UNITED STATES GOVERNMENT

Memorandum

TO : Wilford W. Johansen, Regional Director
Region 21

DATE: AUG 12 1976

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

RELEASE

SUBJECT: Hospital and Service Employees Union Local 399
(Broadway Convalescent Hospital)
Case 21-CG-4

A.D. 06183

This Section 8(g) case was submitted for advice as to whether the Union's commencement of picketing over three hours after the time specified in its 10-day notice was unlawful.

FACTS

The Union was certified on February 6, 1976, and thereafter bargained with the Employer to impasse. On June 18, the Union wrote the Employer of its intent to "engage in a strike, picketing and/or other concerted activities" at or near the Employer's facility on June 30 at 7 a.m. As a result, the Employer hired eight additional nurses and also notified its vendors and the relatives of patients of the pending strike and/or other activity.

On June 30 at 7 a.m., one employee scheduled to start work at that time failed to appear. Actual picketing did not commence until 10:45 a.m. 1/ The picketing has not disrupted patient care or interrupted deliveries and all nonunit employees apparently are crossing the picket line.

ACTION

It was concluded that the charge should be dismissed since the Union apparently began the strike on time and did begin picketing within a reasonable time from that specified in the 8(g) notice. 2/

1/ The employee who failed to report at 7 a.m. subsequently joined the picket line.

2/ See, Lutheran Welfare Service of Illinois-Augustana Nursery, Case 13-CG-4, Advice Memorandum dated December 31, 1975; S. Rep. No. 93-766, 93d Cong., 2d Sess. 4 (1974); H. Rep. No. 93-1051, 93d Cong. 2d Sess. 5 (1974).

Since one employee who was scheduled for work did not report and later joined the picketing, he was apparently withholding his services as a striking employee. 3/ And since his failure to report coincided with the strike commencement time set forth in the 8(g) notice, the strike began on schedule. With respect to the picketing, the Union began picketing only three hours and forty-five minutes late. In view of the fact that the strike began on time, the picketing was considered to be within a reasonable period after the scheduled time. It was also noted that the Employer has suffered no adverse affects because of the delayed picketing and the delay was apparently not attributable to any intention to mislead the Employer by lulling him into a false sense of security.

H. J. D.

3/ Cf., Bechtel Corp., 200 NLRB 503.