

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

CABELL HUNTINGTON HOSPITAL, INC.,
a West Virginia Corporation,

Plaintiff,

v.

DISTRICT 1199, THE HEALTH CARE AND
SOCIAL SERVICE UNION, SEIU, AFL-CIO,
BECKY WILLIAMS, VIKKI TULLY,
JOYCE GIBSON, JOHN DOE, JANE DOE,
AND ALL OTHERS SIMILARLY SITUATED
WITH THEM CONSTITUTING A CLASS SO
NUMEROUS AS TO MAKE IT IMPRACTICAL
TO BRING THEM ALL BEFORE THE COURT
INDIVIDUALLY AND SEVERALLY BY NAME,

Defendants.

CIVIL ACTION NO.: 21-C-421
Honorable Alfred E. Ferguson, Judge
for the Honorable Christopher D. Chiles, Judge

MIKE WOELFEL
CIRCUIT CLERK
CABELL CO. WV

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FILED

ORDER GRANTING PLAINTIFF'S TEMPORARY RESTRAINING ORDER

On this day, the 10th of November, 2021, came Plaintiff, Cabell Huntington Hospital, Inc., (“CHH”), by counsel, David D. Amsbary, Esquire, Thomas L. Craig, Esquire, and the law firm of Bailes, Craig, Yon & Sellards, PLLC, and Defendants, District 1199, The Health Care and Social Service Union, SEIU, AFL-CIO, Becky Williams, Vikki Tully, and Joyce Gibson, by counsel, Patrick K. Maroney, Esquire and the law firm of Maroney, Williams, Weaver & Pancake, PLLC, for hearing on *Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction*. Based upon the pleadings and papers filed herein, including the *Verified Amended Complaint*, the arguments and representations of counsel, and the evidence presented before the Court during the hearing, the Court hereby makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

FINDINGS OF FACT

1. Cabell Huntington Hospital, Inc. (hereinafter ACHH) is a private not-for-profit hospital providing health care services to residents of the tri-state area. It employs over Two Thousand Eight Hundred Fifty-Two (2,852) people, approximately Nine Hundred (900) of which are collective bargaining unit members of Cabell Huntington Hospital, Service and Maintenance Units. The bargaining unit is represented by District 1199, the Health Care and Social Service Union, SEIU, AFL-CIO, (hereinafter ADistrict 1199@). CHH voluntarily recognized District 1199 and the SEIU as the bargaining agents for unionized employees in 1975. CHH and certain of its employees have been operating under a collective bargaining agreement since 1975. The current contract for the Cabell Huntington Hospital, Service and Maintenance Units was effective on June 9, 2016 and expired on November 2, 2021.

2. CHH and District 1199 have been engaged in negotiations for a new collective bargaining agreement over the past several months. Unfortunately, CHH and District 1199 were unable to reach an agreement, and, on October 21, 2021, District 1199 notified CHH, as required by the National Labor Relations Act (hereinafter ANLRA@), of its intent to engage in a strike and a concerted work stoppage at 12:00 p.m. on November 3, 2021.

3. Since approximately 12:00 p.m. on November 3, 2021, Defendants have, in fact, engaged in a strike. District 1199 members and supporters have picketed CHH and have congregated in and around CHH grounds. These pickets are primarily located along Hal Greer Boulevard from the main entrance to the hospital stretching to the corner of the 13th ½ Alley where the Emergency Department entrance is located. There are also pickets located outside of the Lung Health Center at 13th ½ Alley and Elm Street; next to the Recovery Center on

Thirteenth Avenue and Elm Street; and along 17th Avenue near the Dialysis Center, and at other locations.

4. Plaintiff produced evidence that in addition to assembling in large masses, Defendants have engaged in acts which have resulted in numerous complaints and threaten the well-being of inpatients at CHH, disrupting employees of the hospital, patients of the hospital and members of the general public. Plaintiffs also produced evidence of damage to a vehicle on hospital premises.

5. The witness testimony and the Affidavit of Andrea Criss, Director of Nursing at CHH, was presented by counsel for CHH, and demonstrates that Director Criss has received multiple reports of complaints from November 3, 2021 to the present, from patients and family members receiving care who were upset and affected by the actions of the Defendants in this matter.

6. The witness testimony and the Affidavit of Kenneth Jackson, Vice President – Support Services at CHH, was presented by counsel for CHH, and demonstrates that Mr. Jackson has received multiple reports of complaints from patients, family members, employees and contractors from November 3, 2021 to the present, who were upset and affected by the actions of the Defendants in this matter.

7. Larry Dial, M.D., Chief Clinical Officer for Mountain Health Network and practicing physician at CHH, testified that he has often been present at CHH and Marshall Health in both clinical and administrative capacities during the strike, has received complaints from family members and patients receiving care who were upset and disturbed by the actions of the Defendants in this matter, particularly loud music coming from picket line, as well as noise makers and bullhorns on the line and excessive horn honking from the street in front of

the Hospital. Dr. Dial also testified that he personally received a computerized "robo call" from the Defendants as did his father.

CONCLUSIONS OF LAW

1. Pursuant to the National Labor Relations Act ("NLRA") Defendants are afforded the right to conduct peaceful picketing and concerted activities.

2. The activities of Defendants is improper and a public safety concern as Defendants' actions are an impediment to the healing environment which must be preserved for patients at CHH as well as for their families.

3. The misconduct of Defendants exceeds the scope of peaceful picketing afforded by the NLRA, and threatens the safety of the community at large inasmuch as CHH is a healthcare provider.

4. Pursuant to Rule 65(b) of the West Virginia Rules of Civil Procedure, a party may obtain a temporary restraining order to prevent an adverse party's conduct "without written or oral notice to the adverse party or that party's attorney" when:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

See, Camden-Clark Mem'l Hosp. Corp. v. Turner, 212 W. Va. 752, 575 S.E.2d 362

(2002). Additionally, Rule 65(b) further provides,

[i]n case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time . . . and when

the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. See, *W. Va. R. Civ. P. 65(b)*.

5. CHH has sufficiently demonstrated that (1) it will suffer irreparable harm absent immediate injunctive relief; (2) no adequate remedy at law exists for CHH; and, (3) after applying a balancing of hardships test, equity favors granting immediate injunctive relief to CHH.

6. Based upon the facts and law before the Court, CHH is entitled to temporary restraining order (“TRO”) preventing the Defendants from engaging in improper conduct, including blocking hospital entrances and engaging in loud and boisterous conduct as described herein, and restricting Defendants from picketing Plaintiff except on public sidewalks and in numbers no greater than a total of eight (8) at each point of entrance during the hours of 6 a.m. and 6 p.m. and four (4) during the hours of 6 p.m. to 6 a.m.

7. CHH is entitled to provide healthcare in a peaceful environment free from the misconduct of Defendants. CHH will not be able to maintain an environment conducive to healing for patients and their families absent immediate injunctive relief.

8. CHH is without any adequate remedy at law, as no monetary value can be equated to the harm which Defendants’ conduct has caused to CHH or the community at large as Defendants are preventing CHH from maintaining a healthcare facility which is conducive to healing.

9. As to the balance of hardships test, equity favors granting CHH immediate injunctive relief. While CHH and the patients admitted therein will suffer irreparable harm absent the requested relief, Defendants will suffer no harm in the event relief is granted as

Defendants will be afforded the opportunity to exercise their rights in a peaceful and orderly manner pursuant to the NLRA.

Based upon the foregoing law and arguments, this Court determines that CHH is ENTITLED to a TEMPORARY RESTRAINING ORDER hereby enjoining Defendants from the following:

(a) Picketing Plaintiff except on public sidewalks and in numbers no greater than eight (8) at each point of entrance to the hospital during the hours of 6 a.m. to 6 p.m., and no more than four (4) at these entrances during the hours of 6 p.m. and 6 a.m.;

(b) Engaging in or encouraging loud and boisterous conduct which includes use of bullhorns, air horns, banging of objects, playing loud music, and blowing and honking automobile horns. Furthermore, this Court hereby precludes Defendants from causing or contributing to or encouraging any unnecessary noise by use of signs or other forms of communication;

(c) Utilizing burn barrels in the vicinity of the Lung Health Center at 13th Avenue and Elm Street. The Defendants shall utilize propane for heat at this location.

(d) Engaging in any conduct which results in blocking, obstructing or in any way or by any means hindering, preventing or interfering with vehicles, ambulances, cars or persons traveling on foot or otherwise from accessing the hospital or its property;

(e) Engaging in any conduct which results in blocking, obstructing or in any way or by any means hindering, preventing or interfering with use of the sidewalk handicap curb cuts;

(f) Picketing, patrolling or gathering within 15 feet of the corner of the sidewalk located at 13½ Alley and Hal Greer Boulevard adjacent to the Emergency Department entrance;

(g) Interfering with traffic, or hindering the free use of roads and streets by Plaintiff, its employees and members of the general public;

(h) Doing any acts calculated to prevent Plaintiff from conducting its business of delivering essential medical services to the general public;

(i) Trespassing upon the private property of Plaintiff;

(j) Any direct communication with patients, visitors, employees, vendors and neutral trade union members entering and exiting Cabell Huntington Hospital;

(k) Engaging in picketing within twenty (20) feet of the Reserve Gate and harassing or interfering with access to the hospital facilities by those neutral trade union workers lawfully utilizing the Reserve Gate. The Union shall be permitted to have two (2) observers at the Reserve Gate. Picketers shall not communicate in any way with those utilizing the Reserve Gate;

(l) Generally intimidating employees of the hospital, patients of the hospital, neutral trade union members, and members of the general public by use of vulgarities, obscenities or threats.

IT IS FURTHER ORDERED that this TEMPORARY RESTRAINING ORDER is effective at 3:30 p.m. on Tuesday November 10, 2021.

IT IS FURTHER ORDERED that a hearing for preliminary and/or permanent injunction will be held on November 22nd at 1:30p.m., or as soon thereafter as may please the Court.

IT IS FURTHER the recommendation of the Court that the Hospital engage law enforcement if the Defendants engage in any unlawful conduct. The Court further instructs the Plaintiff to bring before the Court on a Motion for Contempt, for any conduct of the Defendants in violation of this Order.

IT IS FURTHER ORDERED that this TEMPORARY RESTRAINING ORDER shall expire November 21st, 2021, unless good cause is shown for extension thereof.


IT IS FURTHER ORDERED that no security or bond shall be required.

IT IS FURTHER ORDERED that a copy of this Order shall be posted at the picket site and that the Defendants will be advised of the contents of this Order.

The objections and exceptions of the Defendants are noted and preserved for the record.

The Clerk of the Court is directed to send a copy of this Order to all counsel of record herein.

ENTER this 17th day of November, 2021.


Honorable Alfred E. Ferguson, Judge

Copy Provided to Pursuant to Trial Court Rules:

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