

Staten Island University Hospital and Federation of Nurses/UFT, Petitioner. Case 22-RC-10585 (formerly 29-RC-7872)

July 29, 1992

ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Employer's and Intervenor New York State Nurses Association's requests for review of the Regional Director's Decision and Direction of Election are denied as they raise no substantial issues warranting review. A copy of the Regional Director's decision is attached. The Employer's request for a stay of the election is also denied.

MEMBER OVIATT, concurring.

Congress, when it enacted the health care amendments to the Act in 1974, expressed concern over unit proliferation. See S. Rep. No. 93-766 at 5 (1974); H. R. Rep. No. 93-1051 at 6-7 (1974). The Supreme Court in *American Hospital Assn. v. NLRB*, 111 S.Ct. 1539 (1991), interpreted these specific concerns about unit proliferation in acute care hospitals as a warning to those who interpret the amendments that, if unnecessary or substantial proliferation of units is permitted or encouraged, such might result in Congressional action. *Id.* at 1544-1545. We should therefore guard against such proliferation. In accordance with that principle, I believe that, even where there are two geographically separate hospitals with separate immediate supervision in the same department at both hospitals, the circumstances may nonetheless warrant accreting the nurses unit at one of the two hospitals into the larger unit. In this case, however, after the 1987 merger, and the 1989 U.S. Government recognition of the two divisions as constituting one hospital, the Employer continued to negotiate separately with the nurses at each hospital. In these circumstances, I agree with my colleagues that the South site has not been accreted to the unit of RNs at the North site, and that the Regional Director correctly directed an election in the RN unit at the South site.

APPENDIX

Petitioner seeks to represent the approximately 230 full-time and regular part-time Registered Nurses (herein RN's) including per diem RN's, employed by the Employer at its 375 Seguine Avenue, Staten Island, New York facility (herein South site), but excluding all discharge planners, utilization review coordinators, managerial employees, guards and supervisor, as defined in the Act. The Employer maintains that, because of a merger of its operations the unit sought by the Petitioner is an accretion to the unit of appropriate 679 RN's employed at its 475 Seaview Avenue, Staten Island, New York facility (herein North site), who are rep-

resented by NYSNA, and, therefore, it is an inappropriate unit for purposes of collective bargaining. Alternatively the Employer maintains that, even if the Regional Director determines that the South site unit is not an accretion to the North site unit, because of the functional integration of nursing services and the community of interest shared by all RN's, the only appropriate unit is a single overall unit composed of RN's employed at both sites. The Employer maintains, however, that conducting an election at the present time to determine the collective-bargaining representative, if any, of the employees in the combined unit would be time-barred because of the current collective bargaining agreement in effect between it and NYSNA, and that the petition herein should, therefore, be dismissed.

The Employer, a not for profit corporation, is a health care institution which operates a multi-site acute care hospital in Staten Island. Its North site, formerly known as Staten Island Hospital, is a 465 bed facility while its South site, formerly known as Richmond Memorial Hospital, is a 201 bed facility. The two facilities are approximately 8 miles apart but, because of traffic conditions, it takes about a half hour to travel between them.

RN's employed at the North site have been represented, for purpose of collective bargaining, by NYSNA since about 1972. The current collective bargaining agreement between the Employer and NYSNA is effective from April 1, 1991 to March 31, 1993.⁴ RN's employed at the South site have been represented, for purposes of collective bargaining, by RCNA since about 1974. The most recent collective bargaining agreement between the Employer and RCNA was to have expired on August 31, 1990, but was extended, by written agreement of the parties, until October 31, 1991.

In about Spring 1987, Staten Island Hospital and Richmond Memorial Hospital decided to consolidate and merge their business operations, in an attempt to be able to provide medical services to the community on a better and more cost-effective basis. They then became a single, not-for-profit corporation, known as Community Health System of Staten Island, Inc. (herein CHS). Each hospital functioned as a separate division of CHS, with an initial directive from its Board of Trustees to seek economies of scale, yet to maintain separateness between the divisions so as not to obliterate their formerly independent status. While operating under this directive, the divisions maintained separate human resource departments, separate annual budget and audits, separate advertising and RN recruitment, separate reviews by the Joint Commission on Accreditation of Healthcare Organizations (herein JCAHO, a voluntary organization which establishes standards for the provision of medical services and measures a hospital's compliance with those standards) and separate provider numbers for the purpose of government reimbursement for the provision of medical services. In about 1989, however, CHS determined that, for a variety of reasons, it would be advantageous to integrate the divisions to a greater extent, and it embarked on efforts to do such. Also, in 1989, both divisions of CHS became recognized by the Federal

⁴The collective bargaining agreement also covers a relatively small number of RN's employed at ancillary sites, such as at the South Beach Psychiatric Center, at the South site's Alcohol Detoxification Unit (which had formerly been located at the North site), at a few school-based clinics and at a dental clinic.

Government as one hospital. To solidify the idea of one hospital in the eyes of the community and to further the recognition of its being the major teaching affiliate of the State University of New York Health Service Center at Brooklyn, CHS changed its name to Staten Island University Hospital. The former Staten Island Hospital became the North site and the former Richmond Memorial Hospital became the South site. The record reflects, however, that the South site is still commonly referred to by staff and others in the community, as Richmond Memorial Hospital.

The Employer's Senior Executives including its President, Vice Presidents and Associate Vice Presidents, are responsible for overseeing the operation of all sites where employees work, including the North and South sites. There is now a single budget and audit, a single reimbursement provider number covering all sites and the hospital receives one accreditation from JCAHO whose standards require, among other things, that each department, including the nursing department, operate according to a uniform set of policies and procedures. Further, finance and purchasing of supplies has been centralized, as has billing systems. Other computer data base systems, such as laboratory functions and patient information, have been centralized. The Employer also puts out a monthly employee newsletter for employees at both sites, although in the newsletters an "employee of the month" is selected for each site. Additionally, a mail delivery shuttle operates regularly between the sites, a common telephone internal extension system is in place at both sites, and a single access card permits an employee to enter, and park at, either site.

With respect to the Employer's Nursing Department, in which the employees sought to be represented are employed the record reflects that that department has overall responsibility for the nursing services provided both the North and South sites. However, the Department of Nursing Organization Plan submitted to JCAHO for accreditation purposes states that the department is organized to operate through a "decentralized management structure."

Dorothy Lucik, Sr. Vice President for Nursing, heads the department and Joan Knighton, Vice President for Nursing Operations, reports directly to her. Both have overall responsibility for the department. Directly under Knighton in the department's table of organization are Assistant Directors of Nursing (ADN's), each responsible for a group of units. Particular units supervised by an ADN's include intensive care (ICU), cardiac care (CCU), hemodialysis (HEMO), emergency room, ambulatory surgery, ambulatory care, substance abuse, alcohol detoxification, labor and delivery, nursery, pediatrics, pediatric ICU, prenatal testing, radiology, vascular lab, cardiac catheterization and intravenous (IV) team. While each site has most of these units, some units are only located at one of the sites. For example, substance abuse and alcohol detoxification are located only at the South site, while labor and delivery, nursery, pediatrics, pediatric ICU, cardiac catheterization and IV team are located only at the North site. Nearly all of the ADN's only work at one of the sites and, with only one exception, the units which they supervise are all located at the same site.

The ADN's appear to have little supervisory contact with staff nurses. Immediate day-to-day supervision of staff nurses is provided by nursing care coordinators (NCC's), or by Nurse Managers (NM's) to whom NCC's report. The record

reflects that NCC's, among other tasks, prepare time schedules and independently approve requests for time off, including vacation requests, scheduling changes and requests to arrive late or leave early. Where appropriate, they independently adjust grievances filed by staff employees. They also interview job applicants and make hiring recommendations to the NM's. Further, they evaluate employees' performance and independently reprimand and counsel staff employees, orally and in writing, as needed. They also make recommendation to, and consult with, NM's regarding decisions to suspend or terminate employees. Additionally, they assign and direct staff in the unit, and assign overtime, as necessary. NM's, among other duties, view recommendations of NCC's regarding the hiring of nursing staff and the retention of staff employees during their probationary period. They also review time and vacation schedules and written evaluations of staff prepared by the NCC's. If appropriate, they will also resolve grievances which rise to their level. The record reflects that the duties and responsibilities of NCC's and NM's are limited to the site at which they work.

A Human Resources Department, responsible for employment related matters, such as recruitment, orientation, continuing education, wages and benefit administration, collective bargaining and grievance resolution, is located in a building near the North site. Personnel records are also housed there. That department is headed by a Sr. Vice President for Human Resources. Reporting to him is Janet Kolibus, Director of Employee Relations. Under them are Donna Cahill, Employee Relations Manager, who works in an office at the North site, and Pat Caldari, Employee Relations Specialist, who reports Cahill and works in an office at the South site. Cahill and Caldari are designated to answer day-to-day inquiries from staff relating to personnel matters. They also handle grievances, if necessary, which are not otherwise resolved. As noted above, NCC's or NM's at their respective sites have independent authority to handle and resolve grievances which occur in their department. Only if grievances cannot be resolved by them will they be handled by a Human Resource Department representative who works at their site. It appears that most grievances arising within the nursing department are resolved by a Nursing Department representative or a Human Resources Department representative who works at the site where the grievances arise. If the dispute, however, involves a major issue, or cannot otherwise be resolved, it may be brought to the attention of a higher level Human Resources Department representative who may work at a different site.

With respect to the recruitment RN's for job openings, the record reflects that applicants who are not already employed by the Employer must undergo an initial screening done by a Recruitment Manager from the Human Resources Department. Furthermore, job openings at either site are posted at both sites. As noted above, interviews for RN positions are done by a NCC employed at the site where the opening exists, and the NCC makes hiring recommendations to an NM, also employed at the site, who acts upon the recommendation. In some cases, the NM may also personally interview the job applicant before making a hiring decision.

The record reflects a very limited amount of permanent transfer of RN's between sites, despite the fact that job openings for RN's at either site are posted at both sites. Thus, in 1990, of the 231 job openings for RN's filled on the

North site, only 4 were filled by RN's who transferred from the South site, and of the 131 job openings for RN's filled on the South site, only 5 were filled by RN's who transferred from the North site. Further, in the first nine months of 1991, of the 123 job openings for RN's filled on the North site, only 3 were filled by RN's who transferred from the South site, and of the 49 job openings for RN's filled on the South site, only 10 were filled by RN's who transferred from the North site.

With respect to other interchange among RN's at the two sites, the record reflects that, of the approximately 909 non-supervisory RN's employed at the sites, only about four to six work at both sites.⁵ While RN's are, if necessary, asked to cover for absences on their own unit and, less frequently, on other units at their site, they do not appear to be asked to cover for such absences at other sites. This is because management interprets JCAHO standards as discouraging the regular transfer of RN's off their unit, and especially from site to site, because such transfers would interfere with the continuity of patient care. One RN however, who had transferred from North to the South site, volunteered for, and has been given, overtime work at the North site.

When RN's are hired by the Employer for either the North or South site, they receive the same orientation together. Orientation programs for new hires are conducted monthly. RN's from both sites also participate jointly in in-service training programs. These continuing education classes must be conducted annually to meet JCAHO requirements. However, other in-service training programs conducted throughout the year are limited to employee working in a particular unit at a site.

The record reflects that, on occasion, patients from one site are transferred to another site, either to take special tests not available at their site or to be placed within a unit at the other site. Thus, out of the 5,447 patients admitted to the South site during the first eight months of 1991, 170 were transferred to the North site for some reason. Also, of the 13,236 patients admitted to the North site during the same period of time, 60 were transferred to the South site for some reason. When these transfers occur, an RN who had cared for the patient gives a report concerning the patient to an RN at the other site. The report consists of information about the patient's status, diagnosis and previous treatment. This report, however, is no different than the report which would be given to an RN at a different hospital if the patient were to transfer there. Patients and their physicians are given full choice with respect to the location of their transfer. For some units it appears that transfers when they occur, are more frequent to another hospital than to a different site.

The record also reflects that while RN's at the North and South sites appear to exercise similar professional skill, their functions may differ, depending upon the site where they work. For example, as noted above, RN's on the North site work in a labor and delivery unit, a nursery unit, a pediatric unit, a cardiac catheterization unit and IV team unit, none of which exist at the South site. Further, RN's at the South site work in a substance abuse unit which does not exist at the

North site. Additionally, nurses on the South site may be assigned to rotate between the ICU, CCU and HEMO unit on a regular basis, while RN's on the North site are assigned to only one of those units. Moreover, RN's who work in the emergency room at the South site will see all types of patients, while North site emergency room RN's are assigned to patients with particular types of problems, such as cardiac, trauma, etc. Also, some units at the North site may utilize different equipment than that utilized in a similar unit on the South site, and RN's at one site may not know how to operate all of the equipment located in a similar unit at the other site.

While the wages of RN's at the South site had, in the past, been less than that received by RN's at the North site, in the same classification and with the same number of years of experience, in 1989 the Employer negotiated amendments to its collective bargaining agreement with RCNA, which amendments brought the wages of South site RN's up to the same level as those received by North site RN's represented by NYSNA. RN's are paid every two weeks, with those employed at the two sites being paid on alternate weeks. Full-time RN's at both sites work either a regular or alternate work schedule totalling 75 hours per pay period. Part-time RN's and per diem RN's are employed at both sites, but the North site employs a higher percentage of full-time RN's than does the South site, whose predominant complement of RN's are employed on a part-time basis. Per diem RN's at the South site also enjoy more flexibility in the scheduling of their hours than do their counterparts on the North site. North site RN's sign in when they arrive and leave work, while South site RN's punch a time clock.

The record reflects that seniority is accrued equally for full-time and part-time RN's on the South site, based upon their date of hire, and they are maintained on the same seniority list. On the other hand, seniority for North site part-time RN's is prorated, and they are maintained on a separate seniority list from full-time RN's. Seniority is used to determine an RN's layoff and recall rights, their entitlement to (and scheduling of) vacation benefits, and their entitlement to (or right to refuse) overtime assignments.

At the North site, RN's receive health insurance under a NYSNA Health Insurance Fund Plan, to which the Employer contributes. The Employer pays the full cost of coverage for full-time employees but only a prorated portion of cost for part-time RN's. The part-time RN's must pay the remaining portion of the cost, if they elect to receive such coverage. At the South site, however, RN's are allowed to select the various benefits that they will receive under a Flexible Benefit Plan, which plan is also available to the Employer's non-unionized employees. Employees selecting the High Option Plan, which is most equivalent to the NYSNA plan, must pay a portion of the cost, to receive coverage. Part-time RN's at the South site are entitled to select and receive, in most instances, the same extent of medical benefits as is provided to full-time RN's, and at the same cost. Further, all RN's at the South site, otherwise insured, may elect not to receive health coverage and may, instead, have the cost of such coverage paid to them as additional salary. North site RN's, however, do not have this option.

The Board has followed a restrictive policy in finding accretions to existing units because it seeks to insure that the employees' right to determine their own bargaining rep-

⁵This does not include instances when an RN who works at one site may also, on occasion, work at the other site as an "agency nurse," that is an employee of an agency whom the Employer has contacted to supply labor, because a staff shortage has occurred.

representative is not foreclosed. It will find a valid accretion “only when the additional employees have little or no separate group identity . . . and when the additional employees share an *overwhelming* community of interest with the pre-existing unit to which they are accreted [footnotes omitted, emphasis added].”⁶ In making this determination, the Board considers many different factors, including the geographic proximity of the two facilities, bargaining history, whether the two facilities have an integrated operation, similarity in skills and duties of the employees at the two facilities, similarity of their working conditions, contact between employees at the two facilities, the degree of their interchange and the extent of common day-to-day supervision of the two groups of employees.⁷

Applying these factors to the instant case, it does not appear that the South site RN’s have lost their group identity, or that they share an overwhelming community of interest with North site RN’s, as a result of the merger of the two former hospitals. While the facilities are only 8 miles apart, it still takes about a half hour to travel between them. Further the employees at the two sites have historically been represented separately and, even after the merger of the two hospitals in 1987, the Employer has continued to bargain separately with NYSNA and RCNA over the terms and conditions employment of RN’s employed at the two sites. While the two facilities have consolidated and integrated several of their operations, the nursing department, in which the employees sought to be represented are employed is, still organized to operate through a decentralized management structure. Further, each facility still provides on its own, substantially all of the patient care services normally provided by an acute care hospital. Additionally, while RN’s at the two sites exercise the same type of skills, their duties may differ even within the same type of unit, depending upon which site they are employed. Also, while the wages for RN’s at the two sites are similar, there are significant differences in the extent to which each site employs part-time RN’s, and the terms and conditions of employment applicable to part-time RN’s, including the method by which they accrue seniority, and their entitlement to, and the scope of, fringe benefits they receive. Moreover, there are differences at the two sites in the health care benefits made available to full-time employees as well. Further, the only contact between RN’s at the two sites, in addition to their joint orientation upon being hired and their annual joint in-service training, appears to be limited to their giving of reports to each other when patients are transferred between sites, which reports are no different than those given when patients transfer to other facilities. Permanent transfers of RN’s between sites is also negligible, and there is virtually no temporary interchange of employees between sites. Additionally, RN’s at the two sites do not have common immediate day-to-day supervision provided by NM’s or NCC’s, who appear to have broad authority with respect to employment-related matters. Based upon the above, and the record as a whole, I find that

⁶*Safeway Stores*, 256 NLRB 918 (1981).

⁷*Executive Resources Associates*, 301 NLRB 400 (1991); *Super Value Stores*, 283 NLRB 134 (1987); *Town Ford Sales*, 270 NLRB 311 (1984), *enfd.* 759 F.2d 1477 (9th Cir. 1985); *Safeway Stores, Inc.*, 256 NLRB 918 (1981); *Melbet Jewelry Co.*, 180 NLRB 107 (1969); *Great Atlantic & Pacific Tea Co.*, 140 NLRB 1011, 1021 (1963).

the unit of RN’s employed by the Employer at its South site has not been accreted to the unit of RN’s employed by the Employer at its North site.

There remains for consideration whether the unit of RN’s employed the Employer at its South site, is, by itself, an appropriate unit for purposes of collective bargaining. The Board has long held that a single-facility unit geographically separated from other facilities operated by the same employer is presumptively appropriate for the purpose of collective bargaining, even though a broader unit might also be appropriate.⁸ It has also applied such a rebuttable presumption as to the appropriateness of a single facility unit in the health care industry, even after taking into account Congress’ concern, as reflected in the legislative history of the 1974 amendments to the Act, with preventing undue proliferation of units in that industry.⁹ The Board continues to weigh traditional factors in deciding whether the presumption has been overcome, similar to the factor considered in determining whether an accretion has occurred, such as geographic proximity, employee interchange and transfer, functional integration, administrative centralization, common supervision and bargaining history.¹⁰

Based upon a consideration of the above factors, and the record as whole, and for the reasons described in my discussion of the accretion issue, I find that the Employer herein has not met its burden of rebutting the presumption of the appropriateness of a unit of RN’s at the South site, or purposes of collective bargaining.¹¹ Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Registered Nurses, including per diem Registered Nurses, employed by the Employer at its 375 Seguine Avenue, Staten Island, New York facility, but excluding all discharge planners, utilization review coordinators, managerial employees, guards and supervisors, as defined in the Act, and all other employees.

⁸*Black & Decker Mfg. Co.*, 147 NLRB 825 (1964); *Dixie Belle Mills*, 139 NLRB 629, 631–632 (1962).

⁹*Manor Healthcare Corp.*, 285 NLRB 224 (1987); *Samaritan Health Services*, 238 NLRB 629, 632 (1978); *National G. South*, 230 NLRB 976, 978 *fn.* 5 (1977).

¹⁰*West Jersey Health Club*, 293 NLRB 749 (1989).

¹¹Cases cited by the Employer and/ or NYSNA in support of their position that only a multi-site unit is appropriate, such as *West Jersey Health Systems*, *supra*; *Kaiser Foundation Health Plan of Oregon*, 225 NLRB 409 (1976); *Baptiste Memorial Hospital*, 224 NLRB 201 (1976); *Saddleback Community Hospital*, 223 NLRB 247 (1976); *Mercy Hospital of Sacramento, Inc.*, 217 NLRB 765 (1975); and, *Community Hospital at Glen Cove*, 29–CA–14910 (unpublished dismissal letter, July 31, 1990), are distinguishable from the instant case. In all of the cited cases, certain factors, not present here, militated in favor of multi-site unit, such as regular interchange of employees between units, a requirement of mandatory overtime at a different site, common immediate supervision, no separate bargaining history, greater similarities in skills, duties and working conditions and/or a more complete integration of facilities.