

Labor Relations: Court Upholds Hospital Nurses' Union's Safe-Care Campaign.

The Massachusetts Nurses Association had represented the nurses at an acute-care hospital for over twenty years.

Several months before the Association's collective bargaining agreement with the hospital expired the Association began what it called a safe-care campaign.

The Association's campaign involved distributing literature to nurses at the hospital. Off-duty nurses distributed literature to other nurses at the front entrance and in the public vestibule, at the rear entrance to the hospital and at the emergency/outpatient entrance.

The union's position was that the literature consisted of reprinted articles stating that downsizing and restructuring of nursing staff and use of non-professional employees giving care and treatment to patients which formerly had only been given by professional nurses can have an adverse effect on the quality of patient care.

The hospital's position, on the other hand, was that the literature contained shocking and sensational headlines focusing on horror stories of patient death and injury due to allegedly unsafe care, at other hospitals.

The hospital stopped the off-duty nurses from distributing the literature and banned further distribution, on the grounds it would shock and disturb patients and thereby have an adverse impact upon patient care.

Court Sides With The NLRB And With the Nurses' Union

The US National Labor Relations Board (NLRB) found the hospital guilty of an unfair labor practice and asked the court for enforcement authority.

The US Circuit Court of Appeals for the District of Columbia agreed with the NLRB. There were several reasons for the Court's ruling.

No Effect on Patients

In this case the Nurses Association was careful to make sure that its safe-care campaign literature *did not* get into the hands of the hospital's patients.

Management can prohibit the distribution of union literature in work areas on the premises.

For hospitals the courts have limited the definition of work areas to immediate patient-care areas. Immediate patient care areas do not include entrances and vestibules used by patients and family coming or going from the hospital.

Outside immediate patient-care areas a hospital can ban distribution of union literature only as necessary to avoid disruption or disturbance.

No union is allowed to disparage the quality of the employer's products or services as an organizing or bargaining tactic. Disparagement is an unfair labor practice.

However, a hospital nurses' union can issue general public statements about patient-care issues and can hand out literature to union members and other nurses about the general effect of staff cutbacks on patient care.

That is not an unfair labor practice as long as the employer hospital itself is not accused of wrongdoing.

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
June 28, 2002

The Association's people testified they were careful only to hand out literature to nurses and pointed out the custodial staff carefully picked up stray litter on a moment-to-moment basis where the literature was being distributed.

There was a debate whether or not the union's literature would tend to frighten hospital patients, which the court settled by deciding that the hospital's patients never actually saw the union's literature.

This case leaves open the issue whether the hospital would have had a valid case for disruption or disturbance of patient care if the Nurses Association had targeted patients rather than nurses.

No Disparagement of the Quality of the Hospital's Patient Care

The Court pointed out the Nurses Association's literature about patient-care and staffing issues did not refer directly to the hospital. There was no disparagement of the hospital's products or services and, therefore, no unfair labor practice.

By contrast, without being guilty of an unfair labor practice a hospital was able to fire a nurse for going on local television and claiming a patient's highly-publicized death at the hospital was caused by nursing staffing changes. See *Labor Relations: Nursing Employee Falsely Disparaged Quality of Care, Not Protected By National Labor Relations Act, Court Says*. Legal Eagle Eye Newsletter for the Nursing Profession, (10)1, Jan 02, p.5.

Work Areas

In labor law the courts devote considerable attention to the definition of a work area. It was a major victory for organized labor when unions were allowed to distribute union literature on an employer's premises as a matter of Federal labor law, regardless of state laws on civil and criminal trespass, as long as the distribution did not take place in work areas.

Patients being escorted or assisted by nurses in the vestibules and entrances does not make those places work areas, the court ruled. **Brockton Hospital v. National Labor Relations Board**, __ F. 3d. __, 2002 WL 1393571 (D.C. Cir., June 28, 2002).