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Why Nurses Form Unions

by Barbara F. Katz, J.D.

Labor relations, labor law, and the legal aspects of collective bargaining have long been of concern to nurses employed in hospitals. The basic collective bargaining policy of the American Nurses' Association, for example, dates back to 1946, when its convention adopted an "Economic Security Program." Unlike some other professional organizations, the ANA not only proposed a "collective bargaining" program, but also explicitly referred to it as such, as it still does. The ANA's 1946 statement on economic security called for collective action on such traditional collective bargaining items as a 40-hour work week, higher minimum salaries, and improved fringe benefits, as well as on more uniquely professional matters such as participation by nurses in the planning and administration of nursing services.

The NLRA

The collective bargaining effort on behalf of nurses was given a substantial boost in 1974 when the National Labor Relations Act (NLRA) was amended to include nonprofit hospitals within its ambit.[1] To insure continuity of health care to the community, several special sections were added which apply only to health care institutions, including the requirement of a ten-day notice prior to any strike by health care workers. In general, however, the standard NLRA provisions apply to hospitals.

The Act sets out the procedures by which employees may select a labor organization as their collective bargaining representative to negotiate with the hospital over employment and contract matters. A hospital may choose to recognize and deal with the union without resorting to the formal NLRA procedure. If the formal process is undertaken, the employees vote on union representation in an election held under the supervision of the National Labor Relations Board (NLRB). If the union wins, it is certified by the NLRB as the employees' bargaining representative.

The NLRA provides that the representatives selected by a majority of employees in a bargaining unit are the exclusive bargaining agent for all employees in the unit. The scope of the bargaining unit is often the subject of dispute, since these boundaries may determine the outcome of the election, the employee representatives' bargaining power, and the level of labor relations stability. The concept of an "appropriate bargaining unit" means a logical, homogeneous group of individuals with a community of interest. Decisions by the NLRB have defined registered nurses as an appropriate separate bargaining unit among health care workers.[2] Thus, for example, nurses can be excluded from a bargaining unit composed of service and maintenance employees, unless they are first given the opportunity to choose separate representation and reject it. Supervisory nurses may also be entitled to a bargaining unit separate from the unit composed of general duty nurses.[3] The NLRB has classified LPNs as technical employees[4], and has refused to permit LPNs to join RNs in a bargaining unit.[5] However, under special circumstances, LPNs have been certified as a separate unit independent of other technical employees.[6]

NLRA Protections

What is the effect of the NLRA on nursing unions? The policy of the NLRA is to prevent obstruction of interstate commerce by strikes and labor unrest, to equalize bargaining power between employees and employers, to assure freedom of association and freedom of contract, and to foster peaceful management-labor relations.[7] The legistation provides employees with certain rights: the right to self-organize; the right to form, join or assist labor organizations; the right to bargain collectively through representation of one's own choosing; and the right to engage in other "concerted activities" for the purpose of collective bargaining or other mutual aid or protection.[8]

The NLRA places certain duties on labor organizations and prohibits certain employee activities classified as *employee* unfair labor practices. Coercion of employees by the union constitutes an unfair labor practice, and activities such as mass picketing, assaults on non-strikers, and following groups of non-strikers away from the immediate area of the hospital plainly constitute coercion and will be ordered

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Ms. Katz is with the Office of General Counsel, Massachusetts Department of Public Health, Boston, Mass., and is a member of the Editorial Advisory Board of Nursing Law & Ethics.

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