within comparable rate ranges for those classifications. All medical center and campus employees work 8-hour shifts and are paid biweekly.

The Employer furnishes all employees with uniforms, although the insignia is different for medical center employees than for campus employees and the two groups of workers receive a different number of uniforms. The Employer provides specialty tools to all employees; however, handtools are furnished by the employees themselves.

The campus and medical center participate in joint purchasing which necessitates contact between employees from the two areas. The medical center receives utility services, i.e., steam, heat, water, and power, from the campus. The medical center is billed by the University for services such as these. This is accomplished through a budget-crediting operation

that is also used when the medical center performs a service for the University.

Based on the above, especially the similar job duties and skills, the comparable wages, the similar hours and benefits of all maintenance employees, as well as the centralized and common administration of labor relations and personnel policies at the University, we conclude that a separate unit of medical center maintenance employees is inappropriate because these employees fail to constitute a distinct and homogenous group. We do find, however, that these employees share common interests with the campus maintenance employees and that a unit consisting of the existing campuswide maintenance unit and the petitioned-for employees is appropriate for the purposes of collective bargaining.

Therefore, we find that the maintenance personnel at the Employer's medical center should be given the opportunity by a self-determination election to express their desires with respect to being included in the existing maintenance unit represented by the Petitioner and we shall direct an election in the following voting group:

All maintenance mechanics, senior electricians, electricians, trades helpers, senior carpenters, carpenters, senior plaster masons, plaster masons, senior painters, painters, senior refrigeration and air conditioning mechanics, refrigeration and air conditioning mechanics, senior plumbers, plumbers, insulation mechanics, insulation mechanics senior, medical equipment servicemen senior, medical equipment servicemen, senior sheetmetal mechanics, electronics technicians, senior electronic technicians, and animal laboratory isolation facility maintenance coordinator at the Employer's Medical Center; but excluding all office clerical employees, supervisors, foremen, executive housekeepers, housekeepers, fire and safety coordinators, safety instructor, manager of Medical Center parking and traffic, parking supervisor, parking lot attendants, bus drivers, professional employees, guards and watchmen as defined in the Act.

If a majority of the employees in the above voting group cast their votes for the Petitioner, they will be taken to have indicated their desire to constitute a part of the existing maintenance unit currently represented by the Petitioner, and the Petitioner may bargain for such employees as part of that unit. If a majority of them vote against the Petitioner, they will be taken to have indicated their desire to remain unrepresented, and the Regional Director will issue a certification of results of election to that effect.

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

CHAIRMAN MURPHY, dissenting in part:

I agree that an election should be conducted among the maintenance employees at the medical center, but I cannot agree that they do not have a separate community of interests which warrants finding that they may constitute a separate appropriate unit. They

are a distinct and identifiable group under separate immediate supervision. I would find that the unit sought is appropriate and direct an election therein without requiring that the employees be represented as part of the overall maintenance unit should they designate the Union as their bargaining representative.