

Baker Hospital, Inc. and Local 218, Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Petitioner. Case 11-RC-5265

16 April 1986

DECISION ON REVIEW, ORDER, AND DIRECTION OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS DENNIS, JOHANSEN, AND BABSON

On 24 December 1984 the Regional Director for Region 11 issued a Decision and Direction of Election in which he found appropriate the petitioned-for unit of all service and maintenance and technical employees employed by the Employer at its North Charleston, South Carolina hospital, excluding business office clericals and certain other employee classifications, some of which the Employer had sought to include in the unit.¹

On 4 January 1985 the Employer timely filed a request for review of the Regional Director's decision. By telegraphic order dated 5 January 1985, the Board granted the request for review solely with respect to the Regional Director's unit exclusion of the Employer's clerical employees, activities director, and social services director. The Board has reviewed the entire record in this case, including the parties' submissions with respect to the issues under review, and makes the following findings.

The Employer operates a not-for-profit hospital. The Hospital contains 44 long-term care and 60 acute care beds. The Hospital provides the standard ancillary services including laboratory, X-ray, and physical therapy, and it has a small alcohol and drug treatment unit. There are approximately 117 employees in the unit which the Regional Director found appropriate.

The Regional Director excluded from this unit all 16 clericals employed in the patient accounting department and the 2 clericals employed in the data processing department. The Regional Director based their exclusion on his finding that under Board law these employees constitute business office clericals, and therefore are properly excluded from a unit of service and maintenance and technical employees. We agree that these employ-

ees are business office clericals, but find that under the standard set forth in *St. Francis Hospital (St. Francis II)*, 271 NLRB 948 (1984), there is an insufficient disparity of interests between the clericals and the service and maintenance, and technical employees to warrant excluding the clericals from the unit.

In *St. Francis II*, the Board emphasized that "more is required to justify a separate unit in a health care institution than in a traditional industrial or commercial facility."² Rather than applying the traditional community-of-interests analysis in the health care industry, the Board chose instead to apply a stricter standard which focuses on the disparity of interests among employee groups which would inhibit the fair representation of employee interests. As the Board explained, "the appropriateness of the petitioned-for unit is judged in terms of normal criteria [citations omitted], but sharper than usual differences (or 'disparities') between the wages, hours, and working conditions, etc., of the requested employees and those in an overall professional or nonprofessional unit must be established to grant the unit."³

The Board's "disparity-of-interests" analysis represents an attempt to accommodate broader units in the health care industry. This is in response to the congressional directive to avoid undue proliferation of collective-bargaining units in the health care industry.⁴ Congress recognized that the likelihood of patient care service disruptions at health care institutions caused by organization drives and related activities such as strikes and slowdowns would be reduced by minimizing the number of units appropriate in the health care industry.⁵ The disparity-of-interests analysis balances the interests served by the congressional directive and the employees' right to representation. Applying this analysis, we find that there is an insufficient disparity of interests between the clericals and the service and maintenance and technical employees to justify excluding the clericals from the unit.

The patient accounting department clericals are employed in the following job classifications: PBX operator, PBX operator/outpatient registration clerk, outpatient registration clerk, admitting registration clerk, file clerk, file clerk/PBX operator, cashier, credentials secretary/cashier, outpatient billing clerk and outpatient billing clerk/admitting

¹ The Regional Director defined the appropriate unit as follows: All service and maintenance employees, including maintenance department, dietary department, housekeeping department, nurses aides and orderlies, operating room personnel, ward clerks, patient escorts, Licensed Practical Nurses (LPNs) and technical employees, employed by the Employer at its North Charleston, South Carolina facility, but excluding all professional employees, Registered Nurses (RNs), physical therapist, business office clericals, personnel clerk, bookkeeper, guards and supervisors as defined in the Act

² 271 NLRB at 953

³ *Ibid*

⁴ S Rep 93-766, 93d Cong., 2d Sess 5 (1974), reprinted in "Legislative History of the Coverage of Nonprofit Hospitals Under the National Labor Relations Act, 1974" at 12, H Rep 93-1051, 93d Cong., 2d Sess 6-7 (1974)

⁵ See discussion *St. Francis II*, 271 NLRB at 950-951

clerk. The two data processing department clericals are employed in the job classifications of computer operator and data entry clerk.

Although most of the accounting department clericals' work is performed in the Employer's business office, a significant amount of such work, consisting of switchboard/receptionist and outpatient registration duties, is done outside the business office. Those duties are performed in the Hospital's lobby and emergency room, respectively. The two data processing department clericals work in a separate office across from the business office. All of the clericals' duties, except their switchboard/receptionist duties, involve financial or insurance matters. The clericals are supervised separately from the service and maintenance and technical employees, but the latter are divided among different departments and presumably are separately supervised from one another.

We find there is an insufficient disparity of interests to justify excluding these business office clericals from the unit because of their significant, work-related contact with unit employees and the many terms and conditions of employment they share in common with unit employees. With regard to the work-related contact between clericals and unit employees, billing clerks and data processing clerks communicate daily with unit employees to verify patient charges. Admitting clerks contact nursing stations many times daily to confirm patients' bed assignments and to ascertain which patients will be discharged soon. Service and maintenance employees in the housekeeping department notify office clericals when a bed has become available and has been prepared for the next patient. Clericals who perform switchboard duties frequently have contact with unit employees while relaying calls for them through the switchboard. The cashiers have contact with unit employees when cashing their checks and making change for them. The outpatient registration clerks also are often assisted by unit employees when registering patients at the emergency room reception counter.

There are also numerous terms and conditions of employment which the clericals and the unit employees share. All are hourly paid and most punch the same timeclock.⁶ The same cost-of-living adjustment is applied to clericals and unit employees. All employees are offered the same pension plan. The same hospital policies covering holidays, vacations, life insurance, health insurance, jury duty, leaves of absence, sick leave, and breaks apply to clericals and unit employees. They are all covered by the same personnel rules and regulations and

disciplinary procedures. There are no restrictions on who may bid on any job vacancies at the hospital, and the same policies concerning seniority, promotion, and transfer apply to both clericals and unit employees. They also share the same cafeteria, parking facility, and bulletin boards.

Based on these specific facts, we find there are no "sharper than usual differences" to demonstrate a disparity of interests between the Employer's business office clericals and its service and maintenance and technical employees to justify excluding the clericals from the unit.

With respect to the Regional Director's exclusion from the unit of the activities and the social services directors, we also find that the record fails to establish that the directors' interests are sufficiently disparate from those of the unit employees to warrant their exclusion from the unit.⁷

The activities director arranges patient activities, primarily recreational, in the long-term care and drug alcohol units. The activities director often involves employees in other departments and the patients' nurses when arranging such activities.

The social services director is responsible for the placement of patients in the long-term care unit and assists in planning their discharge to other facilities. She works with nurses and physicians to obtain information necessary in planning patient placements. She also corresponds with other health care institutions on behalf of the Employer to locate suitable care for patients after their discharge.

The duties of these two employees are unique compared to those of the unit employees. The Board, however, has previously held that social service representatives who perform virtually the same duties as the social services director here could be appropriately considered technical employees.⁸ We note that neither director is required to possess a college degree but the activities director and the social services director possess degrees in recreational therapy and social work, respectively. Further, although both are salaried and separately supervised, they share the same benefits and facilities and are governed by the same hospital policies, rules, and regulations, discussed above, as the unit employees.

Based on our finding that the activities director and the social services director may appropriately

⁷ Although the record indicates that the work of the activities director and the social services director involves contact with nurses, it is not clear whether such contact is with unit LPNs or with nonunit RNs.

⁸ *Duke University*, 226 NLRB 470, 473 (1976). Although the Board also stated in *Duke* that the social service representatives could be considered professional employees, the Regional Director here found the social services director was not a professional employee, a finding not disputed by either party.

⁶ The LPNs and credentials secretary/cashier fill out timesheets.

be considered technical employees, who the parties agree should be included in the unit, the terms and conditions of employment which the activities and the social services directors share in common with unit employees, and mindful of the congressional admonition against undue proliferation of health care bargaining units, we conclude that there does not exist the requisite disparity of interests between the directors and the unit employees to warrant excluding them from the unit.⁹ Therefore, we hold that a unit consisting of the Employer's service and maintenance, technical and business office clerical employees must include the activities and the social services directors.

As the unit found appropriate herein is substantially different from that found appropriate by the Regional Director, the election conducted on 27 November 1984 must be vacated. However, inasmuch as the Petitioner did not indicate an unwillingness to proceed to an election in a unit broader

⁹ In so deciding, we note that were we to agree with the Regional Director that the activities and the social services directors be excluded from the services and maintenance and technical unit, the effect would either be to leave them without any representation or to require their representation in a separate unit. We view the first result as inconsistent with Congress' extension of the Act to afford representation rights to employees in health care institutions, and the latter as inconsistent with the admonition against undue proliferation of bargaining units.

than the one petitioned for, we shall direct an election in the following unit:¹⁰

All service and maintenance employees, including maintenance department, dietary department, housekeeping department, nurses aides and orderlies, operating room personnel, ward clerks, patient escorts, licensed practical nurses (LPNs) technical employees, business office clericals, activities director and social services director employed by the Employer at its North Charleston, South Carolina facility, but excluding all professional employees, registered nurses (RNs), physical therapist, personnel clerk, bookkeeper, guards and supervisors as defined in the Act.

ORDER

The election conducted on 27 November 1984 is vacated.

[Direction of Election omitted from publication.]

¹⁰ Because the inclusion of the business office clericals and its activities and the social services directors changes the composition of the unit specifically sought, the Petitioner may not wish to proceed to an election in this unit or, desiring to do so, may have an inadequate showing of interest. In these circumstances, we direct the Petitioner to notify the Regional Director within 10 days of this decision whether it wishes to proceed to an election, and, if so, to submit within such time any additional showing of interest that may be required to support its petition.