

Labor Relations: Court Rules Nurses' Strike Illegal, Allows Employer To Fire Them.

The union certified to represent the nurses at a clinic gave notice to the clinic of the union's intent to go on strike after the union rejected the clinic's last contract offer and the union membership voted to authorize a strike.

Healthcare Facilities – Special Rules

The US National Labor Relations Act (NLRA) has a special strike-notice rule for private-sector employees who work for healthcare providers. A union must give a private-sector healthcare employer a minimum ten-days notice of the exact date and time a strike will commence.

Further, the union must stick to the exact date and time stated in the strike notice unless the employer and the union mutually agree to extend the strike deadline for some reason, usually to permit last-minute negotiations to avert the strike.

The purpose of the ten-day notice is to allow the employer, in the interest of patient safety, to make arrangements for temporary replacement workers and/or to transfer or shut down its patient-care operations temporarily.

Union's Tactics Faulted

In this case the union called the strike for 8:00 a.m. on a specified day. Then the union secretly told its member nurses to report for work anyway, to work until noon and then suddenly all to walk off the job together.

In this case the clinic experienced a significant disruption of service by having to have the replacement nurses stand by on the premises while management tried to figure out what to do and then had the union nurses all walk out abruptly four hours into the day shift.

The US Circuit Court of Appeals for the Eighth Circuit ruled the nurses' union violated the NLRA by unilaterally extending the strike deadline. The nurses acted illegally and could be fired and had no recourse under US labor law. Minn. L.P.N. Assn. v. N.L.R.B., ___ F. 3d ___, 2005 WL 1107330 (8th Cir., May 11, 2005).

The union cannot unilaterally shorten or extend the date or time of the strike deadline after giving notice to a health care employer.

The nurses thus struck illegally in violation of Section 8(g) of the US National Labor Relations Act.

By striking illegally the nurses lost the usual protected status which private-sector employees have when engaged in legitimate collective bargaining negotiating tactics with their employers over the terms and conditions of employment.

The nurses were discharged lawfully by their employer.

The individual nurses may have acted in good faith relying upon unsound advice from their union and the union's legal counsel.

However, that does not justify rewarding their unlawful conduct by ordering their employer to reinstate them with back pay, which would be the usual remedy for an employer's unfair labor practice.

The nurses' employer did not commit an unfair labor practice.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
May 11, 2005

O.R.: Incorrect Sponge Count Excused, Was An Emergency.

The patient was involved in a horrific automobile accident and sustained massive internal trauma.

The trauma team at the hospital opened his abdomen and did what was described as "damage control" to keep the patient alive pending transfer to a major trauma center. They removed his spleen and took out ruptured bowel segments, packed the abdomen with lap sponges, closed the surgical incision and transferred him to a Level I trauma center.

The nurses at the Level I trauma center did all they could under the circumstances.

They counted the lap sponges that were actually removed during the second surgery, but made a note on the operative record that the count was "incorrect," meaning that one or more sponges were still inside the patient's body.

SUPERIOR COURT OF PENNSYLVANIA
May 12, 2005

After two more surgeries at the trauma center at least one lap sponge remained inside. The patient died of sepsis and multiple organ failure. His widow sued the trauma center. The jury found no negligence. The Superior Court of Pennsylvania upheld the jury's verdict.

The court ruled this was hardly the run of the mill case of a surgical sponge inadvertently being left inside the patient. Under the circumstances the nurses and physicians did all they could and they should be excused from legal liability. Faherty v. Gracias, ___ A. 2d ___, 2005 WL 1120081 (Pa. Super., May 12, 2005).