

1956

# Utah Labor Relations Board v. Utah Valley Hospital : Brief of Petitioner

Utah Supreme Court

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Case No. 7612

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**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

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UTAH LABOR RELATIONS  
BOARD,

*Petitioner,*

vs.

UTAH VALLEY HOSPITAL, a  
corporation,

*Respondent.*

**FILED**

DEC 28 1950

Clk, Supreme Court, Utah

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**PETITIONER'S BRIEF**

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PETITION-  
ER'S BRIEF

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PETITIONER'S BRIEF

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The Utah Labor Relations Board brings this proceeding before the Supreme Court seeking its order enforcing an order of the Board in the matter of the Government and Civic Employees Organizing Committee, C. I. O., and the Utah Valley Hospital, Unfair Labor Practice Case No. 748.

STATEMENT OF FACTS

On the 4th of April, 1950, the Government and Civic Employees Organizing Committee, Local 1699, C. I. O., hereinafter called the union, petitioned the Utah Labor

Relations Board, hereinafter called the Board, for certification of that union as the sole bargaining agent for certain nonprofessional employees of the Utah Valley Hospital hereinafter called the hospital. (R. 1) The union claimed to represent fifty employees of the hospital working as nurses aids, in the laundry, sewing room and kitchen, and maintenance employees. With its petition the union submitted slips signed by 49 such employees authorizing it to bargain collectively for those employees. (R. 2-50) Pursuant to this petition the Board made its investigation and ordered a hearing to be held April 24, 1950. (R. 52)

Following the hearing the Board found that a unit appropriate for the purposes of collective bargaining should consist of:

“All employees employed at respondent's place of business as nurses' aids, laundry workers, sewing room and kitchen and maintenance employees, and shall exclude the housekeeper manager, laundry manager, dietician manager, clerical employees, supervisors with power to hire or fire or effectively recommend such action, and registered nurses.”

It also ordered an election to determine if the employees in such unit chose the union as their bargaining agent. (R. 92-93)

Pursuant to notice, such election was held on May 22, 1950, at which 51 votes were cast. Forty-five votes were cast for the union, two for no union, and four ballots were challenged. (R. 159) The Board then, on



June 6, 1950, certified the union as the exclusive bargaining agent for employees in that unit. (R. 167-168)

There is nothing in the record which indicates that the respondent seriously questioned or opposed the Board's designation of the unit for collective bargaining purposes or the bargaining agent. (R. 76) The only objection raised throughout the certification proceedings was that the Board had no jurisdiction over the employer-employee relationship at the respondent hospital, on the theory that the hospital was engaged in interstate commerce and that Congress had pre-empted this field of labor-management relations.

On July 20, 1950, the union filed an unfair labor charge with the Board setting forth that the hospital, in violation of Section 49-1-16, subparagraph 1 (d), Utah Code Annotated 1943, as amended by chapter 66, Laws of Utah 1947, refused to bargain collectively with the union so certified by the Board. (R. 176) On August 8, 1950, the Board's investigator submitted a report that the hospital had refused to bargain on the ground that it was excluded from the provisions of the Utah Labor Relations Act. (R. 177) The Board then ordered a hearing for the purpose of taking testimony on the complaint based upon such charge. (R. 180-182) The hearing, at which the union and the hospital appeared, was held before a referee August 17, 1950. (R. 183-201)

In its answer to the complaint under the unfair labor charge (R. 205), respondent admitted that it had refused to bargain with the union and raised one defense only for this action—"that the Utah Labor Relations Board has no jurisdiction over the subject matter or this cause." The only testimony adduced at the hearing by respondent was for the purpose of showing that the respondent was engaged in interstate commerce within the meaning of the National Labor Relations Act as amended. Following the hearing, respondent filed a motion with the Board that the action be dismissed on the grounds that the respondent is engaged in interstate commerce and is therefore under the exclusive jurisdiction of the National Labor Relations Board. (R. 204) The trial examiner submitted an intermediate report August 31, 1950, (R. 206-208) in which he found that the respondent came within the Utah Labor Relations Act as amended, and that it was guilty of the unfair labor practice as charged. Respondent filed its exceptions to the examiners report and findings on September 8, 1950. (R. 215-216) On September 14, 1950, the Board issued its decision and order in which it adopted the findings and conclusions recommended by the referee, denied the respondent's motion to dismiss the complaint, ordered the respondent to cease and desist from any further violation of Section 49-1-16, subsection 1 (d), Utah Code Annotated 1943, as amended, ordered the respondent to enter into collective bargaining with the complainant, and to notify the board of its compliance with the order within fifteen days



from the date thereof. (R. 233-234) It is this order the Board seeks enforced.

The testimony given by the superintendent of the hospital at the certification hearing shows that the Utah Valley Hospital is incorporated as a non-profit corporation under the laws of the State of Utah with a board of directors, forty-five in number. These directors serve without pay. The direction of the hospital is actually under the executive committee consisting of nine of these directors. There are no stockholders in the usual sense, and no dividends are paid. (R. 70) Under the articles of incorporation, anyone who contributes a dollar or more is considered to be a stockholder in the hospital. Tho board of directors is chosen at a public meeting held in January of each year and though technically a voter must have contributed at least \$1.00, this requirement is not followed. (R. 74) The hospital was created in 1939. Funds to the extent of \$90,000 were raised in Utah County, and the Commonwealth Fund of New York contributed an outright gift of \$250,000 for the purpose of constructing and operating the hospital. (R. 75) The hospital is supported by payments from the patients and voluntary contributions from local citizens, clubs and churches. (R. 71) The hospital accepts charitable cases and, apparently under the agreement with the Commonwealth Fund and contributors, up to 25% of its services is rendered on a charity basis. (R. 71) No grants for the support or operation of the institution are received

from the state or its political subdivisions, although the hospital does receive aid under the Hill-Burton Act (R. 74-75) (42 USCA 291 et seq.) Practically all patients come from Provo and surrounding portions of Utah county, although some patients come from other parts of the state, and the hospital occasionally may treat an out-of-state patient. (R. 72) The regular charges for services to patients are comparable with those charged by other hospitals, (R. 72) and the hospital has used legal process to collect charges for service rendered. (R. 73) Payments are received by the hospital from the state only to the extent of services rendered, apparently for welfare patients. (R. 74)

At the hearing on the unfair labor charge, respondent introduced certain evidence intended to show that the hospital is engaged in interstate commerce. The respondent's superintendent testified that in the year 1949 the cost of operation of the hospital was \$304,851.40 (R. 198.) Of this amount \$193,715.00 represented wages. Approximately \$104,000.00 represented supplies, and the remainder represents expenditure for electricity, water and the like. (R. 197) Of this \$104,131.15 used for the purchase of supplies in the year 1949, sixty-three per cent thereof or an amount of \$65,309.56, was used in making purchases directly from outside the State of Utah. (R. 191) The witness further testified that for the normal operation of the hospital the percentages and amounts would remain approximately the same for other years (R. 191) Although the witness

testified that these purchases made directly from outside the State of Utah were necessary in most instances because the supplies were not available in the State (R. 190), on cross-examination he indicated that purchases were thus made, rather than from business establishments within the state, for the reason that the supplies could in this way be more economically purchased. (R. 195) Upon examination by the referee, the witness testified that these supplies are not resold within the state, but rather are converted into services to the patients. (R. 199)

The witness further testified that the hospital is presently constructing an addition to its building which will cost approximately \$575,000.00. Of this amount approximately \$475,000.00 represents contracts with the building contractors (R. 191, 196), but that the hospital, in the year 1950, is purchasing directly from outside the State of Utah certain equipment in the amount of approximately \$100,000.00. (R. 192, 196) This testimony was apparently introduced to show that the percentage of direct out-of-state purchases would be particularly high in the calendar year of 1950.

The Board's petition to this Court for enforcement of its order was filed and served November 14, 1950. At the time of writing this brief, respondent has not served or filed an answer to that petition.

At the certification hearing, respondent moved to dismiss the petition of the union on the ground that Congress, by enacting the Labor-Management Relations

Act of 1947 (P.L. 101-80th Congress, 61 Stat. 136,) had pre-empted the field of employer-employee relationships as regards nonprofit charitable hospitals, and therefore the Utah Labor Relations Board had no jurisdiction to entertain the petition. (R. 66) The Board denied this motion. (R. 92) In the answer to the complaint on the unfair labor charge, respondent admitted that it was an employer, and further that it had refused to bargain with the union "on the grounds and for the reasons that the Utah Labor Relations Board has no jurisdiction over the subject matter or this cause." (R. 205) In its exceptions taken to the examiner's report, findings of fact and conclusions, respondent further urged that it was engaged in interstate commerce, and therefore within the exclusive jurisdiction of the National Labor Relations Board by virtue of the Labor-Management Relations Act of 1947, colloquially known as the Taft-Hartley Act.

It would thus appear that the only issue before this Court is whether Congress has, under the commerce clause of the United States Constitution, pre-empted the field of labor-management relations as regards respondent, so as to impliedly deny jurisdiction to the state. However, in view of the fact that respondent has not raised issues by means of an answer to the Board's petition, and with the thought that it may be of help to the Court, we shall also treat of the question

whether, apart from the issue regarding interstate commerce, nonprofit charitable hospital corporations come within the purview of the Utah Labor Relations Act.

## STATEMENT OF POINTS

### I

NONPROFIT, CHARITABLE HOSPITAL CORPORATIONS ARE NOT EXCLUDED FROM THE OPERATION OF THE UTAH LABOR RELATIONS ACT.

### II

IF RESPONDENT HOSPITAL WERE ENGAGED IN ACTIVITIES AFFECTING INTERSTATE COMMERCE, PETITIONER WOULD STILL HAVE JURISDICTION OF THE RESPONDENT AND THE SUBJECT MATTER IN QUESTION UNDER THE UTAH LABOR RELATIONS ACT, AS THE LABOR-MANAGEMENT RELATIONS ACT OF 1947 LEAVES THE EMPLOYER-EMPLOYEE RELATIONSHIP AS REGARDS NONPROFIT CHARITABLE HOSPITALS FREE FOR STATE ACTION.

## ARGUMENT

### POINT I

NONPROFIT, CHARITABLE HOSPITALS ARE NOT EXCLUDED FROM THE OPERATION OF THE UTAH LABOR RELATIONS ACT.

The Utah Labor Relations Act, in section 49-1-18, Utah Code Annotated 1943, gives to the Utah Labor Relations Board exclusive power "to prevent any person from engaging in any unfair labor practice (listed in section 9) affecting intrastate commerce or the or-



derly operation of industry.” Section 9 (49-1-16 (1) (d), Utah Code Annotated 1943, as amended by Chapter 66, Laws of Utah 1947) makes it an unfair labor practice for an employer “to refuse to bargain collectively with the representative of a majority of his employees in any collective bargaining unit.” Section 49-1-10, Utah Code Annotated 1943, as amended by Chapter 66, Laws of Utah 1947, in subsection (6) thereof, defines “commerce” as meaning “trade, traffic, commerce, transportation, or communication within the State of Utah,” and, in subsection (2) it defines “employer” as including “any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any state or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.” It does not expressly exclude those in the position of the respondent hospital, nor is there anywhere else in the act any express exclusion.

It is the Board’s position that the respondent hospital is engaged in “trade” or “commerce” within the meaning of the Act, that it is an “employer” within the meaning of that Act, and that it is not excluded from the operation of the Act or the jurisdiction of the Board expressly or by implication.



In the case of *American Medical Association v. United States* (1942), 130 F. 2d 233, 76 U. S. App. D. C. 70, the Court of Appeals for the District of Columbia held that nonprofit charitable hospitals operating in the District of Columbia are engaged in "trade and commerce" within the meaning of the common law and the Sherman Act. To the same effect see the case of *United States v. American Medical Association*, 110 F. 2d 703, 72 U. S. App. D. C. 12, cer. den. 310 U. S. 644, 60 S. Ct. 1096, 84 L. Ed 1411. The United States Supreme Court held, in the case of *Jordan, Secretary of State, et al. v. Tashiro, et al.* (1928), 278 U. S. 123, 49 S. Ct. 47, 73 L. Ed. 214, that the words "trade" and "commerce" used in a treaty with Japan were not limited to the narrow meaning of purchase and sale or exchange of goods and commodities, but included the operation of a hospital.

The case of *National Labor Relations Board v. Central Dispensary & Emergency Hospital* (1945), 145 F. 2d 852, 79 U. S. App. D. C. 274, cer. den. 324 U. S. 847, 65 S. Ct. 684, 89 L. Ed. 1408, is squarely in point here. In that case the NLRB petitioned the Court of Appeals of the District of Columbia for an order enforcing its order directing the respondent to bargain collectively with its non-professional employees. The case was brought and decided prior to the amendment of the National Labor Relations Act by the Labor-Management Relations Act of 1947. One of the defenses raised by the respondent hospital was that it was not

engaged in trade, traffic or commerce within the meaning of the National Labor Relations Act, and was therefore not subject to the act. In granting its order of enforcement, the Court of Appeals of the District of Columbia stated:

“Respondent’s activities involve the sale of medical services and supplies for which it receives about \$600,000 a year. It purchases from commercial houses material of the value of about \$240,000 annually. It employs about 230 persons for nonprofessional services and maintenance work and 120 technical and professional employees. Such activities are trade and commerce and the fact that they are carried on by a charitable hospital is immaterial to a decision of this issue.”

The case of *Wisconsin Employment Relations Board v. Evangelical Deaconess Society* (1943), 7. N.W. 2d 590, 242 Wis. 78, involved the same question. The Wisconsin Employment Relations Board sought an enforcement of its order requiring the respondent society, which operated a charitable nonprofit hospital, to bargain collectively with a labor union. The Circuit Court granted such order. On appeal, the Supreme Court of Wisconsin affirmed, pointing out that there was no express exclusion of such institutions from the act, and that reason and logic indicate that such exclusion should not be read into it. The court stated:

“In the declaration of policy at the beginning of the act it is recognized that the employer, the employee, and the public have an interest in the solution of this problem and the statute is aimed at safeguarding the interests of all

three groups. The law seeks to provide new methods of peacefully settling disputes which may arise and thus prevent strikes which might have resulted under the common law. Respondent here points out that the act intends to confer a benefit on those whom it covers, and appellant's whole argument is based on a misconception of the nature of the policy and the operation of the statute. It is suggested that the order if enforced may endanger in some way the patients in the hospital, but there can be no greater hazard to the lives of patients in a hospital under the statute than there was before its enactment so far as strikes are concerned."

The case of *Northwestern Hospital v. Public Building Service Employees' Union Local No. 113 et al.*, (1940), 294 N. W. 215, 208 Minn. 389, concerned the anti-injunction provisions of the Minnesota Labor Relations Act. The district court had granted an ex parte restraining order against the union picketing and "bannering" the hospital. The state labor conciliator then assumed jurisdiction under the Labor Relations Act, and the court quashed the restraining order. The hospital appealed from that order, insisting that non-profit charitable hospitals were exempt from the Act. That Act, like that of Utah cited above, contained exemptions in the definition of employers, but did not expressly exclude such institutions. The court, in affirming the order of the district court quashing the temporary restraining order, refused to read an exemption in favor of such institutions into the Labor Relations Act of Minnesota. The court stated in part:

“Certainly it is true, as pointed out in both of the previously cited decisions, that ordinarily labor legislation has been concerned principally with industrial labor relations. But to place such a restricted meaning upon the Labor Relations Act would amount to judicial legislation instead of interpretation. The employer-employee problem is more far-reaching and to impute to the legislature a purpose to provide means for the adjustment of labor relations in industry only would be artificial. We are all aware that thousands are performing duties as employees in hospitals such as plaintiff which are the same as those done by employees in private industry. The position and rights of employees in a hospital are as important to the well-being of the whole community as that of a technical industrial employee. The simple fact is that employees are dependent upon their positions for a livelihood. This is true whether the employer is a charitable hospital or an automobile manufacturer. The Labor Relations Act does not make the right to bargain collectively dependent upon the nature of the employer’s operation.”

We have found two cases which hold that non-profit hospitals are not within the definition of “employer” under the respective anti-injunction statutes. They are *Western Pennsylvania Hospital v. Lichliter* (1941), 17 A. 2d 206, 340 Penn. 382, 132 A. L. R. 1146, and *Jewish Hospital v. Doe* (1937), 252 App. Div. 581, 300 N. Y. S. 1111. In both those cases the respective courts point out that such institutions are not expressly exempt from the definition of employers under the statutes, but then proceed to construe the acts to ex-

clude such institutions from their operation. The Supreme Court of Minnesota, in the *Northwestern Hospital* case cited above, had this to say of these cases:

“Other courts considering a similar provision have stressed the exemption in favor of the state and have included, among other grounds for decision, the particular hospitals involved within such exclusion. [Citing the New York and Pennsylvania cases.] However, in the New York case the hospital received substantial aid from the city and accepted its patients. In the Pennsylvania case most of the hospitals were recipients of state funds. It was in light of these facts that the decisions were rendered. Concededly the state would be compelled to perform the function now undertaken by such hospitals as plaintiff were they to cease operation. Nevertheless, we do not think that this relationship between the hospitals and the state is sufficient to classify the former in the exemption granted the latter. Since the legislature specified certain exemptions, the most practical inference is that all intended were mentioned. Inasmuch as hospitals and hospital employes were not specifically excluded, they must be regarded as within the definitions.”

The Court of Appeals for the District of Columbia, in the *Central Dispensary & Emergency Hospital* case cited above, simply stated, “We are unable to follow the reasoning of the Pennsylvania court,” and adopted the views of the Minnesota and Wisconsin Supreme Courts as set forth in the cases heretofore cited.



It may thus be seen that reason, logic and the authorities support the Board's position that the respondent hospital is an employer within the meaning of the Utah Labor Relations Act and is, therefore, subject to the Board's jurisdiction apart from the question concerning interstate commerce. That Act proposes new methods of handling labor disputes and is calculated, by the machinery set up therein, to protect the interests of the employees, the employer and the public. To say that it is limited in its operation to industrial operations would be to defeat the purposes of the Act. There is no question but what the Act covers, among other matters, labor problems involving janitors, elevator operators and the like in, let us say, a hotel. We cannot see wherein janitors or elevator operators employed in a private, nonprofit charitable hospital are in any different position. "The Labor Relations Act does not make the right to bargain collectively dependent upon the nature of the employer's operation." *Northwestern Hospital vs. Public Building Service Employees' Union*, supra.

## POINT II

IF RESPONDENT HOSPITAL WERE ENGAGED IN ACTIVITIES AFFECTING INTERSTATE COMMERCE, PETITIONER WOULD STILL HAVE JURISDICTION UNDER THE UTAH LABOR RELATIONS ACT, AS THE LABOR-MANAGEMENT RELATIONS ACT OF 1947



LEAVES THE EMPLOYER-EMPLOYEE RELATIONSHIP  
AS REGARDS NONPROFIT CHARITABLE HOSPITALS  
FREE FOR STATE ACTION.

In argument to the Board at the hearing on the unfair labor practice charge, counsel for respondent hospital urged strenuously that respondent was outside the jurisdiction of the Board for the reason that it was engaged in interstate commerce, and hence came within a field pre-empted by Congress under the National Labor Relations Act as amended. We do not believe respondent is engaged in interstate commerce. The difficulty arises under the "affecting commerce" criterion as set forth in the National Labor Relations Act (29 USCA 152(7)) and the construction given thereof by the National Labor Relations Board and the courts. See 1 CCH Labor Law Reporter 1611 et seq.

In view of the amendments to the National Labor Relations Act made by the Labor-Management Relations Act of 1947, we believe it is immaterial to the jurisdiction of the Utah Labor Relations Board whether respondent is or is not engaged in activities "affecting interstate commerce." Under section 2(2) of that Act (29 USCA 152(2)) Congress, by deleting persons in the position of respondent from the definition of "employer," removed them from operation of the National Labor Relations Act and jurisdiction of the National Labor Relations Board in any event, and thus left the matter of employer-employee relationship in such institutions up to the parties themselves, or to state action.

We quote that section, indicating those portions deleted by the amendment in brackets, and those portions added by the amendment in italics:

“The term ‘employer’ includes any person acting [in the interest of] *as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.*”

It may be seen that institutions of the nature of respondent were thus removed from coverage of the National Labor Relations Act by the simple device of removing them from the definition of “employer” therein. Section 10(a) of the Labor-Management Relations Act of 1947 provides that “The [National Labor Relations] Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce.” Section 8(a) provides that “It shall be an unfair labor practice for an *employer*” to engage in certain activities. Congress thus, by its amendment to the National Labor Relations Act, removing nonprofit hospital corporations from the definition of employers, has left the entire area of employer-employee relationship in non-

profit charitable hospitals free from federal control or pre-emption under the Commerce Clause of the United States Constitution (Art. I, 8, U. S. Const.), and thus the states are free to regulate in this field.

In the cases of *Bethlehem Steel Company et al. v. New York State Labor Relations Board* and *Allegheny Ludlum Steel Corp. v. Kelley et al.*, (1947) 330 U. S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234, Mr. Justice Jackson discusses this entire matter of Congressional pre-emption under the commerce power as regards the National Labor Relations Act. In those cases the New York Labor Relations Board, during a period in which the NLRB refused to certify foremen's unions as bargaining agents, certified such a union under the New York act, which closely paralleled the NLRA. The New York Court of Appeals affirmed this action, and an appeal was taken to the United States Supreme Court. That court reversed the New York court, holding that federal action under the NLRA, as regards foremen's unions, precluded state action in that area of employer-employee relations. In discussing this question of federal pre-emption, the Court stated:

“At the time the courts of the State of New York were considering this issue, the question whether the Federal Act would authorize or permit unionization of foremen was in controversy and was unsettled until our decision in *Packard Motor Car Co. v. National Labor Relations Bd.*, 330 U. S. 485, ante, 1040, 67 S. Ct. 789. Whatever constitutional issue may have been presented by earlier phases of the evolution of the

federal policy in relation to that of the State, the question now is whether Congress having undertaken to deal with the relationship between these companies and their foremen, the State is prevented from doing so. Congress has not seen fit to lay down even the most general of guides to construction of the [National Labor Relations] Act, as it sometimes does, by saying that its regulation either shall or shall not exclude state action. [Statutes cited.] Our question is primarily one of the construction to be put on the Federal Act. It long has been the rule that exclusion of state action may be implied from the nature of the legislation and the subject matter although express declaration of such result is wanting. [Cases cited.]

“In determining whether exclusion of state power will or will not be implied, we well may consider the respective relation of federal and state power to the general subject matter as illustrated by the case in hand. \* \* \* Thus, the subject matter is not so ‘intimately blended and intertwined with responsibilities of the national government’ that its nature alone raises an inference of exclusion. [Case cited.]

“Indeed, the subject matter is one reachable, and one which Congress has reached, under the federal commerce power, not because it is interstate commerce but because under the doctrine given classic expression in the Shreveport Case, Congress can reach admittedly local and intrastate activities ‘having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of condi-

tions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance.' [Cases cited.]

“In the National Labor Relations Act, Congress has sought to reach some aspects of the employer-employee relation out of which such inferences arise. It has dealt with the subject or relationship but partially, and has left outside of the scope of its delegation other closely related matters. Where it leaves the employer-employee relation free of regulation in some aspects, it implies that in such matters federal policy is indifferent, and since it is indifferent to what the individual of his own volition may do we can only assume it to be equally indifferent to what he may do under the compulsion of the state. Such was the situation in *Allen-Bradley Local, U.E.R.M.W. v. Wisconsin Employment Relations Bd.*, 315 US 740, 86 L Ed 1154, 62 S Ct 820, where we held that employee and union conduct over which no direct or delegated federal power was exerted by the National Labor Relations Act is left open to regulation by the state.”

In the *Allen-Bradley* case cited in the above opinion, decided in 1942, the Wisconsin Employment Peace Act made it an unfair labor practice for one employee to coerce or intimidate another, or to coerce or intimidate his family in the enjoyment of their rights, or to picket his home or injure his property, and the like. The Wisconsin Employment Relations Board had issued a cease and desist order under this provision against the union, its officers, and members. It was admitted that the company was within the jurisdiction of the



National Labor Relations Board. To the objection that that jurisdiction was exclusive for all purposes, and that therefore the Wisconsin Board had no jurisdiction to issue the cease and desist order, the United States Supreme Court said that the federal act did not govern or control employee or union activity of that sort, and had not made such activity subject to the control of the NLRB. It found no intent on the part of Congress to exclude states from exercising their police power where such action did not impair rights guaranteed and protected by the federal act.

A similar question was before the United States Supreme Court in *Algoma Plywood and Veneer Co. v. Wisconsin Employment Relations Board* (1949), 336 U. S. 301, 69 S. Ct. 584, 93 L. Ed. 691. In that case the union had been previously certified as the sole bargaining agent by the NLRB, and there was no question but what the company was engaged in interstate commerce. The employer had agreed to a maintenance-of-membership clause in the union contract. Pursuant to this clause, the employer had discharged an employee who refused to pay his union dues. The Wisconsin Employment Peace Act contained a provision making it an unfair labor practice for an employer to enter into such maintenance-of-membership agreement unless it was agreed to by a vote of two-thirds of the employees. There had been no election on this union contract clause. The Wisconsin Employment Relations Board found the employer guilty of an unfair labor practice



under the state statute, ordered reinstatement of the employee, and payment of back pay. On certiorari a majority of the United States Supreme Court affirmed, holding that the state and federal statutes did not overlap in respect to this matter, and therefore the state was free to govern this type of employer-employee relationship. The court pointed out that the enumeration of unfair labor practices in the federal act as amended was not exclusive, and Congress had not pre-empted the field by enumerating what it considered unfair labor practices. Therefore, states were free to characterize other wrongs as unfair labor practices so long as they were not inconsistent with the federal act.

These three cases are not squarely in point with the facts of the case now before this Court, but are cited to show that Congress, by means of the National Labor Relations Act and the Labor-Management Relations Act of 1947, has not pre-empted the *entire* field of employer-employee relationships in those activities which admittedly and clearly are in or affect interstate commerce. This entire problem is treated in an Annotation, 93 L. Ed. 470, "National Labor Relations Act and Labor Management Relations Act as Excluding State Action."

We have found only one case in which a state court interpreted the exclusions made in section 2(2) of the Labor-Management Relations Act of 1947. In the case of *International Longshoremen's and Warehousemen's Union et al. v. Inland Waterways Corp.*

(1948), 35 So. 2d 425, 213 La. 670, the Supreme Court of Louisiana held that the Inland Waterways Corporation, a wholly owned Government corporation, was not amenable to that Act by virtue of the exclusion contained in that section. It is indeed difficult to see how it can be reasoned that a nonprofit hospital corporation, which is excluded from operation of that Act by the same section, can be subject to "the exclusive jurisdiction of the National Labor Relations Board."

The legislative history of the Labor-Management Relations Act of 1947 supports petitioner's position, and further indicates a legislative intent to exclude nonprofit hospital corporations from jurisdiction of the NLRB entirely, leaving employer-employee relationship of those institutions to state action.

No amendment comparable to section 2(2) of the Act as finally passed was placed in the Senate Bill (S. 1126, 80th Congress, 1st Session). That section as reported and passed by the House (H.R. 3020, 80th Congress, 1st Session) reads as follows:

"The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any instrumentality thereof, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization, or any corporation, community chest, fund, or foundation organized

and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.”

The House Report (House Report No. 245 on H. R. 3020, 80th Congress, 1st Session) contains the following comment on the above provision:

“Churches, hospitals, schools, colleges, and societies for the care of the needy are not engaged in ‘commerce’ and certainly not in interstate commerce. These institutions frequently assist local governments in carrying out their essential functions, and for this reason *should be subject to exclusive local jurisdiction.*” (Emphasis added.)

In the light of the above, we cannot see how it can seriously be urged that the petitioner has no jurisdiction of respondent hospital and its employer-employee relationship because respondent is subject to the exclusive jurisdiction of the National Labor Relations Board. Indeed, whatever the situation may have been prior to the passage of the Labor-Management Relations Act of 1947, the National Labor Relations Board is a board to which respondent or its employees cannot now go with their labor problems. The effect of that act was to remove those in position of respondent and their employees completely from any federal

jurisdiction or regulation so far as labor relations are concerned. Congress has clearly and unequivocally shown that "in such matters federal policy is indifferent, and since it is indifferent to what the individual of his own volition may do we can only assume it to be equally indifferent to what he may do under the compulsion of the state." *Bethlehem Steel Co. v. New York Labor Relations Board*, supra.

## CONCLUSION

The Utah Labor Relations Board, pursuant to the Act under which it operates, has certified the Government and Civic Employees Organizing Committee, Local 1699, C.I.O., as the sole bargaining agent for certain employees of the Utah Valley Hospital and has ordered the hospital to bargain collectively with that union. The hospital has chosen not to comply with that order, giving as the reason therefor that it is outside the pale of the Utah Legislature, by virtue of an Act of Congress, which, by its very terms excludes the hospital from its operation. We do not believe that that Act of Congress may be construed to mean that the National Legislature intended nonprofit charitable hospital corporations to operate free and clear from any restraint whatsoever, national or local, in its relationship with its nonprofessional employees.

We do not believe that the respondent hospital is engaged in activities "affecting interstate commerce." We have not discussed this point because the

line drawn between those activities so affecting interstate commerce and those not so affecting it is not clear, and in this case such a line need not be drawn. Conceding, for the sake of argument, however, that respondent is engaged in such activities, the entire problem of its employee-employer relationships is by an Act of Congress, left to the jurisdiction and control of the several states.

We respectfully submit that the record and the authorities support the order of the Board, and respectfully request that this Court enforce that order.

Respectfully submitted,

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