

# Labor Relations: Medicaid Reimbursement To Nursing Homes For Strike-Related Expenses Does Not Violate NLRA, Federal Court Says.

The US District Court for the District of Connecticut ruled recently that the State of Connecticut did not violate the US National Labor Relations Act (NLRA) by its response to strike action by a labor organization representing private-sector nursing home employees.

The same union represented approximately seven thousand employees at seventy-one privately-owned nursing homes in Connecticut, registered nurses, licensed practical nurses, nurses' aides, housekeepers and some maintenance and clerical employees.

Two years ago negotiations with forty-seven nursing homes went down to the wire and a few of the homes were struck. Afterward the state made funding available for additional labor costs, which included retrospective reimbursement for some strike-related costs such as hiring replacement workers.

Contract negotiations heated up again in late 2000. Anticipating possible strikes early in 2001, state officials began contingency planning. The governor, state legislators and Medicaid officials worked to together to allocate funding for training of replacement workers, transportation for replacement workers, premium pay for agency employees, etc., as well as use of the state police and National Guard to protect replacement workers and other measures for the health and safety of nursing home residents.

As the threatened strike deadline approached, union officials went to Federal court seeking an order barring state officials from intervening in the course of events.

The US District Court for the District of Connecticut refused the union's request for a preliminary injunction, ruling that the union's legal position was not meritorious.

## Background

During the New Deal in the 1930's the NLRA was the culmination of an effort by labor organizations on the national level to

***In private-sector labor disputes, state government is not allowed to use the state's power or resources to influence the outcome of the collective-bargaining process.***

***The US Constitution gives supremacy to Federal law over state law in the area of interstate commerce. Federal labor law is based on the exclusive authority of the US Congress to regulate interstate commerce.***

***Labor-policy objectives established by Congress and implemented by the National Labor Relations Act (NLRA) are paramount over the labor-policy objectives of state authorities.***

***However, state government can use Medicaid reimbursement to compensate nursing homes, before or after the fact, for strike-related expenses like hiring and pre-training replacement workers, paying premium wages to agency personnel, etc.***

***State government has the right and the obligation to protect the health and safety of nursing home residents, and that is supported by Federal law.***

UNITED STATES DISTRICT COURT,  
CONNECTICUT, 2001.

put the Federal government strictly in charge of setting standards for private-sector labor dispute resolution and to keep state officials strictly out of that process.

The NLRA prohibits state officials from using state power and state resources to shift the balance one way or the other in private-sector labor disputes. This principle takes many forms.

For example, picketing is a legitimate form of union activity, to inform the public a labor dispute is in progress, to urge employees to join the strike and to urge employees of other companies like delivery drivers not to cross the picket lines.

Regardless of how state law defines criminal trespass and the powers vested in the local police to deal with criminal trespass, picketing must be allowed.

Another example is that pro-union state legislatures are not allowed to extend unemployment benefits to workers while they are on strike, even to workers in the bargaining unit who do not agree to be represented by the union or with the union's decision to strike.

## Residents' Health and Safety Is The Most Important Consideration

The bottom line was that state officials, in the court's judgment, from the governor all the way down the line, were not acting with the intent to shift the balance of power in the labor dispute between the nursing homes and the union.

State officials were acting with the primary intent to protect the health and safety of the nursing homes' residents. Federal law and national policies place a strong burden of responsibility on state officials to protect this vulnerable population. Medicaid statutes and regulations give a sizeable margin of discretion and flexibility to state officials to use available resources as they deem necessary. New England Health Care Employees Union District 1199, SEIU/AFL-CIO, 170 F. Supp. 2d 199 (D. Conn., 2001).