I, [redacted] Law Librarian, provide the following statement to David Berry, Inspector General.

I started working at the NLRB in November 2009. Prior to coming to the NLRB, I was employed as law librarian at a private law firm. I have been a law librarian since 2000.

I recall that in September 2011, I was asked by Terry Flynn to do research in a particular case. I received the request by e-mail message. The case was called something similar to "American Hospital" and I was asked to find the initial papers for the injunction to stop the Agency's rule making on healthcare.

My efforts to find the papers included using Westlaw, BNA-LERC, and PACER. In all I believe that I spent approximately 2 to 3 hours on the research. Both the Westlaw and BNA-LERC Web sites are paid subscription services. I communicated the results of my research efforts back to Mr. Flynn by e-mail message.

During the time that I conducted the research for the initial papers for Mr. Flynn, I had other official work that I could have been doing. I generally do not have idle time and, if I am not working on a research project, I have other work assignments that occupy my time.

Mr. Flynn did not tell me what he intended to do with the research.

Prior to signing this statement I read it and had the opportunity to make changes. I swear that this statement is true to the best of my memory and belief.

[redacted] 1-31-12
[redacted] Date

David Berry Jan 31, 2012
David Berry Date
Inspector General
Authorized to administer oaths

Berry, David P.

From: [redacted]
Sent: Tuesday, January 31, 2012 12:46 PM
To: Berry, David P.
Subject: FW: District Court Case

Reviewing the email chain on this request further, I realized something that slipped my mind when we were talking. I also called on the Records Department to see if they had any paper record of these cases. I believe I contact [redacted] and had them look. I'm not sure if that's relevant to your inquiry, but am passing it along as an expansion of our discussion.

[redacted]

From: Flynn, Terence F.
Sent: Wednesday, September 07, 2011 11:01 AM
To: [redacted]
Subject: RE: District Court Case

No worries, [redacted]. Thank you for trying.

From: [redacted]
Sent: Wednesday, September 07, 2011 10:58 AM
To: Flynn, Terence F.
Subject: RE: District Court Case

I'm afraid we're finding nothing on this case. If the AHA sued to stop a rulemaking then there wouldn't be an inciting NLRB case that would have produced a paper trail. We've looked through all our stuff just in case and blown the fluffy clouds of dust off the microfiche and microfilm, and asked the Records Department to strap on their headlamps and pith helmets and go prospecting, but to no avail.

Since the case predates PACER coverage, I'm afraid the only way to get these documents is going to be to request them from the court, and they'll probably have to dig them up from storage somewhere.

The only other Hail Mary option that we could think of would be checking with the ExecSec's office or the GC to see if they kept something floating around.

Sorry! I wish I could have been more helpful. Let me know if you'd like me to start the process of retrieving the case file from the Court.

[redacted]

From: Flynn, Terence F.
Sent: Tuesday, September 06, 2011 3:11 PM
To: [redacted]
Subject: RE: District Court Case

Yes, that is it.

From: [redacted]
Sent: Tuesday, September 06, 2011 3:00 PM
To: Flynn, Terence F.

Subject: District Court Case

This appears to be the decision in the District Court that eventually ended up at the Supreme Court in 1990. If it's the right one, I can ask if Case Records still has anything associated with it.

Labor Cases > U.S. District Courts, Illinois > AMERICAN HOSPITAL ASSN. v. NLRB, 131 LRRM 2751 (N.D. Ill. 1989)
131 LRRM 2751
AMERICAN HOSPITAL ASSN. v. NLRB
U.S. District Court Northern District of Illinois
No. 89-C-3279
May 22, 1989
718 FSupp 704
AMERICAN HOSPITAL ASSOCIATION v. NATIONAL LABOR RELATIONS BOARD, et al.
Headnotes
LABOR MANAGEMENT RELATIONS ACT
[1] NLRB's rule-making authority -- Bargaining-unit determination -- Judicial review ▶ 40.10 ▶ 47.20 ▶ 43.605
NLRB's authority under Section 6 of LMRA to promulgate rule establishing eight separate bargaining units in health-care industry without case-by-case determination is judicially reviewable under Administrative Procedure Act. Congress has not provided statutory scheme for review of board's rule-making authority, and there is presumption in favor of judicial review absent specific congressional prohibition.
LABOR MANAGEMENT RELATIONS ACT
[2] NLRB rule-making authority -- Bargaining-unit determination -- Ripeness ▶ 47.20 ▶ 43.605
Federal district court has jurisdiction over suit challenging NLRB rule establishing eight separate bargaining units in health-care industry, despite claim that rule is not ripe for review because it has yet to take effect, where rule has been published in final form and can be expected to have direct and immediate impact on industry.
LABOR MANAGEMENT RELATIONS ACT
[3] Intervention -- Bargaining-unit determination -- Interest requirement ▶ 38.18 ▶ 47.20 ▶ 43.605
Nurses association and labor federation are not entitled to intervene as of right in suit challenging NLRB's authority to establish bargaining units in health-care industry without case-by-case determination. Although proposed intervenors have interest in assuring proper representation of their members, they have no direct interest in board's authority to promulgate rule.
LABOR MANAGEMENT RELATIONS ACT
[4] Preliminary injunction -- NLRB's rule-making authority -- Bargaining-unit determination ▶ 47.20 ▶ 43.605
Hospital association is entitled to preliminary injunction against NLRB's enforcement and application of bargaining-unit rules in health-care industry, where challenge to board's rule-making authority, in light of Section9(b) of LMRA, has better than negligible chance of success on the merits, implementation of challenged rule could cause irreparable harms, and public policy does not weigh against issuance of injunction.
Attorneys
Katten, Muchin & Zavis, by Brian W. Bulger, Laurence H. Lenz, Jr., and Daniel A. Kaufman, Chicago, Ill., and Venable, Baetjer & Howard, by Benjamin R. Civiletti, Baltimore, Md., for plaintiff. Diane Rosse, Office of Special Litigation, National Labor Relations Board, for defendants. David M. Silberman, Washington, D.C., and Asher, Pavalon, Gittler and Greenfield, Ltd., by Marvin Gitler, Chicago, Ill., for proposed intervenors AFL-CIO and Building Trades Department. Dickstein, Shapiro & Morin, by Woody N. Peterson, Washington, D.C., for proposed intervenor American Nurses Association.
Opinion Text
Opinion By:
ZAGEL
ZAGEL, District Judge: -- What I have before me are a series of motions which I am going to address.
The first is the motion by the defendant to dismiss this case.
I believe that at issue in this case is the extent of the NLRB's rulemaking authority under Section 6 of the National Labor Aviations Act construed also in light of Section 9(b), which provides how the board may determine appropriate bargaining units for purposes of collective bargaining.
Section 6 authorizes the Board to promulgate rules and regulations as necessary to carry out the provisions of the Labor Act with the usual, customary limitation that they do not conflict with any part of the Act.
During the past two years pursuant to Section 6 authority and in compliance with the APA procedures the NLRB has considered a rule which would establish collective bargaining units in the health care industry.
On April 21st of this year the final rule, which recognizes eight separate bargaining units in hospitals, was published in final rule form. The rule will become effective on Monday, May 22, 1989.
Plaintiff, American Hospital Association, claims that establishing the bargaining units is beyond the rulemaking authority because the rule violates 9(b) of the Labor Act, which requires bargaining units be determined on a case-by-case basis.

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[1] The Board seeks dismissal for lack of jurisdiction and on the grounds that the case is not ripe for review or characterizes this uit as a representational dispute under 9(b), something which we have no jurisdiction to review since there is a specific mechanism for such review, and that is in the Courts of Appeals of the various circuits.

The plaintiff and one intervenor, potential intervenor, the AFL-CIO, point out I am not foreclosed from review of the Board's rulemaking authority, and the plaintiffs apparently ask me not to determine the validity of representation under the new rule, but the Board's authority to promulgate the rule; and having asked that, in my opinion Section 704 of the APA creates a cause of action which falls within this Court's jurisdiction.

Absent a specific prohibition by Congress, there is a presumption in favor of judicial review. Judicial review will be denied only upon clear and convincing evidence of contrary legislative intent. Congress really has not provided any statutory scheme for review of the Board's rulemaking authority under Section 6. Any considerations which might make me hesitate to accept review, such as prejudice to the unions, are not present here.

In fact, judicial review in this case is favorable as a matter of policy because it will limit further challenges to the rule.

[2] Defendants' argument that the claims are not ripe for review is similarly without merit. It is well established that suits brought for review of an administrative regulation prior to enforcement are not necessarily premature.

In Abbott Laboratories v. Gardner the Supreme Court characterized problem of ripeness as two-fold, regarding the evaluation of the fitness for judicial decision and the hardship to the parties of withholding judicial consideration.

The Abbott court found that a preenforcement challenge to a new regulation was ripe for review because at issue was purely a legal question. The regulation was a final agency action and the impact of the regulation upon the petitioners was sufficiently "direct and immediate as to render the issue appropriate for review.

In this case the extent of the NLRB is a purely legal issue. While judicial intervention should be withheld until the agency's rule has reached complete development, as a general rule a flexible view is taken of finality in Abbott.

This rule is published in final form. It is to become effective next Monday and it is final agency action. It can be expected that the rule will have a direct and immediate impact on the American Hospital Association and its members as it necessarily changes the nature of collective bargaining in the health care industry.

This impact on the health industry becomes very clear in light of the Board's order of May 9, 1989, in response to clarification on bargaining standards. The Board indicated that any representation decision made after May 22nd would rely on the new rule.

The motion to dismiss is therefore denied. I have, I believe, jurisdiction over this dispute and the litigation is not premature.

[3] The question of intervention. I have two proposed intervenors. They raise the question of their intervention of right. They also ise the question of permissive intervention.

, to their status of amicus curiae, they have already prevailed on that issue.

Federal Rule of Civil Procedure 24 provides for intervention of right upon timely application, when a potential intervenor claims an interest in the transaction which is the subject of litigation, where disposition of the action may impair or impede the potential intervenor's ability to protect that interest, and where the applicant's interests are not adequately represented by the existing parties.

Each requirement must be met; if one is not, then the intervention as of right must be denied.

I limit my discussion to the second criteria, interest in the transaction, because I find that the intervenors have only an indirect interest in the pending litigation and not as intervenors as a matter of right.

The ANA and the AFL-CIO have an interest in assuring the proper representation of their member employees. If these labor organizations are dissatisfied with the bargaining units provided for in the NLRB's rules -- were they to become effective -- they could clearly initiate the appropriate proceedings.

When considering a potential intervenor, however, the issue is not "whether a lawsuit should be begun or defended, but whether an already initiated litigation should be extended to include additional parties." Wade v. Goldschmidt, 673 F.2d 182, 184.

The Supreme Court has noted that the "interest" requirement in Rule 24 should be broadly construed.

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The Seventh Circuit, as well as many others, have interpreted this statement as "encouraging liberality in the definition of an interest, but still suggesting rigor in the requirement that the interest be direct and substantial." Meridian Homes Corporation v. Prassa, 683 F.2d 201, at 204.

The issue I am to decide, as I understand it, is not whether the particular bargaining unit the NLRB has chosen to represent the various employees in the health industry are appropriate, but whether the NLRB has the authority to promulgate rules which specify bargaining units within the health industry without a case-by-case determination.

While the intervenors may have an interest in the specific bargaining units certified by the NLRB rules, their interest in whether the NLRB is authorized to promulgate rules rests solely on the NLRB's including their representational interest in the rules.

Furthermore, if this were a representation dispute under Section 9(b), the NLRA provides specific remedial schemes and judicial review entrusted to the Court of Appeals and not to this Court.

This, however, is a suit brought to require the NLRB's compliance with the rulemaking authority pursuant to federal statutes and "the governmental bodies charged with this compliance can be the only defendants," under Wade v. Goldschmidt.

AFL-CIO and the ANA have no direct interest in the subject of this litigation. It follows that there is no legally protectable erest to be impaired if the potential intervenors are not admitted as parties to this suit.

I might also [say] that were I not to reach this conclusion on the second consideration, I believe that I would reach it on the fourth consideration.

That leaves the question of permissive intervention, and I defer decision on this question of permissive intervention to a later date.
[4] In ruling, as I finally must, on the question of whether I should grant a preliminary injunction or not, I do not determine any controverted right. If I were to allow the application, my basic purpose is to prevent a threatened wrong or any further perpetration of injury or the doing of any act pending the final determination of action.
This is really hornbook law.
Issuance of a preliminary injunction is predicated on balancing of four factors familiar to every attorney in this room: 1) whether the plaintiff has a reasonable likelihood which is ordinarily construed as a better than negligible chance of success on the merits; 2) whether the plaintiff will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; 3) whether the threatened injury to the plaintiff outweighs the threatened harm the injunction may inflict on defendant; and 4) whether the granting of the preliminary injunction will disserve the public interest.
The threshold for success on the merits is quite low, as the Seventh Circuit has pointed out in Curtis v. Thompson and Fatheem-El v. Klincar.
It seems to me fairly clear that the plaintiff has met this burden, that there is at least a better than negligible probability, significantly better than negligible in my view, that the NLRB's rule exceeds Section 9(b) of the Labor Act's limitations and the NLRB's rulemaking authority.
This is not an unheard of view even in the direct course of the proceedings below since one member of the Board took, I believe, a similar view that the language of the Act foreclosed rulemaking for particular units.
I do not say -- and it should be quite clear from my questioning today -- that I do not believe that the issue is necessarily clearcut. I believe there are reasonable and respectable arguments that the defendants can offer which will address the two principal questions with which I am capable of dealing with here today, and those are the claims that the new rules contravene the unambiguous statutory mandate for case-by-case determination.
There is a least a logically possible argument that could be advanced to defend what the Board has done as a preservation of case-by-case decision making at least insofar as Congress mandated it, very narrow perhaps, but still logically possible.
The question of the mandate of undue proliferation may very well be one on which the Board can adequately defend its actions; but at least to the extent that the board has sought to defend it here today, there is a substantial possibility that the plaintiffs will prevail largely because the Seventh Circuit has held that Congress does have a mandate against proliferation, that the NLRB is bound to obey it, and I think it is a necessary holding of opinions of the Seventh Circuit and those of other circuits who have refused to enforce orders on the grounds that they did not take into adequate consideration proliferation.
It is, I think, necessarily implied in those decisions that the courts believe that the determination of what is proliferation and what is not is not exclusively
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remitted to the judgment of the Board.
Let me add briefly that the two other challenges to the Board's action which are advanced by the plaintiffs are that the Board's action is not supported by substantial evidence, particularly with respect to the Board's conclusions that there are no major distinctions between health care institutions, that the rules will not result in undue proliferation of bargaining units and the rules will not pose significant harm to hospitals, and their fourth ground for challenge, that the rules are arbitrary, capricious and irrational in both purpose and means and thus contravene due process.
It is very difficult for the Court having not read the entire administrative record to make a determination as to whether or not there is a more than negligible possibility that the plaintiffs will prevail on one or both of these additional grounds.
I have expressed by my questioning my concern that perhaps there is not substantial -- for a variety of technical reasons not a large body of data on which the Board could base its decision, but I'm reluctant to rest my decision on that because that principle could very well be extended to the ridiculous length that it will be impossible for an administrative agency such as the Board or any of the other independent boards or commissions to ever change their way of doing anything because they would be unable having not changed it to establish substantial evidence as to what the effect of the change might or might not be.
I rest my determination as to the existence of possibility of likelihood of success on the merits on the two basic legal challenges which were made that the new rule contravenes specific mandates of Congress.
Now, the next question really ties a variety of aspects together and I think I am going to address in one respect first the balance of harms and then talk about irreparable injury.
From my perspective the balance of harm question is not really a difficult one to decide. I believe that there are significant harms that can come from the implementation of these final rules, which I will discuss in a moment.
The only harm to be set against it is the loss of 60 or 90 or 120 days of organizing time if there is a stay by the various unions or just perhaps even ordinary employee groups who would seek to organize themselves.
That is a harm that should not be made light of in the course of attempts to organize a particular enterprise. The loss of 60 or 90 or 120 days may in fact be quite significant. But it is not in my view particularly significant in light of the countervailing harms to be brought to the plaintiffs in general, particularly when what we are talking about is a delay of operating under a system for 60 or 90 or 120 days when all that is being done is to require that various employees interested in organizing wait 60, 90 or 120 days more added to the many, many years which have already passed without application of the proposed final rule.
What is the counterweight to that and what is the irreparable harm? I think there are a variety of harms.
The first is one I suggested in my questioning, and that is the destruction of peace and the creation of turmoil in management/employee relationships and in fact I believe in employee and union relationships.
If a system which represents a very significant change from past methods of operation represents a significant change, I believe to

-- and I believe the amicus on this question -- to the advantage of the unions, if this system is held out as the way things will be done in the future, it is in operation for period of months and is then found to be invalid, I think the breaking of the promise as I ferred to it in the course of questioning is deleterious to the purposes in the National Labor Relations Act.
In addition to that, if this rule takes effect and if actions are taken under the rule -- and I believe there is some reason to believe that in some cases it will be -- it seems to me extremely difficult ever to unscramble the egg without forcing the employers to take recourse to a remedy in the Courts of Appeals which Congress has said they are entitled to take, but which extracts, I believe, an additional cost in damages to labor/employee relations.
Less abstract is the fact that there will be significant costs to both unions and management proceeding under the wrong rule if it is the wrong rule, costs which are not reparable or compensable and costs which will be doubled again because if the rule turns out to be the wrong rule, it will have to be done all over again.
In addition to that I believe that inherent in operating under the old rule and under the new rule, the operations have a significant impact on the manner in which strategies of organization are employed by individual employee groups and those who wish to organize them. I believe there is harm to them as well if they devise a strategy based upon the new rule, attempt to execute
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it, and find out that the new rule was inappropriate all along.
In fact, it might very well have significant adverse effect on their ability to organize under the existing rule if the new rule eventually falls by the wayside.
I also believe that Congress did find by its actions in 1974 in accordance with the holdings of the Seventh Circuit that proliferation of unions in the health industry causes injury, and it is clear to me from the representations of all the parties and the briefs that have been filed that the new rule does in fact permit more units than have customarily existed in the past.
If that is sufficient to constitute proliferation and I believe that I have already said that there is a reasonable likelihood that the plaintiffs will be successful in establishing that that is the case, then harm, too, will occur.
Since I found irreparable injury, since I found that the harms are much greater -- much more likely to result from the refusal to stay the effect of these rules than from the denial of the preliminary injunction, that leads me to the last question, and that is whether public policy weighs against the grant of the injunction in this case.
I think public policy does not, if one were to weigh public policy the way that one weighs harms, and that is a possible method of looking at the rules governing preliminary injunctions, the public policy issue is a wash because we have set against each other a complex of rights in employee/management relations on which you would have rights on both sides, and the rights and policies are essentially all expressed in Congressional enactments. It is not uncommon for Congress to enact rights which come into nflict in courts. Indeed, it may very well be endemic in our own Constitution and is certainly true in state legislation.
ou weigh public policy in terms of an absolute determination as to whether a particular injunction is or is not contrary to public policy, the answer to that in this case is that the injunction if issued is designed to vindicate policies expressed by Congress in its decision to require determination of bargaining units in each case and its policy against proliferation. Public policy, therefore, does not stand against the issuance of the injunction.
As must be obvious to everyone in this room, the motion for preliminary injunction is granted.
The plaintiffs will prepare a draft injunction and submit it to this chambers.
I assume there is not significant danger that some drastic thing will occur between midnight Sunday and Monday morning.
MR. BULGER: I don't believe so, Your Honor.
THE COURT: So you will submit it to me Monday morning. You will also submit copies to the defendants because they may have objections to the specifics in the injunction.
Defendants, if you wish to, you can appear in court. If you don't, we can do this by telephone conference.
I also intend to set a briefing schedule and a hearing date to determine this matter finally.
MS. ROSSE: Your Honor, the defendants request that you stay your decision on the preliminary injunction pending decision on appeal.
THE COURT: I do not do so.
MS. ROSSE: Thank you, Your Honor.
THE COURT: The following rule will apply with respect to further proceedings in this case.
The defendant, National Labor Relations Board, will file a full administrative record in this court by Monday, May 22nd.
Briefs will be filed by plaintiff and defendants simultaneously by June 19th. Simultaneous replies will be filed by June 26th.
If it is necessary for me to hold additional hearings, I will do so, but it is my intention to decide this matter on or before July 20th of this year.
The briefing limitations. Briefs will be limited -- the opening briefs of each side will be limited to 50 pages. You may print them or type them as you see fit.
I have never exactly understood which version has more words on the page, but you can count and whether you want more words or a fewer, it's up to you.
The reply briefs will be limited to 20 years.
The amicus will be permitted to file briefs of 25 pages each. They will be due on June 19th.
ect that the National Labor Relations Board consult one week prior to this time -- one week prior to June 19th with the amicus confer on what, if any, arguments the amicus intends to present which would be duplicative; and if it is [at] all possible, the amicus can adopt arguments of the NLRB where they feel it is appropriate.
The issues will not address ripeness or jurisdiction. The briefs will address the four challenges made by the American Hospital

Association, unless, of course, the American Hospital Association notifies the defendants and the amicus again one week prior
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the due date of the briefs, June 19th, that it intends to abandon any one of the four grounds alleged.
ask you to do that because I don't want to force briefing on an issue that's unnecessary.
Anything further?
MR. BULGER: We have nothing, Your Honor.
MR. SILBERMAN: Two questions, Your Honor.
First, in the hopes we avoid a needless appearance on Monday, with respect to the form of the preliminary injunction, a question was raised during the course of the proceeding as to whether the Court intends to enjoin the Board from relying on evidence gathered in the rulemaking record.
I have the sense by Mr. Bulger that was not his intent, but I would like to see if we can work that out now so we don't have to have a dispute on that on Monday.
THE COURT: I didn't understand that to be your intent.
MR. BULGER: That was not my intent. I think a statement I made about something else got converted.
MR. SILBERMAN: Okay.
THE COURT: Okay.
MR. SILBERMAN: Second, I don't know whether Your Honor is open on the issue of intervention. There is one point I wanted to make to the Court with respect to that question, on the permissive intervention.
THE COURT: Make it now.
MR. SILBERMAN: Okay. Your Honor indicated last Friday in the discussion one of the issues you would take into account is the likelihood there would be appeal or appeal right, the need to assure --
THE COURT: Yes.
MR. SILBERMAN: And I would just ask the Court to consider not merely an appeal to the Seventh Circuit, but also a right to appeal to the Supreme Court as --
THE COURT: I don't really want to tip my hand on this issue, but I think my reason for entering and continuing your request for permissive intervention was directed toward considerations of just that sort.
MR. SILBERMAN: The point I want to make is the AHA observed in the past the Board has been quite willing to go to the Court of Appeals and quite reluctant to go to the Supreme Court, and so we would hope the Court would not simply ask whether it is likely to go to the Seventh Circuit, but take into account our need to be able to protect ourselves in getting to the Supreme Court and the ct that the Board wouldn't be able to do so without the consent of the Solicitor General and a whole series of things that takes ce in Washington.
want the Court to understand, but I do know it doesn't always come out the way I wished it.
THE COURT: Well, I understand completely and I have actually now in my life heard five successive Solicitors General speak on how that is done and I have not fully understood what they have said. I understood most of what they have said.
I always thought when I was representing the State one of the great things was that we didn't have to deal with the Solicitor General and we didn't have to ask anybody's permission to file an amicus brief.
I will take into account the possibility of appellate relief beyond the Seventh Circuit in determining whether to permit you to intervene.
And I will say again, as I have said before, it may very well be after all of this is over, it may not be you who is appealing or the Board who is doing the appealing.
MR. SILBERMAN: I certainly hope so, Your Honor.
MR. BULGER: Your Honor, if I, may, just to avoid the problem you suggested on Monday, what we will do is Monday morning we will fax our draft to the parties before we file with the Court so they will have an opportunity to object to us. Maybe we can work it out before we file it with the Court.
THE COURT: That would be helpful. If you can do that, fine. If you can't do that, I will be available by phone and we can resolve it that way.
If you have any problems with this relatively accelerated schedule I have set, I'd raise them promptly, because absent a flood or other natural disaster or some act of God, it will remain intact.
MS. ROSSE: Your Honor, could the Board have until Tuesday to file the full record? There is nobody at the office on the weekends; and although I can box it, I may not have a place to bring it to.
THE COURT: Sure.
MS. ROSSE: Thank you.
THE COURT: The office being closed on the weekend is like an act of God.
MR. SILBERMAN: Your Honor, one other matter with respect to the briefing schedule is I take it that unless we're notified, the AHA will not be raising any additional issues in their opening brief, that they will be addressing the four issues that they've raised and they will notify us --
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E COURT: I thought their issue were fairly comprehensive. Do you think it is likely --
.. BULGER: I think it's unlikely we're going to find anything new. Obviously I don't want to make a commitment not having reviewed the record.
THE COURT: Because I've set this kind of briefing schedule in which you are engaging in simultaneous findings, I would hope

and I would suggest that if you feel that something about the case is going to change -- I have already advised you if you think you are going to subtract from the case, you ought to now notify your opponents -- if you are going to add to the case, you ought to notify your opponents as soon as possible.
MR. BULGER: Your Honor, I have actually been known to file briefs which are less than the page limit. Believe me, we are not going to go beyond what we feel we need to say.
MR. SILBERMAN: I will protect the honor of the profession and object to anything less than the page limit.
THE COURT: Thank you, counsel.
PRELIMINARY INJUNCTION ORDER
This matter having come on to be heard upon the Motion of American Hospital Association for a Preliminary Injunction, the Court having reviewed the written submissions and heard oral arguments and the Court being fully advised in the premises and for the reasons stated in open Court,
IT IS HEREBY ORDERED
The National Labor Relations Board, its members and employees are hereby enjoined from enforcing or applying the Collective-Bargaining Units in the Health Care Industry, Final Rule as published in the Federal Register on April 21, 1989, 54 Fed.Reg. 16336 (1989) (to be codified at 29 C.F.R. Part 103), until further Order of this Court. In accordance with Fed.R.Civ.P. 65(c), the Court finds that no security shall be required since the Board did not request such security.
- End of Case -

[redacted]
Librarian (Law)
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[redacted]