

Empire Health Centers Group d/b/a Deaconess Medical Center and International Union of Operating Engineers, Local 280. Case 19-CA-22501

July 29, 1994

DECISION AND ORDER

CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On January 20, 1994, Administrative Law Judge David G. Heilbrun issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions,¹ and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Empire Health Centers Group d/b/a Deaconess Medical Center, Spokane, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent argues that the Board should reverse the judge and find that the accretion of the Cowley Street skilled maintenance employees into the larger skilled maintenance unit located at the Fifth Street facility took place after the two facilities merged, based on what it contends was an overwhelming community of interest between the two employee groups. It appears to base its argument in part on the fact that the two groups shared the same wage and benefit structure after the merger. The Respondent's argument begs the question. The employees shared the same wage and benefit structure only because the Respondent has refused to bargain with the union representing the maintenance employees and unilaterally imposed on those employees the terms of its collective-bargaining agreement (with another union) that covered the Fifth Street employees.

The Respondent further contends that the judge failed to give adequate weight in his assessment of its accretion defense to the permanent transfer of one of eight skilled maintenance employees at Cowley to Fifth Street. We disagree. The judge appropriately deemed "negligible" the Respondent's proof of all skilled maintenance employee interchange, both permanent and temporary, between the two facilities in the months following the Respondent's takeover of the Cowley facility. We note that permanent transfers are generally a less significant indication of actual interchange than temporary transfers. See *Red Lobster*, 300 NLRB 908, 911 (1990). In reaching our conclusion regarding the interchange factor, however, we have placed no reliance on the judge's conclusion that the Respondent's use of two Cowley Street engineers at the Fifth Street location was "artificial" interchange in the sense that "it merely balanced cost controls" between the two facilities.

George I. Hamano, Esq., for the General Counsel.
Kenneth E. Jernstedt, Esq. (Bullard, Korshoj, Smith & Jernstedt), of Portland, Oregon, for the Respondent.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge. This case was tried in Spokane, Washington, on October 5, 1993. The charge was filed January 25, 1993, by International Union of Operating Engineers, Local 280 (the Union), and the complaint was issued March 11, 1993. The primary issue is whether Empire Health Centers Group d/b/a Deaconess Medical Center (Respondent) has since about December 31, 1992, failed and refused to recognize or bargain with the Union as exclusive collective-bargaining representative of employees in a skilled maintenance unit, in violation of Section 8(a)(1) and (5) of the National Labor Relations Act.

On the entire record,¹ including my observation of the demeanor of witnesses, and after considering briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a domestic corporation with an office and place of business at Spokane, Washington, where it is engaged in operating an acute care hospital and having annual gross sales of goods and services in excess of \$500,000. In the course of such business operations it annually sells and ships goods or services in excess of \$50,000 from State of Washington facilities directly to customers outside that State, or to customers within Washington which themselves engage in interstate commerce other than by indirect means as defined by the National Labor Relations Board. *Siemons Mailing Service*, 122 NLRB 81 (1958). In the same course of business operations it annually purchases and receives goods and materials in excess of \$50,000 directly from sources outside Washington or from suppliers within Washington which in turn had obtained them directly from outside that State. On these admitted facts, I find Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14), and, as is also admitted, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Case Summary*

A health care alliance at Spokane had included traditional hospitals named Deaconess Medical Center and its smaller nearby counterpart St. Luke's Memorial Hospital. Both institutions employed their own unionized group of licensed engineers and related occupations. After St. Luke's Memorial Hospital (SLMH) became chronically unprofitable Deaconess Medical Center (DMC) absorbed it in early 1993² to be a rehabilitation facility only. The skilled maintenance employees of SLMH were rehired into DMC without a break in service or essential change in work location, however, their union was denied further recognition after the takeover.

¹ Certain errors in the transcript are noted and corrected.

² All dates are from October 1992 through September 1993, unless otherwise indicated.

B. General Facts

Prior to events of this case the entity Empire Health Services (EHS) existed as a not-for-profit holding company of affiliates. One of these affiliates is Empire Health Centers Group (EHCG) that had been comprised of several Spokane area hospitals, health care centers, or separately organized supporting operations. DMC was the largest such division as a 372-bed acute care hospital. SLMH was a considerably smaller acute care hospital located less than a mile from DMC. Both institutions had existed for about a century as hospitals of the Spokane community.

DMC had a long collective-bargaining relationship with the Spokane Medical Engineers Association (SMEA) for a unit of skilled maintenance employees. A current labor agreement effective from March 1, 1992, through March 1, 1994, exists between these parties, in which the unit description includes operating engineers, painters, groundskeepers, biomedical technicians, and other job titles along with the principal maintenance classification. DMC employed a total of approximately 38 persons for these unionized functions. The group was organized under Thomas Linhart, assistant vice president of support services and the person directly responsible for physical plant integrity at DMC.

A comparable long-term collective-bargaining relationship also existed for a generally similar unit between SLMH and the Union. The last contract between these parties was one of a 3-year term expiring December 31. Here, about eight individuals were employed in the unit, with only engineer, general maintenance, and fireman as formally listed classifications. The support function represented by this bargaining unit was organizationally under Edward Vivier, long-service vice president of environmental services. Within the unit itself Fred Russell (Russ) Bailey was responsible as the chief engineer for day-to-day achieving needed maintenance, performing physical repairs, and related scheduling of employees.

Late in 1992 the prospect of a fundamental change at SLMH began taking shape. This was first reflected insofar as the case record is concerned with a letter dated September 2, 1992, from Chief Operating Officer Patricia Thompson to Union Vice President and Business Representative Jim Hendry. This first letter was a mere informational "update"; however, Thompson wrote to Hendry again on October 6 stating that the governing board of directors had just approved expansion of SLMH's rehabilitation program with the likelihood of a further "revised focus" away from acute care. The letter closed with advice that management was already working on "transition issues."

When Thompson wrote to Hendry again by letter dated October 20 and hand delivered, it was to advise that timelines had been approved for "the closure of St. Luke's as an acute care hospital" by January 1. Her letter envisioned transition to a 30-bed inpatient rehabilitation unit, and renovation of the physical plant as appropriate to support a "new focus of rehabilitation services." Finally, the letter addressed special features of employment during the imminent 2-month time of transition, this including severance benefits, retention payments, sick leave bonus adjustment, and outplacement services.

Another communication followed immediately on October 21 from Thompson to all employees as a special memorandum. Here, the imminent changes were plainly termed

"from acute care to rehabilitation services," and advice added that many persons would have yet undefined job opportunities elsewhere within the overall EHS system. This communication expressly stated that both the Union and Washington State Nurses Association (WSNA), as bargaining representative for registered nurses, had been furnished the proposed severance program for comment.

Events proceeded with increasing intensity as specific closure timelines were established in December for ending inpatient, surgical, emergency room, and related services of an acute care hospital. By communication to all employees dated December 4, Respondent provided "letter of interest" forms which constituted an application for employment at the refocused facility eventually to be known as Deaconess Rehabilitation Institute (DRI). All eight individuals of the Union's bargaining unit, each of whom, except Bailey, had been listed as a first-class engineer, responded to this prospect, and ultimately each of them was hired into what Respondent considered an expanded coverage of the SMEA contract. Certain variations were applied to the hiring classification of these former SLMH engineers, and early January letters of job confirmation also included two other individuals added as groundskeepers.

As transitional happenings took place, Hendry opened contract negotiations by letter, with himself and Bailey as bargaining representatives of the Union and an objective being that a protective successor clause be achieved with Respondent before the year ended. Hendry testified, with corroboration from Bailey, that in a negotiation meeting held on November 24 both EHS Vice President for Human Resources James Arnold and then Personnel Director at SLMH Carrol Lee had led the Union to believe proposed operational reforms on January 1 would only be a "name change." In testimony relating to this meeting, Arnold denied saying that the longstanding bargaining relationship between SLMH and the Union would survive this planned closure.

With these progressive revelations being made about how SLMH was about to be changed as of yearend, the Union's Richland, Washington-based business manager, Donald Bushey, wrote to Arnold on December 23 to claim bargaining rights as to any successor employer of persons within the long-existing bargaining unit. Arnold answered this letter on December 31, stating in his response to Bushey that by the "disappearance" of SLMH, its former skilled maintenance employees, to the extent they accept work at DMC's "relocate[d]" rehabilitation services, would be employed under the SMEA contract and part of that bargaining relationship. This position amounted to Respondent's refusal to recognize the Union subsequent to the imminent change. The parties did meet on January 6, however, in unsuccessful negotiations for a settlement agreement comparable to the one reached between SLMH and the WSNA.

As to these various dynamics, Arnold testified that they amounted to activities going on simultaneously in three distinct regards. He identified the first of these as the closing of SLMH as an acute care facility, and the second of them as the associated opening of an expanded rehabilitation center. In this second regard, an extensive undertaking began in which surgical, acute care, and laboratory equipment was retired from the SLMH premises as expanded rehabilitation capacity took its place during renovations. The third main activity of simultaneous effect was a spread out "general re-

structuring of the organization'' as administrative and non-clerical services shrank from what had been necessary prior to the change. Here, personnel changes were made in middle management of the emerged DRI; however, as pertinent to issues of this case, the more important details concern what instances of employee interchange occurred after official establishment of DRI on January 1.

For the first several months of 1993 daily work patterns of the now DRI-based skilled maintenance employees remained the same as they had been for years up to that time. Furthermore, and with minor exception, the employees of DMC's larger SMEA-represented bargaining unit continued in the performance of their customary duties only at that location. The minor exception occurred on January 29, when 6 hours of signmaker labor was performed for the DRI premises by an employee of DMC. In testimony about early instances of employee interchange between the two locations, Linhart identified the January 29 undertaking as maintenance work for an administrative area of DRI. He also testified that engineers routinely stationed at DMC had performed locksmithing, and work was done on the fire alarm system, in both cases referring to physical features at DRI. However, the plant operations usage reports for 1993 do not specifically show entries to this effect. The instance of fire alarm work was filled in by testimony of Linhart, who asserted that DMC employee Robert Clayton spent approximately 18 hours on the project during August.

As the year progressed, additional and more extensive instances of cross-exchange occurred by employees of the two locations. As to those from DMC actually working at DRI, Linhart testified the usage reports were 80 percent representative of such work when recording time spent by engineers and carpenters and for repairs. This record showed 6 hours' time by engineers in June, 10 hours by this classification in September along with 41 by carpenters and 3 by repairmen, and 160 hours by engineers on October 1, 1993, along with 15 by carpenters and 20 by repairmen. This recapitulation is exclusive of biomedical personnel showing as having functioned at DRI after January 1. Such individuals, skilled in adjustment and repair to sophisticated electronic and patient-sensitive equipment of a hospital, had always worked at DRI and other facilities of EHS as needed at particular times.

As to opposite direction movement of personnel, Linhart testified that, during July, engineer Frank Martin worked for up to 2 weeks at DMC, that engineer Daryl Brookins worked with DMC groundskeepers for about 3 days in July, and that Bailey attended a 3-hour meeting at DMC where he served as a computer trainer for maintenance applications. Martin was subsequently transferred in August on an indefinite basis to be a DMC-located employee; however, Linhart could not deny that Martin has continued to report his hours worked through Bailey as part of DRI timekeeping.

C. Discussion

NLRB v. Burns Security Services, 406 U.S. 272 (1972), held that in cases where a successor employer continues former operations with a majority of its predecessor's employees it must recognize the labor organization which represented them. This decision assumes the bargaining unit is fundamentally appropriate and has remained unchanged as factors in the determination.

The substantially comparable continuity in acquired operations results in a legal showing of successorship when the business of both employers is the same, employees continue in their same jobs and working conditions under the same supervisors, and the new entity basically has the same body of customers. *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987). Here, the State of Washington's view that former SLMH has merged into the hospital license of DMC supports finding the transaction a continuation of operations by a successor employer. I note further that DMC itself has always maintained rehabilitation services, and the expansion into a facility not far away with merged management controls places DMC in the legal status of successor to SLMH for labor law purposes.

This belief takes into account that a change in the nature of SMLH was rendered. As a reality of institutional health care the facility serves rehabilitation needs of patients and not those associated to traditional hospital activity such as surgery and room stays. It is more significant, however, that an important facet of health care is still the service offered, and as to this the employees at issue perform the same work an estimated 95 percent of the time. By continuing its identity as a health care facility, retaining Thompson to run it until about September and having Arnold as a person carrying out labor relations functions at SLMH even before the change, a sufficient number of factors are present to hold that successorship has been the consequence here.

A second factor in doctrine traceable from *Fall River Dyeing Corp.* is whether employees continue working much the same as before a change and under the same supervisors. In the small group that this case concerns, a focus is drawn to Bailey as the person actually directing daily maintenance operations for a considerable number of years prior to January 1. It is uncontradicted that he possessed and fulfilled a responsibility for continuous maintenance and steam plant operations at SLMH, and personally coordinated the staffing necessary to such fulfillment. I do not believe the nature of supervision applicable to this aspect of a successorship issue requires that the individual in focus must be within the statutory definition of Section 2(11). Rather it would seem sufficient that in every practical sense it is instead merely that person looked to for leadership and endowed with it by the organization. I recognize that Vivier was phased out of his former position by May, when Linhart assumed the enlarged responsibilities of support services for both locations. The fact that Bailey himself now reports to a different official, however, does not carry any meaningful effect on employees of the bargaining unit as to which the issue of successorship pertains. For this reason, I am persuaded that the group continuing in their traditional work at DRI are also functioning under the same supervisor as before.

Case law also speaks of a "same body of customers" as an element to consider in successorship. While this phrasing intimates general commercial relationships, it has sufficient meaning for the health care industry to signify patients or those comparably in need of medical attention. However, this meaning also seems broad enough to include the pure rehabilitation candidates to be treated under DRI's exclusive programs. Furthermore, Arnold termed the creation of DRI as an "expan[sion]" of rehabilitation services as always collaterally available at DMC, and that cross-usage of rehabilitation facilities occurred as with water therapy at a pool only

existing at DMC but availed of by DRI patients after transportation on a van provided to shuttle between locations. On this basis, I believe that a comparable body of customers is present as between the two facilities in a way that supports the conclusion of successorship having occurred between DMC and DRI.

A defense to the allegation of a successor obligation is that an insufficient continuity has been shown upon comparing operations of the predecessor with those of the claimed successor. In *Morton Development Corp.*, 299 NLRB 649 (1990), an intermediate care facility for mentally retarded adults, at which a certified bargaining unit of service and maintenance employees existed, was briefly closed for financial reasons. It then reopened as a skilled nursing home, and the resultant issue of the case was whether there was legal justification in refusing to continue recognizing the labor organization representing this bargaining unit. The Board held that operational differences in services, patients, programs, and other activities were not significantly different so as to relieve that employer of its bargaining obligation.

The rationale was specifically associated to considering a work perspective of the unit employees. The differences were only in degree, not in kind, with maintenance employees "encounter[ing] fewer problems with equipment and fewer that are damaged by residents." The Board's fundamental conclusion in *Morton Development*, supra, also survived its finding that extensive physical renovations were made, and equipment sales and purchases were made as a reflection of what was needed for mentally retarded patients compared to those in a geriatric category. The rationale has ample application here, where skilled maintenance employees of DRI continued to ply their fundamental tasks in a health care building given over to recovery from bodily injury or defect. Thus, I believe the business alterations undertaken by Respondent, and large expenditures anticipated in the near future, are not of a significance that would permit the discontinuance of recognition to the Union. Cf. *Petoskey Geriatric Village*, 295 NLRB 800 (1989).

This conclusion is further supported by *Capitol Steel Co.*, 299 NLRB 484, 489 (1990), where the Board held that if the physical place of business remains the same after a hiatus in operations a work force reduction coupled with equipment changes necessitating additional tasks to the variety formerly performed do not break an underlying link between the old and new enterprises. A useful analogy is present from *Capitol Steel* in comparing it to the change of 100-bed SLMH to a lesser 30-bed rehabilitation center, but with the skilled maintenance employees continuing to provide basic high-pressure steam heat services to the building, as well as required work on utilities, health care equipment, and general accessories of the facility.

In analyzing supplemental elements of a successorship issue, a technical question is whether a valid demand for bargaining has been made. The Board has observed that a bargaining obligation where successorship is present does not automatically follow. It is instead only a potential obligation, one that must be triggered by a valid demand for recognition and bargaining. *Royal Midtown Chrysler Plymouth*, 296 NLRB 1039 (1989). A premature demand shall be valid where it is reasonably viewed as "continuing," and thus effective with the occurrence of a successorship. *Royal Midtown Chrysler Plymouth*, supra at 1040. Here, Bushey's writ-

ten demand expressly contemplated that Respondent was about to become a "successor organization" and, under "the circumstances presented," made it legally obligated to recognize the Union. This demand letter could hardly have made more plain that a blanket claim of representation rights was being made by the Union in terms of an imminent operational change. I am satisfied from this clarity, and the detailed written rebuttal made by Arnold on the day before a takeover was to happen, that the Union adequately perfected its valid demand for recognition and bargaining. I do not rely on claimed remarks made by Respondent's management personnel during a sterile course of bargaining in late November, instead only the clear effect of the later demand for recognition and its rejection.

Respondent argues earnestly as a second principal contention that involved persons represented by the Union have been accreted to the also long-existing SMEA bargaining unit of skilled maintenance employees at DMC. Here, a threshold doctrine applies under which it is rebuttably presumed that a new facility's unit is separately appropriate for bargaining. When this presumption is not overcome by an analysis of circumstances present, the Board uses a simple fact-based majority test, present here, to determine a bargaining obligation. Conversely, when the presumption is overcome, the employees at issue will be accreted to an existing bargaining unit. Determination of whether the presumption survives, turns on factors of central control over daily operation and labor relations, similarity of skills, functions, and working conditions, degree of employee interchange, distance between locations, and bargaining history. *Mercy Health Services North*, 311 NLRB 367 (1993).

Several of these factors are relatively straightforward of evaluation. DMC is now the sole focal point of executive business control and implementation of labor relations policies. The similarities of skill, function, and working conditions are also clearly evident, influenced mostly by the more elaborate makeup of the larger DMC group. Geographic separation is relatively slight, however, I am not impressed that a shuttle van operates between the two facilities for, as Respondent notes in its brief, this is used mostly by patients and doctors. The bargaining history of the situation creates a strong bias against accretion, as the Union was solidly established as representative of the SLMH group for a goodly number of years. Setting apart the factors of employee interchange briefly, the *Mercy Health Services* case shows how significantly the Board treats bargaining history. Other factors are in my view, however, most influential toward a conclusion that the former SLMH group has not accreted into DMC.

In *Gitano Distribution Center*, 308 NLRB 1172 (1992), the Board emphasized a "restrictive policy" in finding accretion to have occurred, because of its reluctance on policy grounds of "depriv[ing] employees of their basic right to select their own bargaining representative." This approach allows finding a valid accretion only when the employee group in question has little or no separate identification and, conversely, shows a considerable community of interest with the preexisting unit to which it is purportedly accreted. *Gitano* further held that a high degree of employee interchange and the presence of common day-to-day supervision between groups were both factors that, where present, would tend to support a finding of accretion.

There is little community of interest between these two skilled maintenance groups operating about a mile apart. The amount of interchange has been negligible over many months following the change, and I do not give significant weight to the fact that an upsurge in interchange occurred only scant days before the hearing opened in this case. Such an upsurge is not sufficient to show any pattern developing, and of greater significance is the fact that Respondent did not even treat the most extensive instance of interchange-like activity as part of normal workings. The July utilization of a painter and repairman at DRI premises was instead, as Linhart testified, the prelude to a "trade" of personnel, in that DRI engineers Martin and Brookins were specifically sent over to DMC to compensate for "offset[ing] the normal working relationship." If a deliberate offsetting of this nature was perceived to be necessary, it shows that Respondent viewed the deployments as artificial in the sense of merely balancing cost controls. The factor of interchange as an element of an accretion contention cannot be artificial, but instead must represent the ordinary assignment rhythms of a dual location business. Respondent reveals the vulnerability of its contention by repeatedly alluding to the "increasing" amount and regularity of employee interchange at several points in its brief. However, the evidence on which the case is properly decided constitutes that which in fact happened during the significant 6-plus months after the change, and not the sudden events of September and very early October 1993 or speculation as to whether a major change was likely into the future. For this reason, coupled with lacking a community of interest between the two groups, exemplified in part by Martin's continuing report of time worked to Bailey, it shows that an accretion of the historical DRI bargaining unit to the larger SMEA-represented one at DMC has not occurred as a matter of law. Cf. *Children's Hospital*, 312 NLRB 920 (1993).

Finally, Respondent argues that the Board Rules and Regulations (29 C.F.R. Part 103), establishing appropriate units in the health care industry, require a finding that the former bargaining unit at SLMH cannot be perpetuated. The points made in support of this contention are not persuasive. In *American Hospital Assn. v. NLRB*, (1991), the Supreme Court upheld the Board's unprecedented rulemaking in this regard. However, the Court "deliberately avoided any extended comment" on the Rule, noting that it embodied discretionary treatment of situations which the Board had envisioned as "extraordinary circumstances." The Rule itself also excepted "existing non-conforming units" from its definitive listing as applicable when a representation petition was filed. Also, the Board's own commentary in prefacing its final rule noted the need for a "fair trial" in testing underlying assumptions of the process. 284 NLRB 1580, 1584. Taken as a whole, these factors convince me that long-existing notions of successorship doctrine and the accretion principle are the source of deciding this case, not the special purpose rulemaking for this industry as principally applicable to representation petitions of the first instance.

CONCLUSIONS OF LAW

1. The Respondent, Empire Health Centers Group d/b/a Deaconess Medical Center, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the

Act and a health care institution within the meaning of Section 2(14).

2. The Union, International Union of Operating Engineers, Local 280, is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing, on and after December 31, to recognize and bargain with the Union as exclusive representative of employees in the appropriate unit, Respondent has violated Section 8(a)(1) and (5) of the Act.

4. The appropriate unit of skilled maintenance employees is:

All full-time and part-time engineers and general maintenance employees at Respondent's Cowley Street location, excluding office clerical employees, guards, supervisors as defined in the Act, and all other employees.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, I shall order that it cease and desist, bargain collectively with the Union as exclusive representative of employees in the appropriate unit and, if an understanding is reached, embody that understanding in a signed agreement.

Ordinarily under *Burns* a successor employer is free to set initial terms and conditions of employment. An exception arises when the new employer makes "perfectly clear" that it plans to hire all employees in the unit, for then a broader legal obligation than merely the duty to recognize and bargain applies. When such an intent is shown the successor must also consult with the bargaining representative before fixing initial terms and conditions. Here the rather routine processing of completed letters of interest from all persons within the Union's bargaining unit, and uniform confirmation of their early January hire, indicates this to have been Respondent's plan all along. There was no evidence advanced that outside applications from qualified individuals were solicited, nor that particular screening was made of any person in the SLMH contingent. Accordingly, I believe the consultation duty applies in theory. The SMEA contract, however, is known to have generally higher wage rates for the occupations absorbed, and such compensation levels are not to be disturbed. Accordingly, the remedial steps to be required of Respondent shall not be construed as requiring it to vary any wage, hour, seniority, or other substantive terms of employment, which it may have established in performance of the SMEA contract.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Empire Health Centers Group d/b/a Deaconess Medical Center, Spokane, Washington, its officers, agents, successors, and assigns, shall

³If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Union of Operating Engineers, Local 280 for all full-time and part-time skilled maintenance employees at its Cowley Street location.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain in good faith with the Union and reduce any collective-bargaining agreement reached to a written contract. The appropriate unit for such bargaining obligation is:

All full-time and part-time engineers and general maintenance employees at Respondent's Cowley Street location, excluding office clerical employees, guards, supervisors as defined in the Act, and all other employees.

(b) Post at its facilities in Spokane, Washington, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with International Union of Operating Engineers, Local 280, and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and part-time engineers and general maintenance employees at our Cowley Street location, excluding office clerical employees, guards, supervisors as defined in the Act, and all other employees.

EMPIRE HEALTH CENTERS GROUP D/B/A DEACONESS MEDICAL CENTER