

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

# Advice Memorandum

DATE: October 14, 1999

TO : Richard L. Ahearn, Regional Director  
Region 9

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: United Steelworkers of America, AFL-CIO-CLC  
(Pikeville United Methodist Hospital, Inc.)  
Case 9-CG-20

This case was submitted for advice as to whether a union that gives an employer proper 8(g) notice of its planned picketing activity, but then postpones the onset of its picketing activity beyond the time and date set forth in the original notice, must give the Employer an additional 12-hours' advance notice before engaging in such activity; and if so, whether the 12-hour notice must contain the time and date that the picketing will commence.

### **FACTS**

United Steelworkers of America (the Union) is the certified representative of two separate bargaining units employed at the Employer's hospital facility - a registered nurse (RN) unite comprised of approximately 50 employees, and a nonprofessional unit, comprised of about 400 employees. The parties are currently negotiating for initial contracts covering both units. On July 21, the Union notified the Employer by letter that the nonprofessional unit would commence a strike at 12:01 a.m. on August 2 if the parties did not reach a contract by that time. On July 23, the Union notified the Employer, by letter, that the RN unit would also commence a strike on the same date and at the same time if agreement on a contract was not reached.<sup>1</sup> On July 30, the Union notified

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<sup>1</sup> Notices were sent to the Federal Mediation and Conciliation Service on the same date that notices were sent to the Employer.

the Employer, by letter, that the two units would not strike as it had originally informed the Employer, but would continue to work. The Union also advised the Employer that the employees would be engaging in ". . . the lesser, included activity of lawful, informational picketing. . ." beginning at the same time and date set forth in original notices.

The Union did not begin any picketing activity on August 2, as it had originally informed the Employer. On the afternoon of August, Employer attorney Jim Smith telephoned Union attorney Joe Stuligross to seek clarification about the Union's planned activities. Stuligross told Smith that the employees would not withhold their labor, but instead would engage in informational picketing. Before close of business that same day, Stuligross faxed a letter to Smith confirming their conversation. Stuligross did not state, in the conversation or letter, the exact time when employees would begin their unspecified activity.

The Union did not begin any concerted activity until August 3 at 6 a.m. At that time about 15 employees gathered in front of a hospital parking lot located across the street from the main facility. The employees carried signs, some of which stated "Honk for Support USWA." According to the Union, the employees displayed signs and handed out leaflets proclaiming a "Memorial to Mourn the loss of our privacy, our dignity, our serenity, our community pride, our employee rights, stolen by Walter E. May and his puppets." There was also chanting and cheering throughout the day. Union representative Carl Hall affirmed that the activity constituted picketing and was in protest of the Employer's alleged unfair treatment of employees and the Union's dissatisfaction with the status of negotiations between the parties. The activity lasted from 6 a.m. to 6 p.m.

On August 11, the Union held what it characterized as a "Candlelight Prayer Service." The Region has concluded that this "service" did not constitute "picketing."

#### **ACTION**

Complaint should issue, absent settlement, alleging that the Union violated Section 8(g) by failing to give the

Employer 12 hour notice of the actual time for commencement of its picketing on August 3.

Although the Board has not directly addressed this issue, in General Counsel Memorandum 74-49<sup>2</sup>, the General Counsel, citing to legislative history, has taken the position that "absent unusual circumstances, it appears that a union would violate Section 8(g) when it strikes or pickets less than 72 hours after the previously noticed time, unless it gives the additional 12 hours notice envisaged by Congress." In so concluding, GC Memorandum cited to language in the Senate and House Reports which states, *inter alia*:

The ten-day notice is intended to give health care institutions sufficient advance notice of a strike or picketing to permit them to make arrangements for the continuity of patient. It is not the intention of the Committee that a labor organization shall be required to commence a strike or picketing at the precise time specified in the notice; on the other hand, it would be inconsistent with the Committee's intent if a labor organization failed to act within a reasonable time after the time specified in the notice. Thus, it would be unreasonable, in the Committee's judgment, if a strike or picketing commenced more than 72 hours after the time specified in the notice. In addition, since the purpose of the notice is to give a health care institution advance notice of the actual commencement of a strike or picketing, if a labor organization does not strike at the time specified in the notice, at least 12 hours notice should be given of the actual time for commencement.<sup>3</sup>

The Union delayed the onset of their activity for 30 hours, and began picketing on October 3 without giving the Employer the requisite 12-hour notice of the actual time it

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<sup>2</sup> "Guidelines for Handling Unfair Labor Practice Cases Arising Under the 1994 Nonprofit Hospital Amendments to the Act," General Counsel Memorandum 74-49, dated August 20, 1974.

<sup>3</sup> Id., slip op at 7, citing to S. Rep. No. 93-766, 93d Cong., 2d Sess. 4 (1974); H. Rep. No. 93-1051, 93d Cong., 2d Sess. 5 (1974).

would begin picketing. The Union's verbal and written notice to the Employer informing it that the Union would "will engage in other legal activities, including informational picketing" does not meet the requirement for providing the employer with the actual time the Union will commence its activities. Further, there were no unusual circumstances justifying the Union's failure to give appropriate notice to the Employer.

In these circumstances, Complaint should issue, absent settlement, alleging that the Union violated Section 8(g) by failing to give the Employer 12-hour notice of the actual time for its October 3 picketing.

B.J.K.