

**Sassaquin Nursing & Rehabilitation Center, Inc.
d/b/a Mariner Health Care Center and Hospital
Workers' Union Local 767, Service Employees'
International Union, AFL-CIO.** Case 1-CA-
35821

July 31, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Upon a charge and an amended charge filed by the Union November 20, 1997, and March 9, 1998, respectively, the Acting General Counsel of the National Labor Relations Board issued a complaint against the Respondent alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. On March 30, 1998, the Respondent filed an answer admitting to all the factual allegations contained in paragraphs 1-7 of the complaint and denying the legal conclusions contained in paragraphs 9 and 10 of the complaint.¹

On April 27, 1998, the General Counsel filed a Motion for Partial Summary Judgment. On May 1, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a timely response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits the allegations that it has maintained the following rules in its employee handbook since June 1, 1997:

- a. You are allowed to enter the Company or outside work areas only during your duty hours. There is to be no loitering in the building or on the grounds when you are not on duty.
- b. Employees who are not visiting a patient may only be on company premises to conduct company business or to work.

These rules permit employees to enter "the Company or outside work areas only during [their] duty hours" and prohibit them from loitering "on the grounds when [they] are not on duty." The rules also provide that "[e]mployees who are not visiting a patient may only be on company premises to conduct company business or to work."

We conclude that the rules are overbroad and therefore presumptively unlawful because the restrictions are not limited to the interior of the facility and other working areas. *Tri-County Medical Center*, 222 NLRB 1089 (1976). Such rules may reasonably be interpreted to forbid Section 7 activity by off-duty employees in areas

other than the interior of the facility and other work areas.

Under *Tri-County*, a respondent may rebut the presumption of illegality by a showing that a rule denying off-duty employees entry to parking lots, gates, and other outside working areas is justified by business reasons. The Respondent's answer did not make this claim as an affirmative defense.

The Respondent has raised a separate affirmative defense in its answer, specifically that the violation alleged is de minimis in nature. In our view, the no-access rule is a facially invalid interference with Section 7 rights, and the continued maintenance thereof is not a de minimis violation.

We therefore find no material issues of fact regarding the allegations contained in complaint allegations 1-7 that warrant a hearing. Accordingly, we grant the Acting General Counsel's Motion for Partial Summary Judgment as to the allegations contained in these paragraphs.²

On the basis of the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in New Bedford, Massachusetts, is engaged in the operation of a nursing home. The Respondent annually derives gross revenues in excess of \$100,000 and purchases and receives goods valued in excess of \$5000 directly from points outside the Commonwealth of Massachusetts.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

Since about June 1, 1997, the Respondent has maintained no-access rules, set forth above, in its employee handbook, which interfere with, restrain, and coerce employees in the exercise of rights guaranteed them by Section 7 of the Act in violation of Section 8(a)(1).

CONCLUSION OF LAW

By maintaining overbroad no-access rules in its employee handbook, the Respondent has violated Section 8(a)(1) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) of the Act, we shall order it to cease and desist. In addition, it shall be ordered to rescind or modify its

¹ Par. 8 of the complaint is not at issue in this proceeding.

² In granting the Acting General Counsel's Motion for Partial Summary Judgment, Member Brame notes that in its answer to the complaint the Respondent did not allege facts sufficient to warrant a hearing with respect to its rule restricting off-duty employee access.

no-access rules so as not to limit off-duty employee access to other than the interior of its facility and other work areas order.

ORDER

The National Labor Relations Board orders that the Respondent, Sassaquin Nursing & Rehabilitation Center, Inc. d/b/a Mariner Health Care Center, New Bedford, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining overbroad no-access rules in its employee handbook.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind or modify its overbroad no-access rules so as not to limit off-duty employee access to other than the interior of the facility and other work areas.

(b) Within 14 days after service by the Region, post at its New Bedford, Massachusetts facility copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 1, 1997.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the issues raised by paragraph 8 (in conjunction with pars. 9 and 10) of the complaint be litigated at a hearing before an administrative law judge.

IT IS FURTHER ORDERED that the Regional Director for Region 30 arrange for such hearing and that the Regional Director is authorized to issue notice thereof.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT maintain overbroad no-access rules in our employee handbook.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind or modify our overbroad no-access rules so as not to forbid off-duty employees the exercise of rights protected by Section 7 of the Act in other than the interior of our facility and other work areas.

SASSAQUIN NURSING & REHABILITATION
CENTER, INC. D/B/A MARINER HEALTH CARE
CENTER