St. John of God Hospital, Inc. *and* **Health Care Division, Local 285, Service Employees International Union, AFL-CIO, Petitioner.** Cases 1-RC-17188 and 1-RC-17189

March 12, 1982

DECISION ON REVIEW AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a Hearing Officer of the National Labor Relations Board. On April 3, 1981, the Regional Director for Region 1 issued a Decision and Direction of Election in which he found appropriate a bargaining unit consisting of all full-time and part-time registered nurses, including nurse practitioners and registered nurse permanent charge nurses, and all full-time and regular part-time technical employees, including licensed practical nurses, licensed practical nurse interim charge nurses, licensed practical nurse permanent charge nurses, and respiratory therapists, subject to the requirement that a majority of professional employees vote for inclusion in a unit with the nonprofessional employees.[1] If a majority of the professional employees do not vote for inclusion in the unit with nonprofessional employees, the Regional Director found appropriate two units, one consisting of all registered nurses as described above and the other consisting of all technical employees as described above.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a request for review of the Regional Director's Decision and Direction of Election, contending, *inter alia*, that the Regional Director made clearly erroneous findings of fact and departed from Board precedent. By telegraphic order dated May 1, 1981, the request for review was granted and the election was stayed pending decision on review.

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 considered the entire record in this case with respect to the issues under review and makes the following findings:

The Employer makes two contentions warranting our review of the Regional Director's decision. First, the Employer contends that the petitions should have been dismissed because at the time of the hearing its employee complement was neither substantial nor representative of the projected total of employees to be hired in the foreseeable future. Second, the Employer contends that there is insufficient evidence of a community of interest between registered nurses and technical employees to warrant their inclusion in a single unit, subject to the approval of registered nurses in a *Sonotone* election. We find limited merit only in the first of the Employer's contentions.[2]

The Employer operates a 79-bed hospital. At the time of the hearing, in March 1981, it employed four registered nurses in unit classifications, seven licensed practical nurses, and two respiratory therapists. Prior to November 26, 1980, the Employer employed 15 registered nurses and 9 licensed practical nurses. The Employer's annual budget for the period from September 1980 to October 1981 provided for 29 registered nurse positions and 16 licensed practical nurse positions. Because of an unusually large number of resignations, however, the ranks of registered nurses and licensed practical nurses had dwindled to the number employed at the time of the hearing. In addition, these resignations left the Employer without any staff registered nurses, ordinarily the nucleus of the Employer's registered nurse complement. To redress this shortage, the Employer had embarked on an extensive recruitment campaign during which the hospital expected to hire 17 to 20 registered nurses and 6 licensed practical nurses within 4 to 5 months after the hearing date. The Employer had already received five tentative employment commitments by the time of the hearing.

The Regional Director found that the number of employees employed at the time of the hearing in the registered nurse and licensed practical nurse classifications was substantial and representative of the ultimate complement of employees. According to the Regional Director, direction of an immediate election was appropriate because vacancies in nursing classifications had existed for approximately 4 months before the hearing, the Employer had not succeeded in finding replacements, and the exact timing of hiring replacements was speculative. We disagree.

As indicated above, the Employer at the time of the hearing clearly employed a substantial and representative employee complement in the technical unit which could result from a *Sonotone* vote. On

[1] See *Sonotone Corporation*, 90 NLRB 1236 (1950).

[2] We hereby affirm the Regional Director's findings that: the Board has jurisdiction over the Employer; a separate registered nurse unit, excluding other professional employees, is appropriate; the registered nurse employed in the classification of liasion nurse should be excluded from the units found appropriate; the charge nurses are not supervisors within the meaning of Sec. 2(11) of the Act; and employee Curtain should be permitted to cast a challenged ballot in the election.

the other hand, the Employer employed only 20 percent of the employees which it reasonably expected to employ by June 1981 in the separate registered nurse unit which could result from the *Sonotone* vote. In addition, the Employer had no employees in the core unit classification of staff registered nurse. Finally, contrary to the Regional Director, we find nothing speculative about the timing of the Employer's anticipated unit expansion. It is undisputed that the Employer had begun its recruitment campaign, had made some hiring commitments, and specifically intended to complete its campaign within 4 to 5 months from the hearing date.

Under these circumstances, we find that the Regional Director erred in not finding that the Employer's complement of employees was not representative and substantial at the time of the hearing.[3] Normally we would dismiss the petitions without prejudice. However, by the time of the issuance of this Decision, the Employer by its own admission should have completed its recruitment campaign. Accordingly, we find that, regardless of the size of the employee complement on the hearing date, the present employee complement is substantial and representative for the purpose of directing an immediate election.[4] We therefore shall not dismiss the petitions.

In finding the direction of an election to be appropriate, we find no merit to the Employer's contention that there is insufficient evidence of a community of interest among the registered nurses, licensed practical nurses, and the respiratory therapists to warrant their inclusion in a single unit. The job descriptions for the registered nurses and the licensed practical nurses indicate that these positions are highly interrelated. Both groups of nurses must, *inter alia*: give nursing care to patients; participate in the planning, implementation, and evaluation of nursing care; prepare, administer, and record medications; maintain appropriate patient records, nursing notes, and nursing care plans; and insure that the general patient area is maintained in a neat, clean, orderly, and safe condition at all times. The licensed practical nurse is required to assist registered nurses as necessary with treatments, examinations, and diagnostic tests. Finally, both licensed practical nurses and registered nurses are under the supervision of the head nurse. Thus, based on the above, we find that there is a sufficient community of interest between registered nurses and licensed practical nurses to warrant their inclusion in a single unit, subject to the statutory requirement of consent by the registered nurses. *Maple Shade Nursing Home*, 228 NLRB 1457, 1458, fn. 5 (1977). We also find appropriate the unit inclusion of the two respiratory therapists, who are the Employer's only other technical employees.

ORDER

It is hereby ordered that this proceeding be, and it hereby is, remanded to the Regional Director for Region 1 for the purpose of conducting an election pursuant to his Decision and Direction of Election, except as modified herein, and that the payroll period for determining eligibility shall be that ending immediately before the date of issuance of this Decision on Review and Order.[5]

[3] See, e.g., *Trailmobile, Division of Pullman, Inc.*, 221 NLRB 954 (1975).
[4] See, e.g., *Frolic Footwear, Inc.*, 180 NLRB 188 (1969).
[5] [*Excelsior* footnote omitted from publication.]