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Case 14-CA-20413

This case was submitted for advice as to whether a hospital's no-solicitation, no-distribution rule violates Section 8(a)(1) because it contains certain beneficient exceptions.

FACTS

The Jewish Hospital of St. Louis (the Employer) is the target of an organizing campaign by the Missouri Nurses Association (the Union). Prior to the commencement of the campaign, the Employer's solicitation and distribution policy permitted employees to solicit on hospital property, provided that such activity was not conducted during working time and did not interrupt the work of another employee, disrupt hospital operations, or occur in patient care areas. Non-working employees were permitted to distribute literature in non-work and non-patient care areas.

On October 16, 1989, the Employer issued a revised distribution and solicitation policy which prohibited employees, inter alia, from soliciting other employees, patients or guests to join or contribute to any organization, fund, activity or cause in patient care or work areas unless the activities were related to the United Way, Jewish Federation or Red Cross Blood Drive campaigns. The revised policy further prohibits off-duty employees from entering the hospital's interior premises to solicit or distribute for any activity not related to the United Way, Jewish Federation or Blood Drive campaigns.

No solicitations or distributions on behalf of the three identified campaigns have been conducted since the revised policy was implemented. However, the Region has

determined that when the annual United Way campaign was conducted on September 6, 1989, employees watched a movie and listened to a speech while on work time; employees were also told that they could contribute to the Jewish Federation rather than to the United Way. The Red Cross Blood Drive is conducted twice a year, again during work time.

The Region has concluded that the revised solicitation and distribution policy otherwise violates Section 8(a)(1) because it contains an overly broad definition of patient care areas and an invalid restriction on off-duty employees' access to exterior non-work areas. [1]

ACTION

We concluded that the exceptions in the Employer's solicitation and distribution policy for the United Way, the Jewish Federation, and the Red Cross Blood Drive are lawful.

In our view, the annual United Way and/or Jewish Federation campaign and the semi-annual Blood Drive were isolated beneficent acts which did not constitute disparate treatment.[2] The United Way and/or the Jewish Federation drive only occurs once a year.[3] The Blood Drive occurs only twice a year.

We further concluded that the Blood Drive was a privileged exception to the no-solicitation/no-distribution rule because it related to the hospital's purpose and assisted the hospital in carrying out its community health care functions and responsibilities.[4] Moreover, if the hospital is partially funded by the United Way and/or the Jewish Federation, the policy exceptions permitting campaigns on behalf of these

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[1] These issues were not submitted to Advice.

[2] See Hammary Manufacturing Corporation, 265 NLRB 57 n 4 (l982), where the Board stated that it would consider the level and nature of solicitation under the "beneficent acts" exception in evaluating a no-solicitation/no-distribution rule which has such an exception.

[3] This is apparently only one drive in which the employees choose which organization shall receive any contribution they make.

[4] See, e.g., Intercommunity Hospital, 255 NLRB 468, 470 (l98l); Rochester General Hospital, 234 NLRB 253, 259 (l978).

organizations would also be valid as relating to the hospital's purpose.[5]

Further, the illegality of other portions of the Employer's solicitation and distribution rule does not invalidate the exception for beneficient and/or hospital-related activities described above.

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[5] The fact that the no-solicitation, no-distribution rules in Intercommunity Hospital and Rochester General Hospital were applied to non-employees and the rule in the instant case is applicable to off-duty employees is irrelevant because the same policy considerations which privilege these exceptions apply regardless of whom the rules restrict.