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The world of books is the most remarkable creation of man. Nothing else that he builds ever lasts. Monuments fall, nations perish, civilizations grow and die out, and after an era of darkness new races build others. But in the world of books are volumes that have seen this happen again and again and yet live on, still young, still as fresh as the day they were written, still telling men's hearts of the hearts of men centuries dead.

– Clarence Day

sionals; (4) technical employees; (5) skilled maintenance employees; (6) business-office clerical; (7) guards; and (8) all other non-professionals.

An "appropriate unit" must be determined before any union election can be held. The NLRB's new rule takes the guesswork out of organizing for unions. Now a union will be able to target any one of the eight separate groups in a hospital and organize it without worrying that the unit will be deemed "inappropriate."

The reason a unit determination is so important is that the size of the appropriate unit may well determine whether a union's organizing campaign will succeed or fail.

When a union begins an organizing campaign, it must persuade employees to sign cards indicating interest in being represented. The cards serve as the basis for the union's request for an election and identify the unit the union wants to represent. If 30 percent of total employees sign cards, a union will be able to seek an election. If the number of cards represents only 30 percent of employees in a certain category or department, the union will be able to have an election only if the NLRB determines that the employees in the category or department are an appropriate unit for collective bargaining.

It is much easier for a union to organize a smaller group because it is generally easier to persuade small numbers of employees (who usually know each other) that a union is the answer to their employment problems. And once a union relationship is established, smaller units are able to bargain more effectively. A small unit can much more credibly threaten to strike than a larger one. So unions typically ask for the smallest bargaining unit that is otherwise feasible.

On the other hand, employers typically want larger units because a larger unit is harder to organize, making it easier for an employer to successfully resist unionization. In a larger group, the ability to persuade based upon a common group identity is diminished. So even if a union successfully organizes a larger unit, the ability to reach a group consensus on collective bargaining goals is diminished. This decreases the chance of strikes and weakens the union's bargaining position.

With the NLRB's new rule, unions can organize eight separate groups of employees within even the smallest acute-care hospital. The only limit is that each unit must have at least six employees!

Why Rule-Making Helps The Board And Unions — Not Health Care Consumers

There is a basic difference between the effect of the rule and the board's previous case-by-case analysis of whether doctors, nurses, maintenance workers and the like constituted separate "communities of interest." The rule virtually eliminates any argument based upon a hospital's unique circumstances. If a union requests, for example, a bargaining unit of only six skilled maintenance workers, the NLRB rule now requires a finding that the unit is appropriate. It will not matter whether the hospital has less than 50 employees or that the skilled maintenance workers will be one bargaining unit of eight.

By contrast, the former case-by-case analysis permitted a hospital to show that a separate skilled maintenance unit was inappropriate — for example, due to the size of the hospital, the composition of its particular workforce, or other mitigating circumstances.

. . . hospital administrators will spend more time and money appeasing unions – and less time and money meeting the needs of health care consumers.

With this new ability of unions to organize up to eight bargaining units at a single hospital, there will be increasing demands for higher wages and "better" working conditions, coupled with the escalating risk of strikes. In turn, hospital administrators will spend more time and money appeasing unions — and less time and money meeting the needs of health care consumers.

How Congress Took a Walk

In 1974, when it amended the NLRA, Congress did not tell the NLRB that union organizing was an unqualified plus to a health care institution. Congress waffled. It extended bargaining rights to health care employees but stopped short of an overall endorsement of collective bargaining in healthcare institutions.

In fact, Congress noted its appreciation that the provision of health care is an activity in which the public as a whole is vitally interested. But although it articulated concern for the public welfare, Congress was unwilling to add amendments that would effectively take into account the public's interest in health care delivery and health care costs.

One way in which the public interest could have been protected would have been to limit the number of appropriate bargaining units in health care. Hospital industry proposals to this effect were rejected, even though Congress recognized that there could be problems caused by many small units.

No man has a good enough memory to be a successful liar.

– Abraham Lincoln

The delivery of health care is labor intensive and requires the services of diverse classifications of employees. Each of the diverse classifications could, under the board's community of interest analysis, be deemed an appropriate bargaining unit. Theoretically, the potential number of appropriate bargaining units in a typical hospital — regardless of its size or overall number of employees — could be very high. A large number of small units would inevitably lead to more health care institutions being organized. And once organized, the unions could effectively exert pressure to achieve bargaining goals, including resort to strikes.

To be great is to be misunderstood.

– Emerson

Hospital Industry Opposition

In 1974, the American Hospital Association unsuccessfully attempted to persuade Congress to limit bargaining units in health care to no more than four. Those efforts were unsuccessful. The best the hospital industry could do was to obtain the admonition, in the legislative history, that the NLRB act to prevent "undue proliferation" of hospital bargaining units.

Over the years, the American Hospital Association has continued in its opposition to collective bargaining in hospitals. Its latest efforts have been directed at challenging the NLRB's health care bargaining unit rule. In July, 1989, a U.S. District Court Judge ruled in favor of the AHA and issued a permanent injunction barring the board from implementing the rule. The basis of the District Court Judge's conclusion was that the rule dictates too many appropriate bargaining units and therefore is inconsistent with the Congressional admonition regarding "undue proliferation."

Whatever comfort hospital administrators derived from that decision was eliminated on April 11, 1990, when the Court of Appeals vacated the injunction and, in a decision written by a well-respected jurist, Judge Richard Posner, made it plain that Congressional failure to amend the NLRA to limit the number of bargaining units was fatal to the hopital industry's argument. Judge Posner observed that the Congressional "admonition" was not a statute and could not be treated as such. Since the NLRA does not limit the number of hospital bargaining units, the judge concluded that the NLRB decision to permit eight separate bargaining units by rule was a reasonable exercise of the board's authority.

The AHA has appealed the case to the United States Supreme Court, which is expected to rule by June 1991. Since a statement of legislative history, however, is not an amendment to the National Labor Relations Act, it appears unlikely that the AHA's arguments will carry the day in the Supreme Court.

What Hospitals Can Do

The NLRB's rule decrees smaller units. If it is upheld, union organizers will be more able to persuade health care employees to join up and, once employees sign up, the smaller units will be in a position to wield significant power by threatening to strike.

The year 1991 may be the right moment for the hospital industry, as well as interested consumers of health care, to make sure that Congress lives up to its responsibility . . .

The National Union of Hospital and Health Care Employees has become so elated by the opportunity that delegates to its November, 1990 annual meeting approved the tripling of monthly union dues. The resulting war chest will fund quadrupling of its organizing staff from 50 to 200 people. Successful union bargaining efforts will inevitably result in substantial increases in hospital operating costs — passed on to the consumers of health care and/or the taxpaying public.

Making it easier for unions to organize health care employees is not what Congress said it had in mind in 1974. Obviously, the message to the NLRB should have been more clear. It can come as no surprise that the NLRB would not feel particularly constrained to act to prevent "undue proliferation" of hospital bargaining units simply because Congress "admonished" it to do so.

The year 1991 may be the right moment for the hospital industry, as well as interested consumers of health care, to make sure that Congress lives up to its responsibility to act in the best interest of the general public with respect to delivery of, and access to, health care. Judge Posner's decision suggests that Congress is free to set a limit on bargaining units in hospitals and could, if it were so inclined, order the NLRB to find appropriate only two hospital bargaining units, i.e. one of professionals and one of non-professionals.

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