

Kirksville College of Osteopathic Medicine, Inc.¹ and Local 50, Service Employees International Union, AFL-CIO, CLC, Petitioner. Cases 17-RC-9392, 17-RC-9393, and 17-RC-9394

11 March 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

Upon petitions filed under Section 9(c) of the National Labor Relations Act, a hearing was held on 19 and 20 January and 16, 17, 18, 19, 23, and 24 February 1982 before Hearing Officer Richard Auslander. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, the Regional Director for Region 17 transferred this case to the Board for decision. The Employer and the Petitioner filed briefs.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

1. The parties stipulated that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We find that it will effectuate the purposes of the Act to assert jurisdiction.

2. Local 50, Service Employees International Union, AFL-CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. The Employer is a Missouri nonprofit corporation engaged in the provision of healthcare services, medical education, and medical research at various locations in Missouri. The Petitioner filed three petitions seeking to represent separate units composed respectively of all technical, all professional, and all service and maintenance employees employed by an entity denominated by the Petitioner as the "Kirksville Osteopathic Health Center." Although the petitions were amended at the hearing to reflect the correct name of the Employer, the Petitioner adheres to its position that the Health Center is a functionally distinct segment of the Employer, "in effect an unincorporated subsidiary of the College," and contends that only the Health Center is a healthcare institution within the meaning of Section 2(14) of the Act. The Petitioner further urges that employees of the Health Center share a community of interest separate from that of College employees, and thus that only Health Center employees, and not those of the College, should be included in the three units. The Employer argues that it is a single, integrated healthcare

institution, all the employees of which share a community of interest such that only two units, composed respectively of all professional and all non-professional employees, can be found appropriate.

The College is principally located in Kirksville, Missouri. On its main campus are located the Kirksville Osteopathic Hospital complex, housing an acute care hospital, an outpatient clinic, a clinical laboratory, basic science research laboratories, a library, a medical records department, and related medical services departments. Also located within the complex are classrooms, meeting rooms, and dining facilities. Several other buildings situated on the main campus are devoted to additional research facilities, clinics, maintenance and boiler-room facilities, and student housing. An administration building is located approximately two blocks away from the main campus. The Laughlin Osteopathic Hospital and Laughlin Osteopathic Clinic, both of which merged with the Employer in 1980, are located approximately a mile and a half from the main campus. The Employer also operates 13 rural and satellite outpatient clinics located within a 60-mile radius of Kirksville in northeastern Missouri.

In order to comply with certain accreditation requirements, the Health Center has its own board of governors and bylaws. The same individuals who comprise the board of governors of the Health Center, however, also make up the Employer's board of trustees. The Employer operates on a single, centralized budget and accounting system.

The teaching process takes place throughout the Employer's complex, and faculty offices are located in several areas, including those adjacent to patient care areas. Most physicians on the faculty treat patients at the Health Center, and the Health Center's medical director also is the director of medical education. The Employer's vice president also serves as the administrator of the Health Center.

In *Albany Medical College*, 239 NLRB 853 (1978), the Board held that the college and the hospital associated with it were separable entities, and that only the hospital was a healthcare institution within the meaning of Section 2(14) of the Act. The Board accordingly found appropriate a unit of maintenance employees employed by the college, excluding all employees who worked at the hospital. In so doing the Board relied in substantial part on its finding that the medical college's "primary purpose—its *raison d'être*—is to train physicians and to promote research and not to provide medical services to the community." 239 NLRB at 854.

After careful consideration, we have concluded that the approach taken in *Albany Medical College*

¹ The name of the Employer appears as amended at the hearing.

may lead to results which are inconsistent with congressional intent revealed in the legislative history of the 1974 healthcare amendments, which conferred upon the Board jurisdiction over nonpropriety hospitals. A primary focus of the legislative debates surrounding the 1974 amendments was the need to avoid interruptions in the delivery of healthcare services. Toward this end Congress provided in Section 8(g) that special strike notice provisions would be applicable at healthcare institutions, and cautioned the Board not to allow undue proliferation of bargaining units in this industry. Congress further indicated that the term "healthcare institution" should be construed broadly.²

The instant case illustrates the need for such an expansive reading. The Petitioner contends that the Employer's facilities and its employees can be divided into "college" and "hospital" categories, and that only hospital employees should be included in the unit or units found appropriate. The Employer offered extensive evidence, however, to establish the high degree to which the College and the Health Center, although legally distinct entities at least for purposes of accreditation, are functionally integrated. Thus, the Petitioner would include housekeeping employees, although in addition to cleaning hospital areas these employees clean classrooms, basic science laboratories, and the library, all of which the Petitioner contends are "college" facilities. The Petitioner would exclude the audiovisual department employees, yet these individuals also maintain and repair the nurse call system, patient television sets, and the pocket paging system in the hospital areas and perform numerous other duties directly involving the hospitals and clinics. Also, the Petitioner would include the centralized plant engineering and maintenance department employees, but these individuals also maintain boilers at the administration and student housing buildings and repair classroom and basic science equipment. The Petitioner would include the centralized purchasing department, yet it purchases supplies for the entire institution, including the classrooms and

administrative services. The switchboard operators would be included by the Petitioner, although they transfer calls not only throughout the hospitals, but also to the library, basic science laboratories, and the administrative offices which the Petitioner contends are part of the College. Similar patterns emerge throughout the Employer's work force.

Thus, employees in several departments serve both the College and the hospitals in such an integrated manner that their functions cannot be assigned to one or the other, and it is impossible to draw a line between them. Moreover, because a strike among any group of employees we might find to be working primarily at the College rather than at the hospitals would inevitably have a profound and direct effect upon the functioning of the hospitals, policy considerations dictate that the line should not be drawn. In sum, no rational basis has been shown upon which we can distinguish "college" from "hospital" employees at this highly integrated facility,³ and we must reject the Petitioner's position to this extent.

Although we have found that the petitioned-for units are inappropriate, because the Petitioner indicated a willingness to represent the Employer's employees in any units found appropriate by the Board, we will not dismiss the petitions. Instead, we shall remand this proceeding for the Regional Director's further consideration consistent with the Decision and Order in *St. Francis Hospital*, 271 NLRB 948 (1984), including, if necessary, a re-opening of the record and the issuance of a supplemental decision by the Regional Director, if appropriate.

ORDER

This case is remanded to the Regional Director for Region 17 for further proceedings consistent with this decision.

² Accordingly, we overrule *Albany Medical College* to the extent it would require a different result.

We are not holding that every medical school is a healthcare institution. Rather, where, as here, the functions, administration, and work force of a medical school and its affiliated hospital are so highly integrated that separating them for representation purposes would be impractical and contrary to the policy considerations present in the healthcare field, we will find the medical school to be a health care institution within the meaning of the Act.

² 93 Cong., 2d Sess., *Legislative History of the Coverage of Nonprofit Hospitals Under the National Labor Relations Act, 1974*, at 110 (Comm. Print 1974).