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Hospitals, Unions, and Strikes

Glenn E. Billington*

ON APRIL 12, 1967, the majority¹ of the non-professional employees of St. Luke's Hospital of Cleveland, Ohio, members of Local 47, Building Service and Maintenance Union, walked off their jobs and set up picket lines across the entrance of the Hospital. In addition to bringing into the limelight the extremely poor working conditions in modern non-profit hospitals, the strike also pointed out a serious shortcoming of the law in Ohio and most other states.² Before we can fully understand the problems of employees in non-profit hospitals, it is useful to briefly review the history of the modern hospital.

History

Hospitals have historically existed with severe burdens upon their staffs. In the 18th and early 19th centuries, a hospital was primarily a place to die, or a place for the poor. If a patient had any money, he was usually advised to stay at home with an attendant and have the doctor visit him. The lack of modern scientific knowledge in the fields of bacteriology, antiseptics and even sanitation greatly increased the dangers in hospitals. A recent study noted that in the late 18th century, employees who lived outside the hospital were usually much stronger and healthier than employees who lived in.³

During this period, the major source of income for private hospitals was charitable contributions, often from church-related organizations. Reasons for this are not hard to understand; those who could personally afford medical care avoided hospitals and therefore the only patients who made use of the facilities were the poor. The churches and other philanthropic interests who established the great network of private non-profit hospitals are certainly to be commended for their compassion and generosity in meeting the needs of society, but as conditions change, institutions must exhibit flexibility also.

When entire budgets had to be made up from charitable collections, there was an obvious need to minimize every cost. One way to keep

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¹ 350 out of approximately 500, according to Union estimates.

² Strikes have occurred in private non-profit hospitals since at least 1937. See New York Times, May 9, 1959, at p. 10. The scope of this article is limited to non-profit hospitals because the labor relations of the few profit-making hospitals in this country are probably subject to the National Labor Relations Act, 29 U.S.C.A. 101 et seq. As to the structure of non-profit organizations generally, see, Oleck, Non-Profit Corps., Orgns. & Assns. (2d ed. 1965).

³ S. S. Goldwater, M.D., "Concerning Hospital Origins" in The Hospital in Modern Society, 9 (Backmeyer & Hartman, 1967).

costs down was to hire the otherwise unemployable, and to pay them low wages. Often this meant hiring the handicapped, the aged, or the derelict, and hospital employment came to be seen as an admission that the employee could not get work elsewhere.⁴

Recently, the class "otherwise unemployable" has been expanded to include those with little formal education and those discriminated against in other areas of employment. At the time of the strike at St. Luke's, 80% of the non-professional employees were Negro women.⁵ This same situation was demonstrated in New York City, when several hospital staffs went on strike in 1959. In that situation, substantially all of the employees were either Negro or Puerto Rican.⁶

Hospital Revolutions

Two great revolutions in hospital operations have occurred in the past century, and a third is just beginning. The first has been in medical science. Since Florence Nightingale introduced sanitation and personal care, and Louis Pasteur introduced sterilization, the hospital has changed from a place to die to a place to be cured. Patients no longer necessarily risk their already weakened lives when they enter a hospital. Today they can expect standards of medical care unheard of here even a few years ago, and still unheard of in most other countries.

The second revolution has occurred in the financing of hospital care. The great fortunes of the early 1900's, which had provided the bulk of the operating income of the hospitals, were radically affected by the economic gyrations of the 1930's. Meanwhile costs greatly increased as medical science produced new technical equipment with astronomical price tags. Also, once the hospital became recognized as a place to be cured, a higher percentage of sick, or those who thought that they were sick, sought hospital care. The result of all this was an urgent demand for expanded hospital facilities, with great quantities of expensive apparatus.⁷ The modern revolution in financing hospital care occurred in two places, Washington, D. C., and the local Blue Cross office.

Blue Cross is a voluntary, non-profit hospitalization plan, established during the depression, which provides for paying certain hospital ex-

⁴ T. Burling, M.D., E. Lentz, Ph.D., and Robert Wilson, Ph.D., *The Give and Take in Hospitals* (1956).

⁵ Statement by Union officials.

⁶ *New York Times*, May 17, 1959, at 1.

⁷ Capacity Increase of Private Hospitals—Chart #98

1950	504,504 Beds
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1964	720,810 Beds
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Cost Increase—Chart #100

1946	\$ 9.39 per day
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1965	44.48 per day
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1967 Statistical Abstract, 88th Annual Edition,
U.S. Department of Commerce.

penses of its subscribers.⁸ As the Depression cut into the charitable contributions and costs rose, patients were obliged to pay a higher and higher share of the costs of their care. Blue Cross is the largest, but by no means the only, private hospitalization insurance plan.

The revolution which occurred in Washington is probably even more important. The Federal subsidization of local hospitals through payments made to State and local Welfare Departments for the care of the people on public assistance,⁹ and for the care of the aged through Medicare,¹⁰ has become a very significant item in hospital budget planning. The newest Federal program, Medicaid,¹¹ could provide even more resources, but as yet Ohio has not established the necessary program to gain these funds.

An Urgent Problem

Despite these revolutionary changes in treatment techniques and finances, one aspect of hospital administration has remained static. Hospital personnel practices have not kept pace with either the other changes in hospital administration or the general improvement in working conditions and incomes of other occupations. We do not refer here, to the physicians—who certainly are in no pain financially—nor to hospital executives.

At the time of the strike at St. Luke's Hospital in 1967, starting salaries for other than top echelon non-professional employees averaged \$1.55 to \$1.91 per hour, with one position, requiring experience, starting at \$2.20.¹² Based on forty hours these salaries would produce weekly incomes from \$62.00 to \$68.00 per week. Advancement was sporadic, and not guided by any formalized procedure. Holidays were paid only when worked; no procedure existed for the settlement of employee grievances;

⁸ R. Cunningham, *The Blue Cross Story* (Public Affairs Committee, Inc., 1944); R. Eilers, *Regulation of Blue Cross and Blue Shield Plans* (R. D. Irwin, 1963).

⁹ 42 U.S.C.A. § 603.

¹⁰ *Ibid.* § 1395.

¹¹ *Id.* § 1396.

¹² Wage Structure at time of strike, supplied by Union.

Title	Hourly Wage	Annual (assuming a full year's employment 40 hours per week, 52 weeks per year)
Anesthesia Aide	\$1.65	\$3,432.00
Food Service Aide	1.55	3,224.00
Porter	1.70	3,536.00
Seamstress	1.55	3,224.00
Orderly	1.86	3,869.00
Nursing Assistant	1.70	3,536.00
Laboratory Assistant	1.91	3,973.00
Physical Therapy Aide	1.65	3,432.00
Houseman (with Experience)	2.20 (highest)	4,576.00
Formula Room Worker	1.70	3,536.00

no pension plans, seniority or group life insurance plan existed, and the Blue Cross contract was limited to the employee and did not cover his family. In short, wages were abominable, advancement uncertain, fringe benefits non-existent, and the future bleak. Naturally, most workers who could get good jobs avoided hospital work. Most workers in this country, conditioned by 33 years of developments under the N.L.R.A., have become accustomed to far greater wages, and regard extensive fringe benefits almost as an inherent right. By way of contrast, 37% of the hospital employees were forced to apply to the County Welfare Department for financial aid necessary for the basic survival of their families.¹³

This is a far cry from the conditions prevalent in other industries in Ohio where, in 1966, the average hourly worker earned \$131.56 a week¹⁴ and generally had extensive pensions, health and accident insurance plans, guaranteed sick leave and vacation plans and formalized procedures for advancement.

Union Activity

In at least two non-profit hospitals in Northeastern Ohio, this situation has recently changed abruptly. In November of 1966, five hundred members of Local 47, Building Service and Maintenance Union, ratified a contract between the Union and their employer, the Youngstown Hospital Association.¹⁵ Wages were uniformly increased 30 cents per hour, and more significant changes occurred throughout the whole framework of personnel practices. Seniority provisions were established, insuring that experienced workers were given the first opportunities for advancement. A grievance procedure was implemented, so that any worker who felt that he was being unfairly treated could have his treatment reviewed, and provisions were made for the arbitration of grievances that could not be resolved otherwise. A uniform forty-hour work week was established, paid holidays and improved vacation rules were provided, and sick leave was increased from six days per year to twelve, and could be accumulated to thirty days. All of these benefits were gained *without* a strike because the Hospital voluntarily recognized the employees' Union.

Court action was required because the Hospital attempted to form its own company union. The Common Pleas Court of Mahoning County

¹³ Statement by Union officials. To many hospital workers, the alternative to hospital work is public assistance.

¹⁴ Average Ohio Wage Rates—Chart 337

1960	1965	1966	
\$ 2.60	\$ 3.01	\$ 3.10	hourly
\$104.13	\$127.02	\$131.56	weekly

1967 Statistical Abstract, *supra* note 7.

¹⁵ The Youngstown Vindicator, (Nov. 15, 1966); *see also* copy of contract available from union.

ruled¹⁶ that once the union had been voluntarily recognized by the hospital, the hospital could not then interfere with its employees' desire to bargain through its own representatives.

Encouraged by the results of these negotiations, the Union began to organize the workers at St. Luke's Hospital in Cleveland. The principal issues, in the eyes of the workers,¹⁷ were the extremely low wages, the lack of advancement, and the lack of formal rules so that the workers would know exactly what they were required to do and not to do. The above-mentioned study of hospital personnel practices found that workers wanted the opportunity to develop their skills, work out their own problems, and have their work clearly defined so that they understood lines of responsibility and authority.¹⁸

The organization drive was successful, an election was held and the majority of the workers voted to have the Union represent them in contract talks. Unfortunately, the Board of Trustees of the Hospital refused to bargain collectively or to recognize the union. Shortly thereafter, the Union members voted to strike and they walked out. The Hospital continued to operate, with management personnel and newly-hired employees (strikebreakers) replacing the strikers.

The Union asked the Common Pleas Court of Cuyahoga County to issue an injunction to prevent the hospital from hiring strikebreakers and to compel the Hospital to bargain collectively.¹⁹ Judge Earl R. Hoover dismissed this request, stating that the N.L.R.A. did not control this matter, citing the specific exemption granted to non-profit hospitals by Section 152(2) of the Act,²⁰ and that no Ohio statute compels collective bargaining. He stated, "not a word in Ohio's common law book . . . says an employer must, against his will, bargain collectively."²¹ The request for the injunction against strikebreakers was denied because Judge Hoover could find no legal prohibition against strikebreakers, except the pleaded Cleveland City Ordinance²² which only banned hiring those who "customarily and repeatedly" offer themselves for employment where a strike exists. Because this condition was not proved, the injunction was not granted.

¹⁶ *Youngstown Osteopathic Hospital Assn. v. Local 47*, case number 181,098, Mahoning County Court of Common Pleas, decided Jan. 19, 1967, not reported (may be found in 3 C.C.H. Labor Law Report, State Laws, Par. 51,617).

¹⁷ From interviews with hospital workers.

¹⁸ *Burling, Lentz and Wilson, op. cit. supra* note 4.

¹⁹ *Building Service and Maintenance Union v. St. Luke's Hospital*, 11 Ohio Misc. 218, 227 N.E.2d 265 (Cuyahoga County Common Pleas Court 1967).

²⁰ 29 U.S.C.A. 152(2), "The term 'employer' includes any person acting as an agent of the employer, directly or indirectly, but shall not include . . . any corporation or association operating a hospital, if no part of the net earnings inure to the benefit of any private shareholder or individual. . . ."

²¹ *Building Service and Maintenance Union v. St. Luke's Hospital, supra* note 19.

²² Codified Ordinances of the City of Cleveland, § 13.112501, reported in *The City Record*, November 4, 1964 at 34.

The strike continued, producing occasional outbursts by some of those persons, called "the Establishment," who controlled the Hospital Board. Various labor, civic and religious groups indicated their support of the strikers, even to the extent of boycotting, during the Christmas shopping season, two of the largest department stores²³ in Cleveland because store executives were members of the St. Luke's Board. The strike continued through the summer and fall of 1967, and the winter of 1967 arrived with still no settlement in sight. Interestingly enough, the Hospital was founded and is influenced by the Methodist Church, and the Methodist Church doctrine had long ago recognized the rights of workers to bargain collectively,²⁴ but the Board held out because the law said that they could.

Finally, in January of 1968, Cleveland City Councilmen George Forbes and Charles Carr submitted legislation in the Cleveland City Council which would have required mandatory collective bargaining in all non-profit organizations in Cleveland which hired more than 25 persons.²⁵

The Board of Trustees soon decided that the handwriting was on the wall, so they recognized the Union and shortly signed a contract similar to the Youngstown Hospital contract.²⁶ Subsequently, the City Council legislation was withdrawn.

The net result of this strike was that the hospital employees received a contract guaranteeing to them the same general economic and working conditions which similar workers, doing similar jobs in private industries, received. The best example of this would be to compare working conditions of hotel housekeeping staffs with hospital housekeeping staffs.²⁷

Federal Legislation

The basic difference seems to be that, at this time, in most private industries (including the profit-making hospitals), labor relations are controlled by the N.L.R.A.,²⁸ whereas the non-profit hospitals are spe-

²³ The May Company, Public Square, Cleveland, Ohio; Halle Bros. Company, 12th and Euclid, Cleveland, Ohio.

²⁴ The Discipline of the Methodist Church, 2020 IIIB Sec. 7, (ed. The Methodist Publishing House 1960).

²⁵ Ordinance No. 119-68, 55 The City Record, No. 2823 at 56.

²⁶ The St. Luke's contract is similar to the Youngstown Hospital Contract, *supra* note 15. The contract provides an immediate 15 cent per hour raise in beginning rates, followed by 8 cent increases for every six months service up to 36 months. The contract runs for three years, with a 10 cent, across the board, increase at the beginning of the second and third year. The contract also provides extensive sections on grievance procedures (including arbitration), no-strike, no lockout provisions, discipline, insurance and pension benefits, and seniority rules.

²⁷ The Building Service and Maintenance Union has several contracts with Cleveland hotels which provide essentially the same conditions and wages as the St. Luke's contract, *supra* note 26.

²⁸ 29 U.S.C. § 141 *et seq.*

cifically exempted.²⁹ This Act established as the national policy the right of workers in most industries affecting interstate trade or commerce to organize themselves into unions for the purpose of improving their working conditions. Employers were held, under the Act, to the obligation or duty to bargain with their employees' chosen union.³⁰ This right has been held to be purely statutory, not based on common law.³¹ No specific mention was made as to whether or not the original Act applied to non-profit hospitals, but in 1944, a case decided by the Court of Appeals for the District of Columbia held that employees of such institutions were covered by the Act. That Court reasoned that the hospital in question had annual receipts of \$600,000, purchases from commercial houses of \$240,000, and employed a total of 350 persons, and therefore was involved in "trade." "It seems clear to us that the activities of the respondent (hospital) are covered by the Act."³² The Court cited two other federal cases which held hospitals to be in trade. In one³³ it was said that "this court held that the sale of medical and hospital services for a fee has been considered as a trade by English and American common law cases going back to 1792." The other cited case³⁴ held hospital services to be "trade and commerce" in the interpretation of a treaty with Japan. Referring to a Pennsylvania case³⁵ which had held hospitals outside the purview of a similarly worded state statute, the Court stated: "We are unable to follow the reasoning of the Pennsylvania Court. We cannot understand what considerations of public policy deprive hospital employees of the privilege granted to the employees of other institutions." It went on to commend the opinions in Wisconsin³⁶ and Minnesota,³⁷ which had enforced collective bargaining in those states.

Three years later, as part of the Taft-Hartley Amendments to the N.L.R.A., Congress specifically exempted charitable hospitals from the protections of the N.L.R.A.,³⁸ with very little debate.³⁹

²⁹ *Ibid.* 152(2).

³⁰ *National Labor Relations Board v. Sands Manufacturing Co.*, 306 U.S. 332 at 342, 59 S.Ct. 508 at 513, 83 L.Ed. 682 (1939).

³¹ *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U.S. 1 at 45, 37 S.Ct. 615 at 629, 81 L.Ed. 893 (1937).

³² *National Labor Relations Board v. Central Dispensary and Emergency Hospital*, 145 F.2d 852 (D.C. Cir. 1944); *cert. den.* 324 U.S. 847, 65 S.Ct. 684 (1945).

³³ *American Medical Association v. United States*, 130 F.2d 233 (D.C. Cir. 1942).

³⁴ *Jordan v. Tashiro*, 278 U.S. 123, 49 S.Ct. 47, 73 L.Ed. 214 (1928).

³⁵ *Western Pennsylvania Hospital v. Lichliter*, 340 Pa. 382, 17 A.2d 206 (1941).

³⁶ *Wisconsin Employment Relations Board v. Evangelical Deaconess Society*, 242 Wis. 78, 7 N.W.2d 590 (1943).

³⁷ *Northwestern Hospital v. Public Building Service Employee's Union*, 208 Minn. 389, 294 N.W. 215 (1940).

³⁸ 29 U.S.C. 152(2).

³⁹ *The Legislative History of the Labor Management Relations Act of 1947*, at 1464 (1948).

State Legislation

A Utah case⁴⁰ held that the Taft-Hartley Amendment reopened the field to state control. In holding that its labor relations act did apply to non-profit hospitals, the Utah Supreme Court set out some interesting guidelines as to the public policy involved. The Utah legislation involved was designed to protect the public interest by promoting labor peace. The Court held that ignoring labor grievances by hospital employees would only foster strikes, so they found reason to apply the statute in order to promote peace in hospitals as well as in steel mills or manufacturing plants. Secondly, the Court stated: "Labor and sweat, hours, wages, and the desire to be important as individuals are much the same whether they exist in a charitable hospital or an industrial plant. There seems to be no reason why the position and rights of workers in a hospital are not just as important to the well-being of the whole community as of any other employee."⁴¹

Fourteen states⁴² have passed comprehensive labor law statutes similar in intent to the National Labor Relations Act. As these fourteen statutes were considered by the various state courts, a variety of decisions were reached. In Colorado, the Supreme Court has ruled that their Act does not apply to charitable hospitals,⁴³ while Connecticut specifically excludes "any charitable, educational or religious agency or corporation."⁴⁴ Massachusetts exempted charitable hospitals,⁴⁵ but the amended statute now allows to "professional nurses and practical nurses" the protection of the Act.⁴⁶ In Michigan, both the statute⁴⁷ and the

⁴⁰ Utah Labor Relations Board v. Utah Valley Hospital, 120 Utah 463, 235 P.2d 520 (1951).

⁴¹ *Id.* at 525.

⁴² Colorado Colo. Rev. Stat. Ann. c. 80, Art. 5 (1953).
 Connecticut Conn. Gen. Stat. Sec. 31-101 (Rev. 1958).
 Hawaii Hawaii Public Law 1945 c. 250 si. A-68, as amended, Act. 249, L. 1951, and Act 11, L. 1955.
 Kansas Kan. Gen. Stat. Ann. c. 44, art. 8 (1949 as amended, Supp. 1959).
 Mass. Mass. Gen. Laws Ann. c. 150A (Supp. 1966).
 Michigan Mich. Stat. Ann. Secs. 17.454(1)-17.474 (26 Res. Vol. 1960).
 Minnesota Minn. Stat. Ann. Secs. 179.01-17, 179.35-39 (1966).
 Montana Mont. H.B. No. 100, Laws 1967.
 New Jersey N.J. Const. Art. 1, Sec. 19.
 New York Labor Law Art. 20 Secs. 700-717 (Supp. 1967).
 Pennsylvania Pa. Stat. Ann. Tit. 43 Sec. 211.1-13 (1954).
 Utah Utah Code Ann. Secs. 34-1-1 to 15 (1966).
 Vermont Vt. S.B. No. 1004, Law 1967.
 Wisconsin Wis. Stat. Ann. Secs. 111.01-111.19 (1957 as amended, Supp. 1965).
 Puerto Rico P.R. Laws. Ann. Tit. 29 Secs. 61-76 (1966).

⁴³ St. Luke's Hospital v. Industrial Com'n, 142 Colo. 28, 349 P.2d 995 (1960).

⁴⁴ Conn. Gen. Stat., § 31-101 (Rev. 1958).

⁴⁵ St. Luke's Hospital v. Labor Relations Com'n, 320 Mass. 467, 70 N.E.2d 10 (1946).

⁴⁶ Mass. Gen. Laws Ann., c. 150A (Supp. 1966).

⁴⁷ Mich. Stat. Ann. §§ 179.01-17, 179.35-39 (1966).

court⁴⁸ require collective bargaining between hospitals and unions. Minnesota goes one step further, recognizing the right to collective bargaining,⁴⁹ makes strikes and lockouts unlawful in non-profit hospitals, and provides for compulsory arbitration of disputes.⁵⁰ Montana follows the Massachusetts rule exempting all except "professional nurses and licensed practical nurses,"⁵¹ while New Jersey⁵² and New York⁵³ follow Michigan and require hospitals to bargain collectively with employee unions.

In Utah, the Supreme Court held⁵⁴ that its labor relations act did apply to charitable hospitals, and then the statute was amended to specifically exempt the non-profit hospital.⁵⁵ Vermont⁵⁶ clearly places charitable hospitals outside the scope of its Act, and, finally, Wisconsin has held that charitable hospitals are included within its Act⁵⁷ and within its Unfair Labor Practice Act.⁵⁸ The remaining three jurisdictions, Puerto Rico,⁵⁹ Kansas,⁶⁰ and Hawaii,⁶¹ have statutes which do not mention the problem and have no decisions reported which would clarify the issue.

Ohio's Problem

Ohio has not passed such a statute, and although one reported Court of Appeals decision has recognized, in *dicta* with no citation given, a general right to collective bargaining,⁶² the generally accepted rule in Ohio is as Judge Hoover stated in denying the injunction to force St. Luke's to bargain: "not a word in Ohio's common law book . . . says an employer must, against his will, bargain collectively."⁶³

Considering the widely recognized success that unions have had in upgrading their members' wages, it is logical that hospital employees

⁴⁸ Local No. 1644 v. Oakwood Hospital Corp., 367 Mich. 79, 116 N.W.2d 314 (1962).

⁴⁹ Northwestern Hospital v. Public Building Service Employee's Union, *supra* note 37.

⁵⁰ Minn. Stat. Ann. § 179.35-179.39.

⁵¹ Mont. H.B. No. 100, Laws 1967.

⁵² N.J. Const. Art. 1, § 19.

⁵³ Labor Law, Art. 20, §§ 700-717 Supp. 1967.

⁵⁴ Utah Labor Relations Board v. Utah Valley Hospital, *supra* note 40.

⁵⁵ Utah Code Ann. §§ 34-1-1 to 15 (1966).

⁵⁶ Vt. S.B. No. 1004, Law 1967.

⁵⁷ Wisconsin Employment Relations Board v. Evangelical Deaconess Society, *supra* note 36.

⁵⁸ St. Francis Hospital v. Wis. Emp. Rel. Bd., 8 Wis.2d 308, 98 N.W.2d 909 (1959).

⁵⁹ P.R. Laws. Ann. Tit. 29, §§ 61-76 (1966).

⁶⁰ Kan. Gen. Stat. Ann. c. 44, Art. 8 (1949), as amended Supp. 1959.

⁶¹ Hawaii Public Law 1945, c. 250 si. A-68, as amended, Act. 249, L. 1951, and Act 11, L. 1955.

⁶² Ritter v. Milk and Ice Cream Drivers, 31 Ohio L. Abs. 631 (8th Dist. Ct. App., Cuyahoga County, 1939).

⁶³ Building Service and Maintenance Union v. St. Luke's Hospital, *supra* note 19.

are exploring unionization as a method of improving their own conditions. The St. Luke's strike⁶⁴ indicates that the employees are willing to strike for the conditions that they feel they need. But, due to the absence of any useful laws on the matter, when faced with a recalcitrant Board of Trustees, the employees' only recourse to gain recognition is a strike. It would also seem that in view of the widespread acceptance of the principles of unionization, there should be sound and substantial reasons for denying these principles to people who happen to work in hospitals.

The first reason usually advanced is the threat that organized workers are liable to strike. This fear is best expressed in a Pennsylvania case: "It has not been the custom in the past to unionize hospitals. The effect of unionization and *attendant efforts to enforce demands* would involve results far more sweeping and drastic than mere property rights. . . . It is a question of protecting the health, safety, and in many cases, the very lives of those persons who need the service a hospital is organized to render."⁶⁵ This is clearly a reference to the threat of a strike that would close down a hospital and seriously endanger public health. Judge Hoover⁶⁶ recognized that workers have the right to withhold their labor in an attempt to improve their conditions. Since the St. Luke's strike indicates that the workers are so dissatisfied with their conditions that they would strike unless improvements occur, logic should compel us to take steps to improve their position and gain in return safeguards of the public welfare. Legislation should be passed by the Ohio Legislature which will recognize the employees' right to collective bargaining,⁶⁷ combined with provisions for binding arbitration of disputes and no-strike clauses.⁶⁸ A provision similar to Section 301 of the L.M.R. Act of 1947⁶⁹ could be incorporated, to the effect that either the hospital or the union could sue to enforce the provisions of the contract,⁷⁰ including the arbi-

⁶⁴ *Daily Cost of Hospital Room—Chart #100*

1946	\$ 9.39 per day	(\$ 4.98 payroll)
1965	\$44.48 per day	(\$27.44 payroll)
1967 Statistical Abstract, <i>supra</i> note 7.		

⁶⁵ *Western Pennsylvania Hospital v. Lichliter*, *supra* note 35.

⁶⁶ *Building Service and Maintenance Union v. St. Luke's Hospital*, *supra* note 19.

⁶⁷ Legislation to this effect would come within the states' police power as stated in *Ohio Constitution*, Art. 2, § 34, and as defined in *Williams v. Scudder*, 102 Ohio St. 305, 131 N.E. 481 (1921); and *Sullivan v. Wellston*, 12 Ohio C.C.R. (n.s.) 108, 31 Ohio C.C.R. 310 (1909).

⁶⁸ *Ohio Arbitration Act*, R.C. 2711.01 *et seq.* See, *Vulcan-Cincinnati, Inc. v. United Steelworkers*, 113 Ohio App. 360, 364, 17 Ohio Op. 2d 386, 173 N.E.2d 709 (1960); see, also, *Local Lodge No. 804 of District No. 34, International Association of Machinists, AFL-CIO v. Stillpass Transit Co.*, 171 N.E.2d 372 (Hamilton Cty. Ct., Ohio, App. 1960) to understand background of arbitration in Ohio labor matters.

⁶⁹ 29 U.S.C.A. Sec. 301.

⁷⁰ "Statutory recognition of the collective agreement as a valid binding and enforceable contract is a logical and necessary step. It will promote a higher degree of

(Continued on next page)

tration of disputes and outlawing strikes or work stoppages during the term of the contract.

The second objection to unionization, the fear of interference by outsiders, is one that has been raised since the beginning of the union movement. Managers, quite naturally, do not want other people telling their workers what they should or should not do. They fear a breakdown of discipline and consequent loss of morale. Union members counter that morale in the hospital is so low that formalized procedures for the resolution of grievances and solidifying of work rules and seniority can only improve morale. Certainly abuses may exist when a formal procedure is employed, but abuses apparently exist without the formal procedure. The fact that the many huge industries that have been unionized in the past few decades have continued to operate, and generate profits, probably indicates that union interference is not, *per se*, fatal.

The study cited above⁷¹ said that group association could improve tenure and morale as well as provide an opportunity to exchange thoughts and comments.

The final objection is that the non-profit organization, because not generating profits, ought not be subjected to pressure by organized workers who could then force raises in their incomes, with a resultant rise in costs of operating the hospital. The fact that higher personnel costs would result in higher costs for hospital care is incontrovertible.⁷² But exploitation of the employees is not the only way to balance a hospital income sheet. New resources for hospital financing have been developed in the past few years. Insurance, Medicare, and welfare payments, as well as fees, now account for the overwhelming proportion of hospital income.⁷³ Other new methods of financing, such as Medicaid⁷⁴

(Continued from preceding page)

responsibility upon the parties to such agreements, and will thereby promote industrial peace." S. Report No. 105, 80th Congress 1st Sess. 17. See, *Textile Workers Union v. Lincoln Mills of Alabama*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1956); *Sinclair Refining Company v. Atkinson*, 370 U.S. 238, 82 S.Ct. 1328, 4 L.Ed.2d 462 (1961); and *Cox*, *Grievance Arbitration in the Federal Courts*, 67 Harv. L. Rev. 591 at 602-604 (1954).

⁷¹ Burling, Lentz and Wilson, *supra* note 4.

⁷² *Supra* note 64. Using these figures a 10% wage increase would increase the daily cost of hospital care by \$2.74, or about 6%.

⁷³ *St. Vincent's Charity Hospital*
1967 Annual Report
Income—\$8,908,776
United Appeal &
Donations—\$470,168 or 4.3%
Medicare—\$2,115,876 or 23.7%

St. Luke's Hospital
1967 Annual Report
Income—\$10,479,994
Endowment and
Donations—\$428,105 or 4%

These deficits, which are covered by the contributions from United Appeal or private endowments, are generally attributed to the cost of care for indigent patients. Medicare (42 U.S.C.A. 1395) and Medicaid (42 U.S.C.A. 1396) are designed to remove this burden from hospital endowments.

⁷⁴ 29 U.S.C.A. 1396.

and prepaid group practices,⁷⁵ offer future possibilities for meeting the total bill for adequate medical care.

Indeed, the 1967 Annual Report of St. Vincent's Charity Hospital concludes: "A more favorable climate has been established for the financial well-being of hospitals during the past two years, and the future trend seems to be for even greater stability."⁷⁶

Conclusions

There is a great need for modern approaches to comprehensive health planning and financing, and hospitals have lagged far behind industry in the application of modern techniques of management.⁷⁷ Merely denying the employees the right to organize in the attempt to raise their own standard of living does not present an answer. The legislation proposed above should be prepared and passed immediately, before new hospital strikes severely compromise the public safety. The effect of this legislation will be to enable hospital employees to gain equitable wage rates and working conditions without striking. The costs for these improved conditions must be borne by the hospitals, and ultimately the public, but despite cries of crisis by some, the hospital industry is probably now in the best financial position in its history and can be expected to meet the costs without sacrificing service.⁷⁸

Following the 1959 strikes in New York City,⁷⁹ editorials,⁸⁰ columnists,⁸¹ law review writers,⁸² and many politicians criticized the situation and called for changes in the law to protect both the employees and the public. It took eight years for the New York legislature to begin to settle the problem.⁸³ Hopefully, it will take Ohio far less time to act.

⁷⁵ Community Health Foundation of Cleveland; Group Health Association, Inc., Washington, D. C.

⁷⁶ 1967 Annual Report, St. Vincent's Charity Hospital of Cleveland, at 2.

⁷⁷ W. E. Landgraf, *Needed: New Perspectives on Health Services*, 45 *Harv. Bus. R.* 75 (Sept. 1967); note, *Design and Management Decisions Reduce Hospital Costs by Half: Baltimore Franklin Square Hospital*, 143 *Arch. Rec.* 135 Feb. 1968; J. Randall, *Wasteful Duplications in Our Hospitals*, 35 *Reporter* 35 Dec. 15, 1966.

⁷⁸ *Who Decides What Is Reasonable Cost for Hospital Care?* 60 *U.S. News and W.R.* 44 April 11, 1966.

⁷⁹ *New York Times*, May 8, 1959 at 1.

⁸⁰ *New York Times*, May 9, 1959 at 10.

⁸¹ G. Kirstein, *Why Hospitals Exploit Labor*, 189 *The Nation*, at 3, July 4, 1959.

⁸² D. Kochery and G. Strauss, *The Non-Profit Hospital and the Union*, 9 *Buff. L. R.* 255 (1960); E. Weissman, *Non-Profit Hospitals and Labor Unions*, 8 *Clev.-Mar. L. R.* 482 (1959).

⁸³ *New York, Labor Law*, Art. 20, §§ 700-717 (Supp. 1967).