



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

DC Circ. Rejects Clinic's Challenge To Union Scope Ruling

By **Tim Ryan**

Law360 (April 7, 2021, 1:48 PM EDT) -- A National Labor Relations Board official reasonably limited a bargaining unit at a Montana medical group to registered nurses, the D.C. Circuit ruled, upholding a board decision finding the company unlawfully refused to bargain with a nurses union.

In a brief opinion issued Tuesday, a three-judge panel of the D.C. Circuit rejected St. James Medical Group's challenge to a board decision finding the company violated the **National Labor Relations Act** by refusing to negotiate with the Montana Nurses Association. St. James admitted that it refused to bargain in order to test an earlier decision on the scope of the bargaining unit.

The appeals court panel said the NLRB Seattle office's regional director, Ronald Hooks, acted within his authority and adequately explained his conclusion that the nurses had distinct interests from certain practitioners they worked with to warrant their own bargaining unit.

"While the nurses and the advanced-practice practitioners share some commonalities, the regional director acted within his discretion in concluding that the nurses' interests were sufficiently distinct to outweigh the few commonalities," the panel said.

The dispute centers on Hooks' 2019 decision directing an election at outpatient health clinics that St. James operates around Butte, Montana. Hooks limited the bargaining unit to registered nurses at the clinics, rejecting St. James' argument that the appropriate unit would also include additional workers the company referred to as advanced-practice practitioners.

In the decision, Hooks said the registered nurses share interests distinct from the practitioners St. James wanted to add, making it appropriate to have them form their own bargaining unit under the 2017 NLRB decision PCC Structural Inc. That decision instructed regional directors to evaluate proposed bargaining units based on whether the employees have a "community of interest sufficiently distinct" from those excluded to warrant a separate bargaining unit.

After St. James refused to bargain following a successful election, the Montana Nurses Association filed an unfair labor practice charge with the NLRB. In February 2020, the board ruled against the company and ordered it to bargain at the union's request.

The D.C. Circuit panel agreed with Hooks' evaluation of the differences between the nurses and practitioners on working conditions such as licensing. In particular, the panel noted that practitioners can independently order diagnostic tests and prescribe medication, while nurses cannot, and that nurses are paid hourly while practitioners are salaried.

In addition, the panel said Hooks properly considered the common practice of bargaining units at outpatient health clinics, which generally considers registered nurses a distinct group of health care workers with their own training and licensing requirements.

The panel's decision mirrored comments U.S. Circuit Judge Patricia Millett **made during oral arguments** in the case, which took place in February.

Montana Nurses Association CEO Vicky Byrd praised the appeals court's decision in an email to

Law360 on Wednesday.

"This was not a complicated or groundbreaking case, but rather an example of an employer that used every delay tactic at its disposal to avoid bargaining with a professional nurse union that had unanimous support from the bargaining-unit members," Byrd said in an email.

Counsel for St. James and the company itself did not immediately respond to requests for comment.

The NLRB did not immediately respond to a request for comment.

U.S. Circuit Judges Sri Srinivasan, A. Raymond Randolph and Patricia Millett sat on the panel for the D.C. Circuit.

St. James Medical Group is represented by Terry Potter, Cooper Page and Abraham Spung of Husch Blackwell LLP.

The NLRB is represented in house by Barbara Sheehy, Elizabeth Heaney, Ruth Burdick and David Habenstreit.

The case is St. James Medical Group v. NLRB and NLRB v. St. James Medical Group, case numbers 20-1076 and 20-1153, in the U.S. Court of Appeals for the D.C. Circuit.

--Editing by Neil Cohen.

Update: This story has been updated with a response from the union.

All Content © 2003-2021, Portfolio Media, Inc.