

Sympathy Strike: Court Says Nurses Can Strike Despite No-Strike Clause In Collective Bargaining Agreement With Hospital.

The California Nurses Association gave notice to a hospital in the Bay Area that the Association intended to conduct a twenty-four hour sympathy strike at the hospital to show support for other union workers who were planning to engage in a primary strike. The Association represented all of the approximately 650 nurses who worked at the hospital.

When the hospital first received the strike notice from the Nurses Association the hospital went to Federal District Court asking for a court order to block the strike.

After the strike did not happen the hospital still argued it was entitled to a ruling a strike would have been illegal and was entitled to compensation from the Nurses Association for the substantial costs of pre-strike precautionary measures.

A local chapter of the International Longshore and Warehouse Union represented the hospital's x-ray techs. They were in contract negotiations and the x-ray techs' union had set a strike deadline.

Ten days prior to the x-ray techs' strike deadline the Nurses Association gave the hospital ten-days notice of the Nurses Association's intent to conduct a nurses' sympathy strike in support of the x-ray techs if the x-ray techs' union called the x-ray techs out on strike.

At a healthcare institution, ten days notice is required by the US National Labor Relations Act for any strike, picketing or concerted refusal to work.

In general, sixty days notice is required when a union intends to strike if the strike will occur at the expiration of the union's own current labor contract.

The hospital took extensive pre-strike precautions such as canceling some elective surgeries, transferring some of its patients elsewhere and declining to admit some new patients.

The x-ray techs settled with the hospital right before their strike deadline and the Nurses Association's sympathy strike never took place.

A no-strike clause has to refer to sympathy strikes specifically or sympathy strikes are not prohibited by the no-strike clause.

The term sympathy strike refers to a strike conducted by workers belonging to one bargaining unit in support of a primary strike that is conducted by workers belonging to another bargaining unit at the same shop or plant.

The two groups of workers are usually represented by different unions.

The primary strikers are seeking improved wages, benefits and working conditions or are protesting unfair labor practices or other grievances.

The sympathy strikers do not have a primary objective of their own, but are seeking only to assist the primary strikers to achieve their goals.

In 1942 the US Supreme Court ruled that sympathy strikes are basically the same thing as honoring another union's picket line. The right to honor a picket line was established by the original US National Labor Relations Act in 1935.

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT, 2002.

Nurses' Sympathy Strike Ruled Legal

The Federal District Court sided with the Nurses Association. The US Circuit Court of Appeals for the Ninth Circuit agreed that the Nurses Association had the right to call a sympathy strike despite the no-strike clause in the Nurses Association's collective bargaining agreement with the hospital.

Threatening or calling a sympathy strike was ruled not to be an unfair labor practice, so the Nurses Association did not have to compensate the hospital.

Right to Strike Can Be Waived By Collective Bargaining Agreement

The US National Labor Relations Act gives employers and employees wide latitude to bargain over the terms and conditions of employment. The law begs off from defining what does and does not belong in a union contract, but instead seeks only to guarantee the integrity and fairness of the collective bargaining process.

Employees through their unions can agree not to strike. They can agree not to call a primary strike or a sympathy strike or both. However, the US Supreme Court has consistently ruled that if the right to strike is given up it must be stated clearly and unmistakably in the contract. Giving up the right to strike is never inferred or surmised.

The Ninth Circuit Court of Appeals said the Nurses Association clearly and unmistakably bargained away the right to call the hospital's nurses out on a primary strike in support of the nurses' own contract objectives.

However, there was no basis to infer or surmise from the no-primary-strike clause that the Nurses Association gave up the right to call a sympathy strike. The Nurses Association had that right under Federal labor law and never agreed to include no-sympathy-strike language in the contract. [Children's Hospital Medical Center of Northern California v. California Nurses Association](#), 283 F. 3d 1188 (9th Cir., 2002).