

Georgetown University Dental Clinic of Georgetown University and Office and Professional Employees International Union, Local No. 2, Petitioner. Case 5-RC-11489

July 2, 1982

DECISION ON REVIEW AND DIRECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On May 15, 1981, the Acting Regional Director for Region 5 issued a Decision and Direction of Election in the above-entitled proceeding¹ in which he found contrary to the parties' contentions that the Employer's dental clinic is an educational institution and that the appropriate unit should be composed of dental assistants, clinical assistants, dental technicians, and clerical personnel employed at the dental clinic facility. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Acting Regional Director's Decision and Direction of Election, contending that the dental clinic is a health care, rather than an educational, institution and that the only appropriate unit must exclude clerical employees and the sole histopathologist at the clinic.

By telegraphic order dated June 12, 1981, the Board granted the request for review. Both the Employer and the Petitioner thereafter filed briefs.

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, including briefs submitted by the parties, with respect to the issues under review, and makes the following findings:

The Employer operates a dental clinic, comprised of two facilities, which is part of the Georgetown University School of Dentistry at the Georgetown University campus in Washington, D.C. The Petitioner seeks to represent a unit of approximately 58 dental assistants, clinical assistants, dental technicians, and clerical employees who work at those facilities. The Employer maintains that the clinic is a health care institution and that, as such, inclusion of the clerical personnel would violate the congressional mandate to avoid proliferation of bargaining units in the health care industry. With the exception of a few housekeeping employees, who work within the clinic area and are

¹ District 1199E, National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO, was permitted to intervene.

represented by the Intervenor in another unit, there is no prior bargaining history at the clinic.

As previously indicated, the dental clinic, hereinafter the clinic, consists of two components:² a training facility referred to as the Dental Clinic and a private practice facility known as the Gorman Clinic. The Dental Clinic is located in a building which is part of the School of Dentistry and provides dental services to members of the public. Department chairmen and faculty members from the dental school staff the Dental Clinic and supervise the work of the dental students who are required, as part of their course work, to provide dental services to patients. The Gorman Clinic is physically located within the Georgetown University Hospital, and is staffed by department chairmen and faculty who provide private dental services to the public. It is not utilized as a student training facility.

Relying on *Trustees of University of Pennsylvania*, 247 NLRB 970 (1980), and *Albany Medical College of Union University*, 239 NLRB 853 (1978), the Acting Regional Director concluded that the Employer's facilities were educational in nature since the "primary purpose" of the facilities was education rather than health care.

At the hearing and in briefs submitted on review, both the Employer and the Petitioner have taken the position that the Employer's facilities are health care institutions. The Employer further argues that the Acting Regional Director's finding is contrary to the 1974 health care amendments embodied in Section 2(14) of the Act which specifically includes "health clinics" within the meaning of the term "health care institutions."³ The Employer also contends that the Board cases relied on by the Acting Regional Director involved medical colleges rather than clinics and thus are factually distinguishable from the instant case. We agree with the Employer and the Petitioner that the clinic is a health care institution within the meaning of Section 2(14).

In *Albany Medical College, supra*, the Board concluded that the medical college was an educational institution rather than health care because its "primary purpose" was to educate rather than to provide patient services. Applying this rule in *Trustees of University of Pennsylvania, supra*, the Board found that the medical school, which, with two university hospitals, comprised a "medical center," was an

² While other dental clinics are run by the School of Dentistry at various hospitals throughout the District of Columbia, those clinics are staffed by the personnel of the respective hospitals, not by university employees.

³ Sec. 2(14) of the Act defines "health care institution" to include "any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm or aged person."

educational institution despite the fact that the school operated clinical programs which provided some health care services.

We are presented herein with a somewhat unique situation in that one of the facilities, the Gorman Clinic, is exclusively a health care facility, and the other, the Dental Clinic, has characteristics of both a health care and an educational institution. Thus, the "primary purpose" test of *Albany Medical College* does not lend itself to a facile resolution of the Dental Clinic's status as health care or educational. While it is true that at least one of the purposes of the Dental Clinic is to train prospective dentists, which is no doubt educational in nature, this facility at the same time is engaged in the direct day-to-day delivery of dental services, i.e., health care, to members of the community. In this respect it is more analogous to a university hospital, where the training of medical personnel occurs within the context of the delivery of health services, and less like a medical school where the predominant purpose of its programs is purely educational.

In view of the fact that the Gorman Clinic, an integral part of the Employer's facility, is solely a health care institution, and further cognizant that "health clinics" are expressly covered by Section 2(14) of the Act, we find, contrary to the Acting Regional Director, that the Employer's clinic, comprising the two facilities, is a health care institution.

With respect to the unit questions, both the Petitioner and the Intervenor seek to represent a unit of all dental assistants, clinical assistants, dental technicians, and clerical personnel employed at the clinic. The Employer maintains that, even if the clinic were found to be a health care institution,⁴ the clerical employees must be excluded on the basis that they do not share a sufficient community of interest with other unit employees. The Employer contends that including the histopathologist with dental clinic personnel creates an inappropriate unit as it becomes an arbitrary grouping of employees at one school, to the exclusion of similarly classified employees within the same school. *Trustees of University of Pennsylvania, supra*. The Acting Regional Director included the disputed employees in the unit, concluding that there was evidence that the clerical employees and the histopathologist share a sufficient community of interest with the unit employees.

The included clinical assistants, who are located in the main lobbies of each of the four floors of the Dental Clinic, take calls from new patients, keep a

schedule of patient visits, collect fees from patients, and work with patients' charts. Some clinical assistants are supervised by the director of clinics; others are supervised by department chairmen, whose offices are, for the most part, scattered throughout the four floors of the building.

Nine of the undisputed dental assistants are located at the Dental Clinic building; six work at the Gorman Clinic. They directly assist the students in the performance of dental services on patients. Graduation from high school, completion of a dental assistants' program, and experience are generally required for these positions, although the Employer accepts experience in lieu of completion of a program.

There are seven dental technicians, also included, most of whom work in the dental laboratory located in the Dental Clinic basement. Two work on the second floor and one on the first. Graduation from high school and completion of a course in dental laboratory procedures are required, although the technicians may take qualifying examinations.

The disputed clerical employees consist of 11 secretaries and 1 medical word processor. The secretaries work for and are located near the offices of the department chairmen, which are located throughout the Dental Clinic building. They perform typing for the chairmen and other faculty members, keep grades and official records of student accomplishments in the clinic, order materials, answer telephones, including private calls from the faculty, and control the supply budget on a daily basis. With the exception of directing complaints from patients to the department chairmen, the secretaries have no regular duties with respect to patient care. The medical word processor spends approximately 75 percent of his time operating the word-processing machine and the remainder performing secretarial duties, such as answering phones, setting up appointments, etc.

The disputed histopathologist technician is responsible for preparing pieces of tissue taken from dental patients for study by faculty members, a function similar to that performed by other histopathologists located throughout the medical center.

All of the above-mentioned employees, including those in dispute, work in the clinic facilities and perform functions related to the clinic. They are covered by the same life insurance, health care, and retirement programs. They work the same hours and are hourly paid. They do not interchange with employees at other facilities.

Not only do we agree with the Acting Regional Director that the disputed employees share a sufficient community of interest with other unit employees based on their common locations, identical

⁴ The Employer contends that, if the Board were to find that the clinic is an educational institution, clerical employees and the histopathologist cannot be included in a less than universitywide unit. Inasmuch as we have concluded that the clinic is a health care facility, we find it unnecessary to reach this issue.

benefits, and similar working conditions, but we also conclude that their inclusion in the petitioned-for unit is even more warranted in light of our finding that the dental clinic is a health care institution. Inasmuch as Congress has mandated that fragmentation of units in this field be avoided,⁵ the inclusion of all of these employees in the clinic unit based upon their community of interest is, in our view, compatible with and in furtherance of that congressional intent.⁶ The Acting Regional Director's inclusion of the clerical employees and the histopathologist technician in the unit is therefore appropriate.

Accordingly, the unit finding of the Acting Regional Director is hereby affirmed and he is hereby directed to open and count the impounded ballots and issue an appropriate certification.

DIRECTION

It is hereby directed that the Regional Director for Region 5 shall, pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, within 10 days from the date of this Decision on Review and Direction, open and count the valid ballots cast in the election held on June 12, 1981, and prepare and cause to be served on the parties a tally of ballots in accordance with Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, which shall thereafter be applicable to the further processing of this matter.

MEMBERS JENKINS, concurring in part and dissenting in part:

• I concur in the decision that the Gorman Clinic is a health care institution. However, contrary to my colleagues and in accord with *Albany Medical College of Union University*,⁷ I would find that the School of Dentistry's Dental Clinic is an educational institution that was established in order to, and is "primarily" concerned with, providing hands-on educational experience for its dental students. The byproduct of this educational process is the service the clinic provides to the community.⁸

The majority has decided, for the sake of convenience, to abandon the "primary purpose" test

set forth in *Albany Medical College*⁹ simply because the Petitioner seeks 6 dental assistants who are employed in the private Gorman Clinic and the 13 dental assistants, among others, who are employed in the Dental Clinic, reasoning *ipso facto* that the Dental Clinic, therefore, must also be a health care facility. To support their health care theory, the majority uses the rubric that the Dental Clinic is analogous to a university hospital. This analogy would be accurate if the predominant purpose of the Dental Clinic were the delivery of health care services.

Dean Beaudreau testified that the Dental Clinic is an integral part of the dental school, staffed by departmental chairmen and faculty, and that the dental students are in the clinic because of the academic/clinical requirements of the dental school. The dean serves as the top officer for the clinic and the school, both budgetarily and administratively. A majority of the faculty are located on the four floors of the clinic where the academic and research purposes of the clinic are pursued. Departmental chairmen possess a significant degree of autonomy in the day-to-day operation of their departments academically, administratively, and fiscally, including the hiring and direction of clinic personnel. Operations of the Dental Clinic are unlike those of a university hospital in several important respects. First, the clinic operates during specific daytime hours which are different from the hours of operation common to hospitals and, although not clearly stated in the record, the inference is raised that those hours were developed with the academic needs and availability of the dental students in mind. Second, the dean testified that the clinic operates on a 10-1/2-month academic schedule because of the need to provide the dental students with a vacation period. Therefore, the clinic usually closes during the entire month of July. Moreover, the clinic also closes for other holidays, some of which are not observed by the rest of the university and hospital community. Third, the dental students, who are not considered part of the staff, are trained under close, daily supervision of the faculty who are also responsible for grading their work. In addition to these considerations, in 1972, before the health care amendments were passed, the Board asserted jurisdiction over the Employer, when the Intervenor herein sought a unit of maintenance employees on the basis that the Employer, including the dental clinic, was an educational institution.¹⁰ No evidence has

⁵ The Employer's reliance on the *Trustees of University of Pennsylvania* case with respect to the histopathologist is without merit. In that case, the Board found inappropriate the petitioner's attempt to represent some animal laboratory technicians employed at the medical school while excluding others who were also employed within the same school. In the instant case, the disputed histopathologist is the only individual employed in that classification within the dental clinic, a unit whose general appropriateness is not directly contested here.

⁶ Compare *Appalachian Regional Hospitals, Inc., Operator of June Buchanan Primary Care Center*, 233 NLRB 542 (1977).

⁷ 239 NLRB 853 (1978).

⁸ *Trustees of University of Pennsylvania*, 247 NLRB 970 (1980).

⁹ 239 NLRB at 854.

¹⁰ *The President and Directors of Georgetown College for Georgetown University*, 200 NLRB 215 (1972).

been put forth by the parties to show any changes in the purpose, operation, or structure of the dental clinic to warrant a change in that initial decision. Therefore, it is clear that the dental school's clinical program is only an auxiliary to its provision of a dental education and the Dental Clinic as an educational institution does not come within the purview of Section 2(14) of the Act.

With regard to the Acting Regional Director's finding that the two clinics herein are one and that a unit composed of employees from both clinics constitute an appropriate unit, I am not persuaded that these two facilities constitute one clinic or that the unit found herein is appropriate. The Gorman Clinic budgetarily is a part of the Dental Clinic but is located within the university hospital, which is one-half mile from the Dental Clinic. There is no question that this clinic was established to provide health care services. While its exact hours of operation are unknown, the inference is raised that its hours are different from those of the Dental Clinic and that these employees work the year round. This clinic is staffed entirely by dental school faculty with the assistance of a registered nurse, a dental hygienist, and six dental assistants. There is no involvement of the dental students in this clinic.

The record shows that the job functions of the six dental assistants are not integrated with those of the dental clinic employees and that there is no substantial or frequent contact, interchange, or transfer of employees between the two clinics. For these reasons and the fact that the Dental Clinic is an educational institution, it seems illogical to draw the larger educational unit of 50-plus employees into the "health care arena" only because the much smaller group of six Gorman Clinic employees are health care workers, especially when it is clear that the community of interest between the two groups is virtually nonexistent. The fact that there are dental assistants at both clinics is a very tenuous connection which, in itself, is insufficient to require the placement of the two groups in a single unit. The proper course here is to exclude the Gorman Clinic dental assistant employees from the unit found appropriate, because they are health care employees and do not share a sufficient community of interest with the Dental Clinic employees.¹¹

¹¹ *Samaritan Health Services, Inc.*, 238 NLRB 629 (1978); *Albert Einstein College of Medicine of Yeshiva University*, 247 NLRB 693, 694 (1980).