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Non-Profit Hospitals and Labor Unions

Esther Weissman*

WHEN A HOSPITAL LABOR STRIKE occurs, like the recent one in New York, the general public is surprised that unions are trying to reach into this field. Yet the fact is that hospitals have a history of employer-employee conflict dating back as far as the period of unionization of mass-production industries in the 30's. As early as 1937 a hospital sit-down strike occurred in New York City. Over the past 20 years there have been hospital strikes in Detroit,¹ Toledo,² and Oakland,³ California, as well as in other places.

What is the relation between non-profit hospitals⁴ and labor unions?

Under the Labor Management Relations (Taft-Hartley) Act of 1947, the definition of *employer* excludes from coverage of the Act "any corporation or association operating a hospital, if no part of the net earning inures to the benefit of any private shareholder or individual."⁵

Exemption of such hospitals was added to the bill in this exact form on the Senate floor on May 13, 1947 by Senator Tydings of Maryland. In the discussion of the amendment, Tydings was asked by Senator Taylor of Idaho:

What does the amendment do? Does it prevent hospital em-

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¹ 32 Newsweek, 22, 23 (Nov. 22, 1948).

² Toledo Blade, Dec. 15, 1956.

³ Both sides of a hospital strike: The Hospital Labor Front Is Boiling; Liebes. Hospitals Must Fight Union Domination; in Highsmith & Smith, *Modern Hospitals*, 75, #3, p. 514 (Sept. 1950).

⁴ This paper deals only with non-profit hospitals. Though labor problems in private profit and public hospitals certainly exist they are not within the scope of this article. Profit hospitals come within the statutory provisions of the Taft-Hartley Act, and public hospital workers have unique problems caused by their being government employees. American Federation of State, County and Municipal Employees A. F. L.-C. I. O. have approximately 50,000 hospital union members, the bulk of whom are public employees. Though each has its own type of labor problems, conclusions herein reached should apply to all types of hospitals, private, profit, non-profit, or public.

⁵ Labor Management Relations Act, 1947; Public L. 101, 80th Cong. 1st Sess., as amended by Public L. 188, 82d Cong., 1st Sess., §2(2).

ployees from organizing? Is that the sense of the amendment?⁶

Senator Tydings answered:

It simply makes a hospital not an employer in the commercial sense of the term. It is rather, to relieve them from the pressures that normally go with business.

Taylor again:

. . . but I wanted to know what would be the effect if nurses in a hospital should decide to organize. Would it prevent their organization?

Tydings replied:

I do not think it would. They should not have to come to the N. L. R. B. (National Labor Relations Board) as in the case of ordinary business concerns. A hospital is a local institution. I do not think the amendment will affect them in the slightest way as to salaries. I will say to the Senator that they can still protest, they can still walk out. The only thing it does is to leave them out of commercial channels of labor-management where a profit is involved.

The Taft-Hartley Act, like the National Labor Relations (Wagner) Act of 1935⁷, which it amended, aims at encouraging collective bargaining as a means of peaceful settlement of labor-management problems. The Act recognizes that:

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife.⁸

Therefore, the law made it an unfair labor practice for an employer "to refuse to bargain collectively with the representative of his employees."⁹

But since hospitals are excluded from the Act, they now have no legal obligation, under federal law, to recognize or deal with unions representing their employees. This explains the refusal by the hospitals in the recent forty-six day New York City hospital strike to recognize or deal directly with the union, and their statements that no third party such as a labor union may be put between the hospitals and their patients.¹⁰

⁶ Legislative History of the Labor Management Relations Act of 1947, 1464 (1948).

⁷ 29 U. S. C. A., §§ 151 et seq. (1938).

⁸ 29 U. S. C. A., § 151.

⁹ 29 U. S. C. A., § 158(5).

¹⁰ New York Times, May 18, 1959, p. 1, col. 2; New York Times, April 22, 1959, p. 1, col. 2.

Regulation by the States

Since 1947, the only regulation of hospital labor-management relations has been that of states which have state labor laws, and some of these have exempted hospitals from their coverage, too. New York specifically exempts non-profit hospitals from the provisions of its Act.¹¹ Courts in Massachusetts¹² and Pennsylvania¹³ have held their laws not applicable to hospitals. In Utah¹⁴ and Wisconsin¹⁵ courts have held that non-profit hospitals do come within the provisions of their particular labor acts.

In 1940 Minnesota's labor act had no specific provision for including hospitals. That year the Supreme Court of Minnesota held that hospitals came within the act and were bound by all its provisions. The court held that since the law specified certain exemptions, among which hospitals were not included, "the most practical inference is that all intended (exemptions) were mentioned."¹⁶

The court also held in the same decision that strikes by hospital employees came within the provisions of the Minnesota Anti-Injunction statute, thereby prohibiting the issuance of temporary injunctions without a preliminary hearing.

In 1947 an amendment to Minnesota's act was passed, prohibiting strikes or lockouts in hospitals, and making arbitration of "any unsettled issues of maximum hours of work and minimum hourly wage rates mandatory and final on the parties."¹⁷ More will be said about this amendment and its inadequacy to deal with the problem of unions and strikes in hospitals.

In 1946 the Supreme Court of Massachusetts held that hospitals did not come within the state's labor act.¹⁸ Here, as in Minnesota, there were specified exemptions, among which hos-

¹¹ New York Consol. L., Chap. 31, § 715.

¹² *St. Luke's Hospital v. Labor Relations Commission*, 320 Mass. 467, 70 N. E. 2d 10 (1946).

¹³ *Western Pa. Hospital v. Lichliter*, 340 Pa. 382, 17 A. 2d 206 (1941); *Penna. Labor Relations Board v. The Mid-Valley Hospital Assn.*, 385 Pa. 344, 124 A. 2d 108 (1956).

¹⁴ *Utah Labor Relations Board v. Utah Valley Hospital*, 235 P. 2d 520 (Utah, 1951).

¹⁵ *Wisconsin Employment Relations Board v. Evangelical Deaconess Society*, 242 Wis. 78, 7 N. W. 2d 59 (1943); *St. Joseph's Hospital v. Wisconsin Employment Relations Board*, 264 Wis. 346, 59 N. W. 2d 448 (1953).

¹⁶ *Northwestern Hospital of Minneapolis, Minn. v. Public Building Service Employees Union*, 208 Minn. 389, 294 N. W. 215 (1940).

¹⁷ *Minnesota St.*, §§ 179.36, 179.37, 179.38.

¹⁸ *St. Lukes v. Labor Relations Commission*, *supra* n. 12.

pitals were not included. But the court said that this was not a determining factor, and that the entire chapter on labor must be read as a whole, to question whether hospitals come "within the sweep of the chapter in the light of the declared underlying and predominant aim and object of the laws." Using this criterion, the court felt that hospital employees were not included in the act's provisions of protection.

But in 1947 a law went into effect in Massachusetts providing for arbitration of hospital disputes.¹⁹ If the dispute is not settled by submission to arbitration, then the governor may declare an emergency and seize the hospital until the dispute is settled. During the emergency it is unlawful to strike.

We can see that both Massachusetts and Minnesota have recognized that hospitals have problems that must be given special consideration, and both have similar solutions, arbitration and prohibition of strikes.

In 1941 the Pennsylvania Supreme Court held that hospital employees are not protected by the state Anti-Injunction Act. The court came to this conclusion by finding that since the Act provides that a labor dispute exists when the cases involves persons who are engaged in a single industry, trade, craft or occupation, it does not apply to hospitals.

If we examine the section of the Act that the Court referred to, we find that it provided that:

A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in a single industry, trade, craft or occupation, or have direct or indirect interests therein, or who are employees of the same employer, or who are members of the same or an affiliated organization of employers or employees, whether the dispute is between one or more employers or associations of employers; and one or more employees or associations of employees;²⁰

I believe that anyone reading the above quoted section in its entirety would be justified in saying that the legislature's intention was that to come within the scope of a "labor dispute" as defined in the Act, the employees must be either in one industry, trade or occupation, or, if not, they must be employed by the same employer. Since the inception of the CIO in 1936, the unionization of employees of a single employer in a single union, regardless of differences of craft or occupation, has become a

¹⁹ Mass. L. Chap. 15013, § 3.

²⁰ Penna. St., Title 43, Chap. 7, § 206 C.

very widespread practice.²¹ The court in no way indicated any intention to invalidate the vertical type of unionization which the CIO was establishing throughout the state of Pennsylvania.

The court went further:

We cannot conceive that the legislature intended to include hospitals within the purview of the Act. Consequently even though the words used might conceivably be broad enough to include a hospital, nevertheless, a hospital is not within the spirit, the Act does not apply to it.²²

As to the application of the Pennsylvania State Labor Relations Act, the court said:

This (operation of hospitals) would be impossible, should we hold the Labor Act applicable with all its attending ramifications, interruptions and possible cessations of service due to labor disputes and attending financial inability to function. Surely the legislature had no such intention and we cannot so find in the absence of a clear and positive declaration to that effect.

In 1951, a Utah court, in holding that non-profit hospitals come within its labor act, said:

The reasoning of the cases relied upon (Pa., Mass., N. Y.) by the defendant (hospital) seems to be largely to the effect that it would have been a good idea for the Labor Relations Act to except such charitable hospitals and therefore the Court should imply such an exception.²³

In 1956 the issue came up again in Pennsylvania. A nurse had been discharged for participation in organizing the nurses in her hospital for collective bargaining. She went to the Pennsylvania Labor Relations Board to protest. Her case eventually reached the Supreme Court of the state, where it was held that since non-profit charitable hospitals are not employers within the meaning of the Act, there was no labor dispute, and the charges against the hospital were dismissed.²⁴ The court referred to the holding in the 1941 Pennsylvania case that, since non-profit hospitals do not engage in industry, commerce or trade, they are not within the scope and intent of the Act. The court also reasoned that the legislature hadn't amended the law since the decision 16 years ago, which proved that the courts had correctly interpreted the legislature's intent.

²¹ Taylor, *Labor Problems and Labor Law* 77-83 (1938).

²² *Western Pa. Hospital v. Lichliter*, supra n. 13, at 209, 210.

²³ *Utah Labor Relations Board v. Utah Valley*, supra n. 14, at 524.

²⁴ *Penna. Labor Relations Board v. Mid-Valley*, supra n. 13.

In New York, where the state Labor Act specifically exempts hospitals,²⁵ the courts have had to deal only with the application to hospitals of the state's Anti-Injunction Act.²⁶ In 1937 the New York court held that, without express language to the contrary, the legislature, in writing the statute, had in mind only industrial and commercial enterprises organized for profit.²⁷

The court also stated that the state Labor Relations Act passed in 1937 and the state Anti-Injunction Act passed two years earlier were to be read in "pari materia," for both had the same aim and purpose. Since charitable hospitals are exempt from the Labor Act, the court held that they were meant to be exempt from the Anti-Injunction Act also. In explaining the fact that the Labor Act was passed two years later than the Anti-Injunction Act, the court said:

This exemption is merely declaratory of previously known and existing public policy.

In 1945 the New York court again held that the Anti-Injunction Act didn't apply to charitable hospitals.²⁸ Stating that the court's duty is to weigh the public interest against the benefits to be obtained by the workers in being allowed to strike, the court found that the public interest against a hospital strike is overwhelming. The court did not allow any picketing.²⁹

In the recent New York City hospital strike, a New York court again ruled that hospitals do not come within the provisions of the state's Anti-Injunction Act.³⁰ The old argument that hospitals are not engaged in industry, trade or commerce, was used to show that there was no dispute within the meaning of the Act. The court also stated that where the public welfare is involved, individuals do not have the right to strike.

In 1941, New Jersey did not have a state labor law, and a New Jersey court held that the state's anti-injunction law didn't apply to hospitals. This court also concluded that the legislature

²⁵ New York Consol. L., Chap. 31, § 715.

²⁶ New York Civ. Prac. Act, § 876-a.

²⁷ *Jewish Hospital of Brooklyn v. Doe*, 252 App. Div. 581 (2d. Dept.), 300 N. Y. S. 1111, 1117.

²⁸ *Society of New York Hospital v. Hansom*, 60 N. Y. S. 2d 589; *affd.* without opinion, 73 N. Y. S. 2d 835 (1947).

²⁹ Seidenberg, *The Labor Injunction in New York City* 49-52 (1953).

³⁰ *Mt. Sinai Hospital, Inc. v. Davis, et al.* (Supr. Ct., N. Y. County, Special Term, Part 1); 141 N. Y. L. J., May 22, 1959, page 12; 37 C. C. H. Labor Cases 65,493 (1959).

never contemplated that hospitals, as charitable institutions, were to be affected by the statute.³¹

The Problem

The cases cited were dealt with extensively in order to show that the courts have been appalled by the idea of hospital strikes, and, in almost every case, having no clear statutory language exempting hospitals from state labor acts or state anti-injunction acts, have resorted to analyzing legislative intent and have usually concluded that hospital employees are not covered by the statutes.

It is certainly clear enough that the prospect of hospital strikes is frightening. But it is not clear whether the problem has been mitigated or intensified by the exclusion of hospitals from coverage by labor acts. If the law frees hospitals from the legal duty to bargain collectively with union representatives chosen by their employees, aren't hospital employees being forced to resort to strikes as the only avenue for securing recognition of their unions?³²

The fundamental right of workers to organize and bargain collectively through their chosen representatives is fully recognized.³³ That the right is fully applicable to hospital workers is not seriously questioned by anyone.³⁴

But to grant the right to organize for collective bargaining without creating a corresponding duty of the employer to recognize and deal with his employees is to invite industrial conflict.³⁵

The American Hospital Association's personnel policy for hospitals provides that:

Modern hospital management is striving to provide for all hospital employees; compensation, working conditions, and

³¹ *Elizabeth General Hospital and Dispensary v. Elizabeth General Hospital Employees Local A. A.* (N. J. Chancery); 4 C. C. H. Labor Cases 60,590 (1941).

³² *New York Times*, Nov. 28, 1958, Letter to the Editor from Irving Weinstein, Acting Director of Community & Social Employees, State, County and Municipal Employees, A. F. L.-C. I. O.

³³ 60 S. Ct. 561, 309 U. S. 261 (1940).

³⁴ *New York Times*, June 11, 1959, p. 24, col. 3: Answer by hospital lawyers to first question presented to them by Supreme Court Justice Epstein, where they conceded that there is nothing in law to prohibit a union from organizing hospital workers, or hospital workers from joining a union.

See also: Hoyt, Hoyt and Groeschel, *Law of Hospital, Physician and Patient* 107-117 (1952).

³⁵ *Killingworth*, *State Labor Relations Acts* 40 (1948); *Fitch*, *Social Responsibility of Organized Labor* 40 (1957); *Millis*, *From the Wagner Act to Taft-Hartley* 98, 278, 254 (1950).

other personnel practices at least at levels prevailing for equivalent work in the community.³⁶

The question is: Are hospitals succeeding in even approaching the goal claimed for them by the Association?

The United States Department of Labor, Bureau of Labor Statistics did a series of studies in sixteen metropolitan areas during 1956-57, of wages of employees in private hospitals (including profit and nonprofit hospitals). The survey covered almost 400,000 full-time employees.³⁷ The highest paid areas were Minneapolis-St. Paul and San Francisco-Oakland, where male dishwashers received \$1.42 and \$1.43 per hour, respectively. Women maids received \$1.32 and \$1.34. The third highest area was Portland, Oregon, where male dishwashers received \$1.25 and female maids \$1.11. Los Angeles-Long Beach was the only other area where every classification studied showed earnings over \$1.00 per hour. Cleveland was fifth with \$1.02 for male dishwashers and 91¢ for female maids. Maintenance electricians received \$2.03 in Cleveland. In the other areas covered in the survey³⁸ the wages for male dishwashers were as low as 60¢ an hour in Buffalo and 84¢ in New York City. Female maids received 59¢ in Baltimore and 91¢ in Chicago.

Obviously these wages are not up to the levels prevailing for equivalent work in these communities. It is questionable whether one might consider these "living wages." In New York during the recent strike, public attention was directed to the fact that

³⁶ In a Statement of American Hospital Association Concerning Collective Bargaining in Hospitals Approved by Board of Trustees, May 19, 1959, it is said: The position of the American Hospital Association is as follows:

1. The American Hospital Association reaffirms its position that voluntary non-profit hospitals continue to be exempt from the provisions of the Labor Management Relations (Taft-Hartley) Act.
2. The American Hospital Association further believes that such hospitals should be exempt from all legislative acts requiring compulsory bargaining of hospitals with any groups of hospital employees.
3. The American Hospital Association also re-affirms its position in upholding a strong and positive personnel policy in hospitals, which provides that, "Modern hospital management is striving to provide for all hospital employees; compensation, working conditions, and other personnel practices at least at levels prevailing for equivalent work in the community."*

* A. H. A. Statement on Hospital Management-Employee Relations. Personnel relations series #1, 1956."

³⁷ Monthly Labor Review, Sept. 1957.

³⁸ Other areas covered by survey were Atlanta, Ga.; Baltimore, Md.; Boston, Mass.; Buffalo and New York City, N. Y.; Chicago, Ill.; Cincinnati, Ohio; Dallas, Tex.; Memphis, Tenn.; Philadelphia, Pa.; St. Louis, Mo.

many hospital employees had to regularly receive public assistance to supplement their wages.³⁹

It is interesting to note that in the two high wage areas surveyed, the hospitals are almost completely organized into unions.⁴⁰ And the other two cities where the wages are above a dollar an hour are in states which have minimum wage laws covering hospital workers.⁴¹

American hospitals employ a total of approximately 1,300,000 workers. Non-professional employees, not including clerical employees, account for about one half of the total number. Certainly these workers cannot be expected to subsidize their employers or the public by continuing to draw substandard wages. Nor should they be deprived of the right to have union representation. Realistically, as long as they do not have a clear right to strike, and the employers are not under a clear duty to recognize and deal with their elected representatives, they are being deprived of the right to union representation and of the right to earn a living wage.

Conclusion

The field of hospital labor-management relations has been neglected too long. No one denies that non-profit hospitals have their financial problems of perennial deficits and of care of the indigent.⁴² There is also the problem of the increasing cost of hospitalization as hospital costs rise.⁴³ But these are problems which must be met realistically, and not by denying 1,300,000 workers adequate wages.

Minnesota, in prohibiting strikes and providing for compulsory arbitration of maximum hours and minimum wages,⁴⁴ comes closest to presenting a realistic solution. However, the defect in Minnesota's act was sharply brought to light in 1951, when employees of ten hospitals went on strike, despite the statutory provisions against striking. The court held that although arbitra-

³⁹ New York Times, May 21, 1959, p. 22, col. 2.

⁴⁰ Medical News, June 24, 1954; Minneapolis Local 113 Building Service Employees Int'l Union; San Francisco Local 250 Building Service Employees Int'l Union.

⁴¹ State Minimum-Wage Laws and Orders, Women's Bureau Bulletin #267 Part II, p. 10; Part I, p. 28.

⁴² Kirsten, Why Hospitals Exploit Labor, 189 The Nation (July 4, 1959).

⁴³ Wall Street Journal, April 2, 1959.

⁴⁴ Minn. St., §§ 179.36, 179.37, 179.38.

tion was limited to maximum hours and minimum wages, this was an adequate remedy at law for the deprivation of the property right to strike.⁴⁵

While Minnesota's law may be constitutional, it is not an adequate solution of the problem, since it leaves no remedy for many possible areas of dispute. If we would deprive hospital workers of the right to strike as a last resort in bargaining, then we must offer them an alternative.

The ideal solution would seem to be the prohibiting of strikes in exchange for establishing compulsory, binding arbitration of all issues pertaining to wages, hours and working conditions that are not resolved by mutual agreement in collective bargaining.⁴⁶

To resolve the problem by simply including hospitals within the collective bargaining provisions of state and federal labor laws does not appear to be an adequate solution. For this would leave us with no guarantee against the breakdown of collective bargaining when the parties might find themselves unable to reach agreement. With forced arbitration on all issues, the employees would be adequately compensated for the loss of the right to strike, and hospital management would only be called on to do what would be possible within their financial resources, and what would be necessary in relation to prevailing community standards.

Since the problem exists in every state of the Union, and since no state has been able to adequately solve it, it would seem that federal action might offer the most practical method of implementing these proposals.⁴⁷

⁴⁵ *Fairview Hospital Association v. Public Building Service Employees Local 113*, 241 Minn. 523, 64 N. W. 2d 16 (1954).

⁴⁶ Editorial, *Hospital Strikes*, 140 *New Republic* (June 1, 1959); Chamberlain in *Social Responsibility and Strikes* 267 (1953) takes the opposite position.

⁴⁷ *National Labor Relations Board v. Central Dispensary and Emergency Hospital*, 145 F. 2d 852 (D. C. Cir., 1944); cert. den. 65 S. Ct. 684, 324 U. S. 847 (1945). The Court held that a non-profit charitable institution was engaged in activities to constitute "trade and commerce" within the meaning of the National Labor Relations Act (Wagner Act). This then is an area to which a federal labor law would be applicable.