

**Duke University and Amalgamated Transit Union,
Local 1328, Petitioner.** Case 11-RC-5779

February 28, 1992

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY, OVIATT, AND RAUDABAUGH

On July 30, 1991, the Regional Director for Region 11 issued a Decision and Direction of Election in which he found that full-time busdrivers on the Duke University campus are not health care employees, and that the drivers comprise a separate and appropriate collective-bargaining unit. The Employer filed a timely request for review. By order dated October 3, 1991, the Board granted the Employer's request for review. The election was conducted as scheduled on August 29, 1991, and the ballots were impounded. The Employer subsequently filed a brief on review.

The Board has carefully considered the record, including the brief on review, and makes the following findings.

The issue in the case is whether a unit of full-time busdrivers at Duke University, who service the entire University, including an on-campus acute care hospital, is appropriate, or whether the drivers must be included in a hospital nonprofessional employee unit under the Board's Final Rule on collective-bargaining units in the health care industry (the Rule).¹ As stated, the Regional Director found that the drivers are not health care employees. We agree.

The Employer is a private nonprofit educational institution with its main campus located at Durham, North Carolina. Included in its operations is the Medical Center.² The parties stipulated that Duke Medical Center is an acute care hospital facility. Approximately 12,500 of the Employer's 19,000 employees work in or around the Medical Center.

The Duke University Transportation Department, designated as Duke Transit, provides bus transportation for students, employees, and visitors to the campus.³ Bus stops are located throughout the Employer's East, West, and Central campus sections, as well as at sev-

eral Duke parking lots on or adjacent to the campus where riders park their cars and ride to their respective destinations. There are two distinct bus schedules: a 7-month school year schedule which is primarily driven by part-time student drivers who, the parties agree, should not be included in any appropriate unit, and a 12-month year-round schedule primarily driven by the full-time drivers. Duke Transit also provides charter bus service for some events. Of the current six full-time bus routes, three run from parking lots restricted to hospital employees. Duke Transit directly employs about 14 full-time drivers, and plans to hire several more.

The busdrivers have no history of collective bargaining. They are separately hired and supervised by Transportation Department supervisors, are physically headquartered in the transit building, which is actually located off the Duke University campus, have little or no interaction with other nonprofessional employees of the Employer, and are required to possess a special Class "A" drivers license. They also wear distinctive uniforms, routinely lunch together in the transit building, and are not allowed to converse with passengers on their buses. Based on the distinct community of interest shared by the full-time drivers, the Regional Director found that they comprise a separate and appropriate collective-bargaining unit.⁴

The Regional Director rejected the Employer's argument that the drivers are health care employees, particularly noting that the drivers are directly employed by the campus Transportation Department and are only involved with Medical Center employees to the extent that those employees ride on buses. He found *Duke University*, 217 NLRB 799 (1975), and *Kirksville College*, 274 NLRB 794 (1985), which the Employer contends compel a finding that the drivers are health care employees, not to be controlling. The Employer contends that the Regional Director departed from Board precedent in finding those cases inapposite, and that his decision results in the undue fragmentation of units in an acute care hospital.

In *Kirksville College*, supra, the Board found a medical college and its health center to be so highly integrated that it could find no rational basis upon which to distinguish "college" from "hospital" employees, and declined to find units limited to the employer's health center appropriate.⁵ The Board noted, however,

¹29 CFR Part 103, 54 FR No. 76 at 16347-16348, 284 NLRB 1580, 1596-1597 (1989). The Rule sets forth eight appropriate collective-bargaining units in acute care hospitals. The term "acute care hospital" is defined in the Rule.

²Duke's Employee Handbook describes the Medical Center as comprising Duke North and South Hospitals, the School of Medicine, the School of Nursing, the Private Diagnostic Clinics, and the Sea Level Hospital.

³Prior to 1978, bus service at Duke was provided by Duke Power Co., an unrelated public utility. During the 1960s and 1970s, the Medical Center operated a shuttle service to and from nearby parking lots. In 1978, the University purchased two buses on an experimental basis. In 1979, Duke formed the Transportation Department to provide bus service to the entire University. The Duke Power contract was formally terminated in 1987.

⁴In its request for review the Employer did not renew its claim, made before the Regional Director, that if the drivers are not health care employees the only appropriate unit would be a unit of all service employees employed by the Employer.

⁵There, the employer was exclusively engaged in the provision of health care services, medical education, and medical research, the same individuals who comprised the board of governors of the health center also made up the college's board of trustees, the medical teaching process took place throughout the employer's entire

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that it was not holding that every medical school is a health care institution, and that only where the functions, administration, and work force of a medical school and its affiliated hospital were so highly integrated that separating them for representation purposes would be impractical and contrary to policy considerations in the health care field would it find a medical school to be a health care institution within the meaning of the Act. The Employer here attempts to extend the holding of *Kirksville College*. It argues that Duke's Medical Center is so highly integrated with the rest of the University that university employees upon whom the hospital depends—in this proceeding, Duke's bus-drivers—must be treated as health care workers. Thus, it claims that the Medical Center completely depends on the drivers to bring its employees to work from the nearby parking lots, so that it could not provide patient care without the drivers. Accordingly, the Employer contends that the Regional Director erred in distinguishing *Kirksville College* on the basis that *Kirksville* involved only medical education and the provision of medical services so that the functional integration of these related activities at *Kirksville College* could not be equated with the functional integration at Duke, a more diversified institution.

The Employer points to the fact that Duke operates under a single corporate charter and has a centralized payroll and accounting system for the entire University.⁶ The Medical Center is entirely dependent upon many of the University's common functions, the Employer states, citing purchasing, employment, employee relations, public safety, heating and transportation. This dependency, the Employer argues, renders the Medical Center so fully integrated with the rest of the University that essentially the entire facility, including the employees working in Transportation Department, should be regarded as a health care institution within the meaning of the Act.

The Employer specifically asserts that the many employees who spend 50 percent of their time in support of the Medical Center, including the full-time bus-

complex, faculty offices were often located adjacent to patient care areas, most physicians on the faculty treated patients at the health center, and the medical director of the health center was also the director of medical education.

⁶The record contains no evidence regarding the budgeting of the University and Medical Center, or how various portions of the Employer's operations are funded. Nor do we know how the Medical Center relates operationally to the University, other than through the Employer's assertions that much of the University's operations support the Medical Center. We do note in this regard that, while the Employer's associate vice president for human resources testified that he had caused a chart to be created showing the percent of the budget of various units of the University that are supported by the Medical Center, and most of those percentages exceeded 50 percent, the witness subsequently had to correct himself when his counsel pointed out that the percentages did not represent budgets at all but rather percentages of total efforts expended in support of the Medical Center.

drivers who service both the "Campus" and "Medical Center," should be deemed health care workers. The logical extension of its argument would, however, cover all university employees who the Employer asserts exert more than half their efforts in supporting the Medical Center. Under the Employer's analysis, Duke employees employed as food workers at a Duke cafeteria located across campus from the Medical Center would be health care employees if they devoted over 50 percent of their time to feeding and serving Medical Center employees. We find this analysis to fly in the face of common sense. Employees of a commonly used Duke University cafeteria are not employees of Duke's acute care hospital merely because most of the cafeteria's customers are doctors, nurses, or other hospital employees.

We decline to extend the holding of *Kirksville College* to find the drivers in Duke's Transportation Department to be health care employees simply because they drive Medical Center employees, among others, on their campus routes. According to Duke's Employee Handbook, published in June 1990, there are 55 departments and programs at Duke offering a total of 25 different types of degrees to approximately 6000 undergraduate students and 3700 graduate and professional students. Only about 5 percent of the student population was estimated by one employer witness to be clinical/medical; another testified that Duke has approximately 400 medical and 65–70 nursing students, and that 750 or so postgraduate physician trainees whose status may be either student or employee are paid salaries by the University. It is therefore apparent that Duke, unlike *Kirksville College*—whose sole function of providing health care service and education was wholly integrated—is, as found by the Regional Director, a multidisciplinary institution with many operations unrelated to its health care function. Hence, its functional integration with the Medical Center is not analogous to that at *Kirksville College*. At *Kirksville College* patient care was interwoven throughout the institution; most physicians on the faculty treated patients at the health center, and the medical teaching process took place throughout the entire complex. That has not been demonstrated to be the case at Duke.⁷ We find that the drivers' role of driving buses carrying hospital and other university employees around campus is not so functionally integrated with the hospital's operation that Duke's Transportation Department is a health care institution and the drivers health care employees.

Nor do we find policy considerations such as a concern for the potential disruption of health care services

⁷Indeed, even whether the Employer's Medical Center is itself so integrated that all of its component parts would constitute an acute care hospital under the Rule, a question not before us, is undetermined.

in the event of a work stoppage to weigh in favor of treating the drivers as health care employees. The drivers do not provide patient care, and they perform a function which could easily be replaced in the event of a work stoppage.⁸ The Employer's vice chancellor for administration and finance of the Medical Center testified that the Employer would have to fashion some sort of contingency plan with respect to bus transport, as it already has with respect to housekeeping and laundry workers in the hospital who are represented by another union. He speculated that the contingency plan might well involve using the Durham city bus system as a backup measure, and admitted that he did not think that a stoppage of the bus system would bring the patient care delivery system of Duke Medical Center to its knees. Accordingly, we find no policy considerations weighing against separating the busdrivers from the Medical Center employees.

As stated, the Employer further claims that the Board's Decision in *Duke University*, 217 NLRB 799 (1975), requires that the busdrivers be found to be health care workers. At issue in that case was the appropriateness of two petitioned-for units of employees in the Medical Center: approximately 22 telephone switchboard operators servicing the entire University, and approximately 108 maintenance employees in the Medical Center. The Employer there contended that the unit of switchboard operators was inappropriate because the operators were health care institution employees sharing a community of interest with non-professional employees in the Medical Center. The operators were located in the hospital, but it was noted in the decision that the Employer planned to move the operators' facilities to the Telecom Building with no change in the responsibilities and duties of the operators. The Board stated that it agreed with the Regional Director's conclusion that the switchboard operators were employees of the health care institution, and found that a unit limited to the operators was congressionally foreclosed because of the severe fragmentation of bargaining units that would result. In so concluding, the Board stated:⁹

The operators are responsible for operating the telephone switchboards and handling voice and radio paging in the hospital and Medical Center. More than 50 percent of all incoming and outgoing calls relate directly to the Medical Center, and the critical paging function is almost exclusively confined to the Medical Center. The switchboard operators are also responsible for

handling emergency calls by use of a "Code 5" signal used within the Medical Center. Cardiac arrest teams and other emergency functions in the hospital are entirely dependent on the operators who must, based upon the information they receive from the emergency calls, utilize voice and radio paging to immediately advise the appropriate personnel within the Medical Center.

The Regional Director found *Duke University*, supra, not to be controlling in this case because the telephone switchboard operators were physically based in the Medical Center and, more importantly, were directly involved in the provision of medical care. The Employer argues that the full-time busdrivers spend a majority of their time servicing the Medical Center, and that the Regional Director ignored this evidence and refused to apply a 50-percent rule as enunciated by the Board in *Duke University*, supra, and related cases, to find that the drivers are health care workers.¹⁰ Board precedent requires that an employee's health care status be determined by looking not at the employee's job duties or integration with other hospital personnel, the Employer claims, but rather at the amount of time employees spend on health care related activities. Further, the Employer asserts, the Board found that the switchboard operators were health care employees solely because the operators, as a group, spent over 50 percent of their time handling calls for the Medical Center.

It is clear from the Board's above-quoted analysis in *Duke University* that the operators' spending a majority of their time handling calls for the Medical Center was but one of a number of factors cited by the Board in finding that a unit limited to switchboard operators was not appropriate. We agree with the Regional Director that more important was the operators' intimate involvement in the provision of medical care. They were responsible for the critical paging function within the hospital, for handling emergency calls, and for signaling cardiac arrest teams and other emergency personnel who were entirely dependent upon the operators to alert them to emergency situations. Contrary to the Employer's assertions, and regardless of whether we would reach the same result now, the telephone opera-

⁸Special provisions of the Act applicable to health care institutions relate to "patient care situations" and not to "purely administrative health care connected facilities." See, e.g., *Damon Medical Laboratory*, 234 NLRB 333, 334 fn. 1 (1978), citing the legislative history of the 1974 health care amendments.

⁹Id. at 800.

¹⁰The related cases which the Employer cites all predate the 1974 health care amendments which extended Board jurisdiction over nonprofit hospitals and other health care institutions: *Duke University*, 194 NLRB 236 (1971); *Duke University*, 200 NLRB 81 (1972); *Georgetown University*, 200 NLRB 215 (1972). The Board then excluded from bargaining units employees or employee classifications if more than 50 percent of the worktime of employees in a given classification were spent in the hospitals, because the Board had no jurisdiction over nonprofit hospitals at that time. Since the passage of the 1974 health care amendments, there is no continuing need for a breakdown of work duties by percentage in order to determine the Board's jurisdiction.

tors were much more directly involved in medical care than the busdrivers here.¹¹

We conclude that the determination of who is a health care employee in a university setting, where the institution contains both health care and health related facilities and traditional nonhealth care academic operations, requires a reasoned analysis of all of the circumstances of the case. Although we recognize that it may not always be easy to draw the line in making such a determination, we are unwilling to decide this issue on the basis of a flat numerical figure, without regard to other factors.¹² In making such an analysis here, we note first that the busdrivers are not directly employed by a health care institution. The drivers are

¹¹ We do agree with the Employer that the Regional Director improperly relied on the operators' physical location in the Medical Center as a basis for distinguishing *Duke University*, supra. As noted, the Board was aware when deciding that case that the Employer planned to move the operators from the hospital, so their location in the hospital obviously was not a basis for the decision. In addition, when the representation of the operators was again considered in a subsequent proceeding limited to the Medical Center, the operators were actually located in the Telecom Building. *Duke University*, 226 NLRB 470 (1976). The petitioner there sought to represent all Medical Center service employees, and the Board excluded the operators from the service employee unit as office clericals.

¹² To the extent that *Duke University*, 217 NLRB 799 (1975), and related cases may suggest the appropriateness of such an inflexible, mathematical approach, regardless of other circumstances, those cases are overruled.

separately hired and supervised by Transportation Department supervisors, are separately headquartered in a building off the campus and away from the hospital facilities, and have very little interaction with other Duke University employees. Their only connection to the Medical Center is that Medical Center employees and patients ride on buses.¹³ In these circumstances, we agree with the Regional Director that the full-time busdrivers are not health care employees. We also agree, based on all the factors previously noted and relied on by him, that they constitute a separate and appropriate bargaining unit.

Inasmuch as the Board's Rule on collective-bargaining units in the health care industry applies by its terms to acute care hospitals, and we find the drivers are not employees of an acute care hospital, their representational interests are not affected by the Rule. Accordingly, the Regional Director's Decision and Direction of Election is affirmed.

ORDER

It is ordered that Case 11-RC-5779 is remanded to the Regional Director for further action consistent with this decision.

¹³ Although the Employer asserts that over 50 percent of the busdrivers' service is devoted to the Medical Center, we note that this assertion is not based on any objective data, such as a statistical survey of ridership.