

The Child's Hospital, Samaritan Service Corp. and Child's Nursing Home Company, Inc. a/k/a Child's Hospital, Inc. and New York State Nurses Association, Petitioner. Case 3-RC-9734

April 15, 1992

DECISION ON REVIEW AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On July 22, 1991, the Regional Director for Region 3 issued a Decision and Direction of Election in which he found The Child's Hospital to be an acute care hospital as it met the patient stay requirement of less than 30 days as set forth in the Board's Final Rule (the Rule) on collective-bargaining units in the health care industry.¹ The Regional Director then directed an election in a unit composed of all the registered nurses (RNs) employed by the Employer, which consisted of The Child's Hospital (the hospital), The Child's Nursing Home (the nursing home), and Samaritan Service Corporation (Samaritan).² Thereafter, in accordance with Section 102.67(b) of the Rules and Regulations of the National Labor Relations Board, the Employer filed a timely request for review of the Regional Director's decision. The Employer argued, inter alia, that it was not an acute care hospital because it predominantly performed ambulatory care, and that the only appropriate bargaining unit consisted of all professional employees employed by the hospital, the nursing home, and Samaritan.³

By Order dated September 20, 1991, the Board⁴ granted the Employer's request for review and affirmed the Regional Director's finding that the hospital itself met the definition of an acute care hospital. The Board, however, remanded the case to the Regional Director to reopen the hearing and adduce further evidence, after which the Regional Director was directed to transfer the case directly to the Board for decision. A second hearing was held on October 1, 1991.⁵

¹ 29 CFR 103 (1980), 284 NLRB 1580 (1989), approved by the Supreme Court in *American Hospital Assn. v. NLRB*, 111 S.Ct. 1539 (1991).

² At the hearing, the employing entity (the nursing home, the hospital and Samaritan) held itself out to be a single employer and was treated as such by the Regional Director. Further, the parties initially stipulated that RNs employed at all three components of the Employer would be included in the unit. No party disputed that the hospital, nursing home, and Samaritan constitute a single employer.

³ These professionals included all registered nurses; 14 physician's assistants employed by the hospital; the dietician employed by the hospital; and 2 social workers, 1 pharmacist, and 4 medical technologists employed by Samaritan.

⁴ Members Devaney and Raudabaugh; Member Oviatt concurring in part.

⁵ The Petitioner initially sought a unit comprised of the registered nurses employed at the hospital and the nursing home. At the second hearing, the Petitioner amended its claim to seek only those registered nurses employed at the hospital.

Thereafter, the Employer and the Petitioner filed briefs on review. The case was transferred to the Board.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has carefully considered the entire record in this matter, including the parties' briefs on review, and has decided that, under the circumstances here, the Rule should not be applied. Therefore, determination of the appropriate unit for purposes of collective bargaining is governed by the principles set forth in the Board's decision in *Park Manor Care Center*.⁶

Facts

The Employer consists of The Child's Hospital, a nonprofit surgical care center providing both inpatient and ambulatory services; the Child's Nursing Home, a 120-bed residential nursing home attached to the surgical care center; and Samaritan Service Corp., which provides shared services to the nursing home and the hospital. The hospital was built in 1960; the nursing home and Samaritan were added around 1970. The three are separately incorporated, although Samaritan and the nursing home share the same board of directors, and Samaritan and the hospital share the same chief executive officer. The nursing home, hospital, and Samaritan essentially comprise one contiguous structure. The hospital occupies one wing, the nursing home the other, and Samaritan occupies the center, acting in effect like a buffer; all facilities are therefore physically connected. Each corporation owns its respective portion of the building, although Samaritan leases office space from the nursing home.⁷ The hospital occupies about 50,000 square feet, Samaritan occupies about 17,000 square feet, and the nursing home occupies about 60,000 square feet. According to the floor plan, the public may gain access to the nursing home through one entrance and to the hospital through another; however, on entering the hospital, visitors first encounter Samaritan, which provides the hospital's admissions services. It is clear that the staff may travel to any of the wings without being required to go outside the facility.

Samaritan provides housekeeping, human resources, switchboard, engineering, purchasing, security, finance, administration, data processing, maintenance, lab, medical records, central supply, and pharmacy services to the hospital and to the nursing home, and admissions services to the hospital. Samaritan bills the hospital and the nursing home for the services, generally ac-

⁶ 305 NLRB 872 (1991).

⁷ Each of the corporations, combined with Nelson House and St. Margaret's House and Hospital for Babies, is located in what is referred to as Good Samaritan Center. Although all the facilities are located in Good Samaritan Center, only Samaritan, the nursing home, and the hospital are physically contiguous. Samaritan also provides security for Nelson House.

ording to how much time it allocates to each. Usually, 65 percent of its budget reflects expenses for the hospital and 35 percent for the nursing home. Samaritan prepares the budget by soliciting information from all of the department heads regarding their expenditures.

The joint commission on the accreditation of health care organizations accredits the hospital. The hospital has 20 medical surgical beds; however, outpatient ambulatory surgery constitutes approximately 95 percent of the medical services provided by the hospital,⁸ and generates the overwhelming percentage of the Employer's revenues. In 1990 the hospital grossed approximately \$469,380 in in-patient revenues and \$12,015,711 in out-patient revenues. The hospital is organized into four nursing departments: ambulatory care; surgery; inpatient and extended care;⁹ and recovery. The four departments are primarily staffed by RNs who rotate among all departments except surgery. Physician's assistants work with the nurses and assist in preadmission processing by taking medical histories, examining patients, and recommending tests. In the evenings they are considered "physician extenders" and counted as the third staff member when three staff members are required and a doctor is not present. Physician's assistants report to Michael Murphy, the assistant director of the hospital, while the nurses report to Karen Harper, the director of nursing. Both Harper and Murphy report to Steven Lauko, the chief executive officer. The pharmacy provides medication, which is requisitioned on a daily basis.

The nursing home is a 120-bed skilled nursing facility licensed by the New York State Department of Health. The nursing home has a 95.6 percent occupancy rate. There are three 40-bed nursing units; occupational, physical and recreational therapy departments; an infection control nurse; a social worker; and a resident care coordinator. The nursing home utilizes registered nurses, licensed practical nurses, and nurses' aides on each unit during each shift. Medication is provided to the nursing home by an outside pharmacy. In 1990, gross revenue for the nursing home was \$6,549,482.¹⁰

The hospital and the nursing home share common labor relations and personnel policies. A single human resources department, which is headed by Ernest Can-

field, establishes and administers all employment policies, including wage guidelines, merit programs, benefits, and grievance and discipline procedures. The personnel policies in the employee handbook cover all employees, and all employees receive uniform benefits. The employees' respective supervisors evaluate their performance; however, Canfield must approve any recommended wage increase. On being advised of a vacancy, the human resources department recruits and screens job applicants, and refers them to the operation with the vacancy. The applicants are then interviewed by a supervisor, such as the director of nursing, and a candidate is selected for hire. Vacancies are posted employer-wide. The human resources department does not become involved in the discipline or counseling process except to ensure compliance with proper procedures; however, Canfield will become involved if a discharge is necessary.

The hospital and nursing home evidence a considerable degree of integration of operations. The dietician is responsible for the dietary needs of the patients, residents, and employees at the hospital and the nursing home. Central supply provides all supplies to both facilities. Laundry provides laundry services to both, and the nursing home is billed per pound of laundry. The clinical equipment department, which maintains all electrical equipment; the engineering department, which is responsible for upkeep; the employee health department, which maintains all employee health records and accident reports; and the housekeeping department all provide services to both the hospital and the nursing home. Murphy testified that he meets monthly with the department heads from all of the departments in the nursing home and hospital, but that meetings also are held which involve only those departments at a particular operation. The hospital provides lab work, x-rays, blood work, etc. to the employees, patients, and residents of the nursing home as well as the hospital; the medical technicians who perform the lab work are employed by Samaritan. When lab work is necessary, nursing home staff transport residents to the hospital on stretchers. A joint foundation raises money for both the hospital and the nursing home, and they also share a common disaster and fire plan, cafeteria, in-service, volunteer program, and sunshine fund. The evidence establishes that since 1973 there have been 6 transfers of RNs and at least 14 in other classifications between the nursing home and the hospital.

Discussion

As noted above, it is undisputed that the nursing home, hospital, and Samaritan Service constitute a single employer. We find that the evidence also establishes that the nursing home, hospital, and Samaritan are sufficiently integrated, both physically and oper-

⁸The hospital provides ambulatory surgery in areas such as ear, nose and throat, ophthalmology, and plastic surgery.

⁹Patients are admitted to in-patient status if they require care extending from 24 hours through 5 days; patients are admitted to the extended care unit if they require monitoring for less than 24 hours. During the 1-year period ending May 1991, the monthly number of patient days (number of patients times the number of days in the hospital) for hospital inpatients averaged 40 per month and the length of stay for hospital patients averaged approximately 2.3 days.

¹⁰Terrence Hurley, chief financial officer for the hospital, nursing home, and Samaritan, testified that during the 1-year period ending May 1991 the length of stay for nursing home patients averaged 965 days or 2.6 years.

ationally, as to require that they be treated as a single facility. The nursing home, the hospital, and Samaritan are physically contiguous, there is centralized control of labor relations and human resources, common personnel policies, uniform benefits and wage scales, one employee handbook, and common administration and financial services. Vacancies are posted employer-wide. Laundry, pharmacy services, housekeeping, dietary services, maintenance, and engineering are all provided facility-wide, and the hospital provides lab work to the residents and employees of the nursing home. There is also a fairly high degree of contact among the employees working in the different operations. Thus, on this basis we find that the three operations comprise a single facility for purposes of collective bargaining.

In view of our finding that the nursing home, hospital, and Samaritan are to be treated as a single facility, a unit of RNs employed solely at the hospital, as sought in the amended petition, is inappropriate; at the very least, all RNs must be represented together in a single unit.

The question remains, however, whether the smallest appropriate unit must also include all other professional employees. The Board here is asked to determine the scope of a unit at a single facility composed of an acute care hospital and a nursing home, where both are substantial components of the overall facility. Acute care hospitals are expressly covered under the Rule; however, facilities that are primarily nursing homes are expressly excluded, both from the definition of acute care hospital¹¹ and from the Rule itself.¹²

We are mindful, of course, that the Board engaged in rulemaking with the hope of creating a greater degree of certainty in unit determinations in the health care industry, at least with respect to acute care facilities. We believe, however, that under the extraordinary circumstances presented here, i.e., the physical joinder of the nursing home and the hospital,¹³ the substantial nature of both the operations,¹⁴ and the integrated sup-

port services provided to both parts of the operation by Samaritan, it would not be feasible or sensible to automatically apply the Rule. To attempt to fit this hybrid facility within a rule that is designed to cover the more typical free-standing acute care hospital may, possibly, lead to an anomalous or impractical result, depending on the RNs' relationship to the other professionals and nonprofessionals in the facility, and the extent to which such relationship differs from, or is similar to, that found in the normal, acute care hospital setting.¹⁵ Consequently, as we have decided not to apply the Rule, the determination of the appropriate bargaining unit in this facility is governed by the Board's decision in *Park Manor Care Center*,¹⁶ in which the Board delineated principles to guide unit determinations in nonacute care facilities.

We note that the instant case was heard and decided prior to the issuance of the decision in *Park Manor*. In addition, the parties have never had an opportunity to address the appropriateness of the unit in light of the considerations set forth in *Park Manor*. We have decided, therefore, to give the parties an opportunity to litigate and argue the scope of the appropriate unit within the framework of the principles enunciated to guide such determinations in nonacute care facilities. Accordingly, we have decided to remand the case to the Regional Director with directions to reopen the hearing to permit the parties, in light of *Park Manor*, to adduce additional evidence on the unit issue, should they desire to do so. Thereafter, the Regional Director shall issue a supplemental decision consistent with this decision and the Board's decision in *Park Manor*.¹⁷

¹¹ 29 CFR § 103.30(f)(2). For those facilities as well as other nonacute health care facilities, the Board stated that it would determine appropriate units by adjudication. 29 CFR § 103.30(g).

¹² 53 Fed.Reg. 33928 (1980), 284 NLRB at 1568.

¹³ This is not a case where a predominately acute care hospital has merely established an area for long-term nursing beds, or a nursing "wing."

¹⁴ As we are not applying the Rule because of the unusual nature of the facility, we need not determine whether the hospital and the nursing home together technically meet the definition of "acute care hospital" as set forth in the Rule (patient stay requirement of less than 30 days). Such a determination would raise an issue regarding how to calculate the average length of patient stay in these unusual circumstances, i.e., whether to look at a snapshot of 1 day or, alternatively, 1 year. If a hospital with 10 beds has a turnover of patients every 2 or 3 days, then the number of patients in a year would be very high, as opposed to a nursing home, which may have 120 beds but a far less frequent turnover of patients. This calculation would likely generate results skewed in favor of acute care status. On the other hand, calculating the average length of stay based on the num-

ber of patients in the hospital on any given day would in all likelihood generate results tilted in favor of nonacute care status, since at any one time, in the facility taken as a whole, long-term patients vastly predominate. In any event, in view of our conclusion that the appropriate unit in this case is governed by *Park Manor* considerations, rather than by the Rule, it is unnecessary at this time for us to decide which method of calculation is the more appropriate.

¹⁵ The fact that we have found extraordinary circumstances in the matter of this facility is not, of course, determinative of the unit ultimately to be found appropriate, but merely indicative of our determination that the issue should be decided by adjudication.

¹⁶ 305 NLRB 872 (1991). In *Park Manor*, the Board discussed the reasons for excluding nursing homes from the definition of an acute care hospital, but also set forth general principles applicable to unit determinations for health care facilities not covered by the Rule.

¹⁷ In *Park Manor*, the Board noted that the case was decided after the Board had promulgated the Final Rule and, therefore, that the Regional Director had not analyzed the case under the approach set forth by the Board, nor had the parties had an opportunity to address the issue from that perspective. The Board, therefore, remanded the case to the Regional Director to reopen the record and to consider the case in light of the considerations set forth in the Board's decision. 305 NLRB at 873.

ORDER

This case is remanded to the Regional Director to reopen the record and issue a supplemental decision,

and for any further processing in conformity with this opinion.