STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED HEALTH CARE EMPLOYEES, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 660, AFL-CIO, CLC,	)	
Charging Party,	)	Case No. LA-CE-1-H
V.	)	PERB Decision No. 329-H
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, UNIVERSITY OF CALIFORNIA AT LOS ANGELES MEDICAL CENTER,	)	August 5, 1983
Respondent.	)	

Appearances; Helena S. Wise, attorney (Geffner & Satzman) for United Health Care Employees, Service Employees International Union, Local 660, AFL-CIO, CLC; and Susan M. Thomas, attorney for the Regents of the University of California, University of California at Los Angeles, Medical Center.

Before Tovar, Morgenstern, and Burt, Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Regents of the University of California, University of California at Los Angeles Medical Center (UC) to the proposed decision of an administrative law judge (ALJ). That decision is attached hereto and incorporated by reference herein. At issue is the ALJ's determination that UC violated subsections 3571(a) and (b) of the Higher Education Employer-Employee Relations Act (HEERA) by denying to United Health Care

Employees, Service Employees International Union, Local 660, AFL-CIO, CLC (SEIU) access rights guaranteed by section 3568 of HEERA, by promulgation and enforcement of unduly restrictive access regulations at the UCLA Center for Health Services (Center).[1] For the reasons set forth below, we affirm the substance of the ALJ's decision.

FACTS

The Board has carefully reviewed the record in light of UC's exceptions and finds that the ALJ's findings of fact are

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[1]HEERA is codified at Government Code Section 3560 et seq. All statutory references are to the Government Code unless otherwise indicated. Section 3568 provides as follows:

> Subject to reasonable regulations, employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes and other means of communication, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this act.

Subsections 3571(a) and (b) provide as follows:

> It shall be unlawful for the higher education employer to:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.

substantially free of prejudicial error. We thus adopt them as the findings of the Board itself, except as specifically modified infra.[2]

DISCUSSION

This case presents the issue of whether UC's restrictions on access to the acute care hospital in the Center are consistent with HEERA's mandate, at section 3568, that ". . . employee organizations shall have the right of access at reasonable times to areas in which employees work , . . ." The ALJ held that many of UC's restrictions on access were reasonable. However, with respect to certain employee lounges and classrooms on the patient floors (2-10) of the acute care hospital and certain locker rooms and employee lounges on the "A" level of the operating room,[3] he found UC's total ban on nonemployee access to be unreasonable, and ordered UC to allow reasonably limited access to these areas by nonemployee union representatives. While UC excepted to each grant of access proposed by the ALJ, SEIU filed no exceptions.[4] Thus, only

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2see discussion of the conference room/office (Room 37-328) infra.

3The areas known collectively as the operating room occupies space on both the A and B subterranean levels of the acute care hospital. The A level contains labs, a cafeteria, lounges, and locker rooms. The areas where surgeries are performed are located on the "B" level.

4UC filed a motion to strike portions of SEIU's brief in response to its exceptions. It argues that SEIU improperly sought to introduce non-record evidence through its brief, by

the particular access ordered by the ALJ is at issue herein.

For the reasons set forth infra, we find that the access ordered by the ALJ strikes a reasonable balance between the statutory access rights of employee organizations and the operational needs of UC, including the necessity to protect patients and their families and friends.

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referring to UC's request for a temporary restraining order in superior court barring SEIU from access to the patient floors, and by referring to matters occurring in the off-the-record tour of the Center conducted for the ALJ and parties during the litigation of this matter before PERB, including alleged evidence of gowning requirements and of an alleged controversy regarding notice posting at the Center. UC further argues that SEIU improperly characterized UC's position regarding the predictability of employee lunch and break periods, and that SEIU impermissibly attempted to raise contingent exceptions by its response brief. SEIU countered by requesting that PERB take judicial notice of the superior court proceedings.

PERB has not considered the material in Local 660's reply brief regarding the temporary restraining order proceedings in any manner in formulating our decision in this case. We decline to take judicial notice of the record in that matter, because it would be superfluous to our deliberations and unduly burden the record. SEIU requests that we take judicial notice of the complaint and all other documents requesting issuance of a temporary restraining order filed in Superior Court, as well as SEIU's responsive pleadings, briefs, and declarations, and the transcripts of ex parte proceedings in that matter. Even if that material were properly susceptible of judicial notice, we agree with UC that it would add nothing of probative value to the record, and hence that we may exercise the discretion to exclude it. Evidence Code section 352, California Evidence Benchbook (2d Edition 1982), vol. 2, section 47.1, p. 1749. Similarly, we have disregarded the references to extra-judicial "evidence" allegedly emanating from the Center tour regarding bulletin board usage, gowning requirements, or any other matters. We consider SEIU's characterization of UC's position regarding predictability of employee breaks and lunch periods simply to constitute argument, and have evaluated it as such. Regarding SEIU's contingent exceptions, we need not consider them because we have not altered the ALJ's access recommendations in any material manner.

In Long Beach Unified School District (5/28/80) PERB Decision No. 130, the Board struck down a rule prohibiting nonemployee union representatives access to employees during the entire teacher workday, noting that such a rule prohibited access even during the nonwork portion of the teacher workday. The Board noted particularly that the rule as applied would deny any access to teachers' aides because their breaks occurred irregularly. The Board stressed the necessity to tailor access rules to particular employment conditions of significant groups of employees. The Board further noted the suitability of lounges, lunchrooms, and other nonworking areas for access by nonemployee representatives to unit employees.

In Marin Community College District (11/19/80) PERB Decision No. 145, the Board struck down district rules preventing solicitation by employee organizations during rest and coffee breaks.

In Regents of the University of California, Lawrence Livermore National Laboratory (4/30/82) PERB Decision No. 212-H, the Board found expressly that HEERA provides employee organizations with a presumptive right of access. In so doing, it rejected UC's argument that, due to the unique national security requirements at the facility, the presumption did not apply. The Board cited with approval the test set forth by the ALJ for assessing the reasonableness of UC's restrictions on access by nonemployee representatives, as follows:

> (The) exercise of labor board expertise is especially fitting in this situation, involving as it does serious uncontested concerns of the Laboratory for national security protection of its work. Instead of eliminating the access presumption, the questions to be answered are whether the regulations established by the employer are properly related to justifiable concerns about disruption of the Laboratory's mission, and whether the rules are narrowly drawn to avoid overbroad, unnecessary interference with the exercise of statutory rights.
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> UC (Livermore Lab)
> Id., at p. 15.

This general rule was properly tailored to the health care setting by the ALJ in this case. Thus, the ALJ found, and the Board affirms, that HEERA provides to employee organization representatives, employee and nonemployee alike, a presumptive right of access to employees at reasonable times in areas where they work. However, the access afforded must be reasonable in light of the particular needs of the workplace in question. We find, with the ALJ, that employee organizations have a presumptive right of access to nonimmediate patient care areas, which can be rebutted by evidence that a ban on access is necessary to prevent disruption of health care operations or disturbance of patients. This presumption will insure that the rights of employee organizations are accommodated in a manner which does not unduly compromise the employer's mission.

The presumption we adopt here is consistent with that developed by the National Labor Relations Board (NLRB), with Supreme Court approval. See, in this regard, St. Johns

Hospital (1976) 222 NLRB 1150, Beth Israel Hospital v. NLRB (1978) 437 U.S. 483 [98 LRRM 2727], NLRB v. Baptist Hospital (1979) 442 U.S. 773 [101 LRRM 2256]. For cases applying the presumption in a manner consistent with the instant decision see Los Angeles New Hospital (1979) 244 NLRB 960 [101 LRRM 1189], aff'd NLRB v. Los Angeles New Hospital (9th Cir. 1981) 640 F.2d 1017 [106 LRRM 2855], and Intercommunity Hospital (1981) 245 NLRB 468.

Applying the rule to the facts of this case, we affirm the ALJ's finding that the employee lounges, locker rooms, and classrooms are not immediate patient care areas, and are legitimate avenues of access. The record did not demonstrate that nonemployee access to such areas, subject to reasonable regulation as to manner, frequency, and duration, would result in disruption.

UC excepts to the ALJ's conclusion that nonemployees enjoy the same right of access as do employees under the HEERA. UC notes that nonemployees have extremely limited access rights under the private sector cases relied upon. PERB has never expressly held that the access rights of employees and nonemployees are coextensive. However, the Board has regularly looked to private sector precedent governing employee solicitation in assessing the reasonableness of access for employees and nonemployees alike. Access rights in the private sector are derived from the general employee rights provided in

Section 7 of the National Labor Relations Act (NLRA).[5] Whereas there is no express right of access under the NLRA, HEERA provides an express right of access for employee organizations at reasonable times to areas where employees work.[6] In accord with our prior decisions, we hold that employee and nonemployee representatives enjoy a presumptive right of access to the workplace under EERA and HEERA. The employer is free to rebut the presumption by demonstrating that such access would be disruptive. It may be that in a given situation access by nonemployees would be disruptive, while access by employees would not. If this were demonstrated, the Board would limit access to employees only.

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[5]The NLRA is codified at 29 U.S.C. 151 et seq. Section 7 provides as follows:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

[6]The language of HEERA is mirrored by the virtually identical language of subsection 3543.1(b) of the Educational Employment Relations Act (EERA).

In this regard, UC argued that the patient floors are already somewhat crowded and chaotic, and that allowing nonemployee access to those areas would lead to a greater risk of infection and increased confusion. Were this assertion supported by the record, we would permit UC to distinguish between employee and nonemployee organizers. The record, however, does not bear this out. Rather, it reflects that large numbers of patients, family members, and friends, as well as medical students and attending physicians frequent the corridors and patient rooms. The speculative evidence offered by UC does not, in our view, establish that the presence of small numbers of union organizers occasionally traversing the corridors of the patient care floors would materially enhance the potential for infection. Reasonable steps may, of course, be taken to inform employee organization personnel of ordinary precautions to be taken to avoid spreading infection, and to enforce gowning and scrubbing requirements as appropriate, so long as this is done nondiscriminatorily, on the same basis as with other visitors to the patient floors.

Similarly, the record does not indicate that the presence of nonemployee organizers passing through the patient floor corridors enroute to areas where access is permitted would cause additional confusion. There has been no showing that such an occasional presence would disrupt patients or interfere with delivery of health care.

In this regard we stress that the access ordered herein is to employee lounges, classrooms, and locker rooms which are neither frequented by patients nor used for delivery of health care. These locations can be effectively sealed off from patient care areas by closing doors. We are not establishing a right of nonemployee representatives to contact employees in or to linger in corridors. UC is free to regulate visitor conduct, and to take reasonable steps to insure that union representatives do not use corridors for any purpose other than to reach areas to which access is allowed.

Thus, we find that UC has failed to demonstrate that a grant of access to nonemployees would be disruptive of patient care or that a relevant distinction should be drawn between employee and nonemployee representatives vis-a-vis the limited grant of access at issue here.

UC excepts to the ALJ's definition of patient care areas, contending that it is too narrow. UC argues that corridors and sitting rooms on the patient floors of the acute care hospital are also patient care areas. The Board agrees that, in the circumstances here presented, UC has demonstrated that corridors are commonly used for physical therapy by ambulating patients, and for transportation of patients between treatment areas. We agree with UC's assertion and would characterize them as patient care areas. Similarly, we note that the sitting rooms on the patient floors are used by family and

friends of patients for consultation with medical personnel, visits with patients, and rest and recuperation. The importance of these areas to the overall process of health care in the acute care hospital cannot be gainsaid. We would characterize them as patient care areas where bans on employee organization solicitation would be presumptively lawful. Nonemployee representatives are thus allowed to utilize corridors on the patient floors only for the purpose of traveling to and from permissible access areas.

We do not characterize the employee lounges, locker rooms, and classrooms as patient care areas. As noted above, those areas may be sealed off from patients, their family, and friends and are not routinely used or entered by them. UC's restrictions on access to the lounges, locker rooms and classrooms are therefore presumptively unlawful.

UC contends that the ALJ has placed too heavy a burden upon it to rebut the access presumption vis-a-vis non-immediate patient care areas. According to UC, it should be required to show only "potential harm" or "potential disruption" of patients or patient care. We disagree. Such a standard would be incompatible with the Supreme Court's pronouncement in Beth Israel, supra, that the employer's evidentiary burden vis-a-vis non-immediate patient care areas is to demonstrate that disruption to patient care would necessarily result if solicitation were permitted in such areas. The Board holds

that the ALJ's requirement that UC prove that disruption would occur is the appropriate standard, particularly in light of HEERA's express statutory grant of access.

UC argues that, in any event, it has demonstrated that disruption would occur if access were allowed to the patient floors and "A" level of the operating room. It argues that, due to overcrowding and limited space, all areas of the acute care hospital are pressed into service on an "as-needed" basis for such functions as health care team conferences, consultations with patients, patient friends, and family members, and use as quiet rooms for visitors.

We agree that UC has demonstrated that many areas of the patient care floors are routinely used on an ad hoc basis for such functions, and therefore that it would not be appropriate to open up all such multi-purpose areas to access by non-employee representatives because such access would disrupt such functions. The ALJ appropriately denied access to many such rooms. However, as to the particular areas at issue herein, there was no showing that the employee lounges and locker rooms are used for such purposes. Further, no showing was made that patients or their families use such areas.

As to the classrooms, the record does reflect that they are commonly used for training and education, as well as health care team consultations, all related to patient care. In

recognition of this fact, the ALJ limited the right of access to those areas to times when they are not in use for the above patient-care related purposes, and when the employee lounges would not be large enough or would otherwise be unsuitable for a given employee organization meeting. In light of the relative infrequency with which these limitations would permit access to the classrooms, and in light of the limited size and number of employee lounges on the patient floors, we find that the limited grant of access to the classrooms ordered by the ALJ is a reasonable accommodation of the rights of UC and the employee organizations.

UC excepts to the grant of access to the conference room/office (37-238) on the third floor of the acute care hospital. We agree with UC that the evidence shows it to be similar in function to a chart room, primarily used for record storage, medical team conferences, and other patient-care related purposes. Thus, contrary to the ALJ, we find that UC may ban access to that room.

UC excepts to the ALJ's failure to find that actual disruption has resulted from breach of its no-access rules on the patient floors, and that this is an indication that such access is inherently disruptive. We have carefully examined the record regarding the incidents cited by UC. One involved a "code blue" emergency on the fourth floor of the hospital. Contrary to UC's characterization, we find that the

evidence indicates that the union representative's presence on the floor in no way interfered with the delivery of health care by medical personnel during the cited incident.

The other incidents cited by UC involved alleged interruption of a nurse during the admitting process at a nursing station, approaching a nurse in the course of an unidentified medical procedure in a treatment area, meeting with nurses during worktime, and engaging nurses in conversation in the corridors. We conclude that there was no showing that patient care was interfered with by the brief violations cited above. Further, the occurrence of such incidents is not probative as to whether the limited grant of access herein would cause disruption of patients or patient care. The Board is not ordering access to employees in corridors, at nursing stations, or during times when employees are on duty. UC is free to prevent such unauthorized access through operation of its own disciplinary procedure.

UC excepts to the ALJ's failure to find that the numerous alternative access areas provided are not in themselves sufficient to satisfy HEERA's requirement that employee organizations be granted reasonable access. UC points out that it has made over 100 venues available for access by SEIU and other employee organizations, in or near the acute care hospital. The ALJ concluded that those locations were too far away from employee work locations, too difficult to book in

advance, or not in natural gathering places for employees, and thus failed to satisfy HEERA's mandate.

We find that the availability of alternative access is an important factor to be considered in striking a reasonable balance regarding access to health care facilities. Beth Israel, Baptist Hospital, supra. The Board also finds that UC has provided extremely extensive alternative access. We have considered the record evidence regarding all such venues, not just those discussed by the ALJ. We find many of them to be fairly proximate to the patient floors. Further, although the record reflects that it may take a week or more to reserve many of the alternative rooms for meetings, we have considered the fact that such rooms are available on an ad hoc basis for impromptu union meetings when not already in use.

We find that the alternative access made available by UC provides a reasonable vehicle for employee organizations to reach employees before or after their shifts. This extensive alternative access, in our view, obviates the need for more extensive employee organization access to the patient floors than the extremely limited access ordered herein.

However, we also find that the evidence supports the ALJ's determination that many employees cannot leave the immediate vicinity of the patient floors during their shift due to patient needs, and that many of those who may be able to leave their work areas do not characteristically do so, due to the

shortness of their breaks, the irregular nature of their break schedule, and/or their preferences for the familiar surroundings and proximity of the break facilities on the patient floors and "A" subterranean level.

We have noted the necessity to tailor employee organization access to the particular employment conditions of significant groups of employees. Long Beach USD, supra. Further, we have acknowledged the unique suitability of employee break rooms and eating facilities for contact between unions and employees. UC Regents (Livermore Lab), supra.

HEERA mandates employee organization access at reasonable times, to areas where employees work. The requirement of reasonable access to employee work areas has been interpreted to mandate access to employees while on non-work time during their shifts. For example, in UC Regents (Livermore Lab), id, we mandated limited access to an employee lunchroom in the work area, even though an alternative access area was available five minutes away.

In the circumstances of this case, we find that some limited access to the patient floors and operating room "A" level is required by the statute's mandate of reasonable access to areas where employees work. In light of the alternative access made available by UC, we find that the access ordered by the ALJ to employee lounges, locker rooms, and classrooms is sufficient to satisfy that mandate. UC's regulations

prohibiting such access interfere with employee organization rights guaranteed by section 3568, and hence violate subsection 3571(b) Of HEERA.

UC excepts to the ALJ's finding that its regulations are violative of subsection 3571(a) as well. It argues that only employee organization rights, and not those of employees, are violated by unduly restrictive access regulations. We hold that such regulations interfere with the right of employees who wish to participate in employee organization activities. UC Regents (Livermore Lab), supra. Thus, we affirm the ALJ's finding that the access regulations violate subsection 3571(a) as well.

ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, it is hereby ORDERED that the Regents of the University of California and the University of California at Los Angeles Medical Center and their representatives shall:

1. CEASE AND DESIST FROM:

(a) Denying to employee organizations a reasonable right of access to the patient floors of the acute care hospital and to the "A" level of the operating room, subject to the hospital's right to reasonably regulate the number of employee organizations granted access at any one time and the manner in which access shall be achieved to these areas. Such access shall at least include:

(1) All employee lounges on the patient floors 2 through 10 of the acute care hospital and the classrooms on floors 2 through 10 to the extent the classrooms are not scheduled for in-service training of employees or staff conferences;

(2) The employee locker rooms, lunchroom/classroom, and nurses' lounge on the "A" floor of the operating room.

(b) Interfering with the right of employees to form, join, or participate in the activities of employee organizations or refrain from so doing, by denying to such organizations the access set forth in paragraph (a) above.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT:

(1) No later than thirty-five (35) days after service of this Decision, prepare and post copies of the Notice to Employees attached as an appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for at least thirty consecutive workdays at the employer's headquarters office and at all locations where notices to employees are customarily posted. Such Notices must not be reduced in size, and reasonable steps shall be taken to insure that they are not defaced, altered, or covered by any material;

(2) Written notification of the actions taken to comply with this Order shall be made to the regional director of the Public Employment Relations Board in accordance with her instructions.

Members Tovar and Morgenstern joined in this Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. LA-CE-1-H in which all parties had the right to participate, it has been found that the Regents of the University of California, University of California at Los Angeles Medical Center violated Government Code sections 3571(a) and 3571(b).

As a result of this conduct we have been ordered to post this Notice, and will abide by the following. We will:

1. CEASE AND DESIST FROM:

(a) Denying to employee organizations a reasonable right of access to the patient floors of the acute care hospital and to the "A" level of the operating room subject to the hospital's right to reasonably regulate the number of employee organizations granted access at any one time and the manner in which access shall be achieved to these areas. Such access shall at least include:

(1) All employee lounges on the patient floors 2 through 10 of the acute care hospital and the classrooms on floors 2 through 10 to the extent the classrooms are not scheduled for in-service training of employees or staff conferences;

(2) The employee locker rooms, lunchroom/classroom and nurses lounge on the "A" floor of the operating room.

(b) Interfering with the right of employees to form, join, or participate in the activities of employee organizations, or refrain from so doing, by denying to such organizations the access set forth in paragraph (a) above.

Dated: _____ THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, UNIVERSITY OF CALIFORNIA AT LOS ANGELES MEDICAL CENTER

By _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED HEALTH CARE EMPLOYEES, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 660, AFL-CIO, CLC, Charging Party, v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, UNIVERSITY OF CALIFORNIA AT LOS ANGELES, MEDICAL CENTER, Respondent.	Unfair Practice CASE NO. LA-CE-1-H PROPOSED DECISION (6/30/82)

Appearances: Geffner & Satzman, by Helena S. Wise, Esq. for United Health Care Employees, Service Employees International Union, Local 660, AFL-CIO, CLC; and Susan M. Thomas, Esq. for the Regents of the University of California, University of California at Los Angeles, Medical Center.

Before: Stephen H. Naiman, Administrative Law Judge.

I. STATEMENT OF THE CASE

The parties to this Unfair Practice Charge bring before the Public Relations Board (hereafter PERB) the issue of whether Respondent has unlawfully denied employee organizations the right of access to certain areas in the Center for Health Sciences at the University of California at Los Angeles (hereafter UCLA).

United Health Care Employees, Service Employees International Union, Local 660,. AFL-CIO, CLC (hereafter Charging Party, SEIU, or

Union) filed a Charge on August 9, 1979, against the Regents of the University of California, University of California at Los Angeles, Medical Center (hereafter Respondents, Employer, or Hospital). The Charge alleged that Respondents violated section 3571(a), (b) and (d) of the Higher Education Employer-Employee Relations Act (hereafter HEERA)[1] by (1) denying the Union access to places where employees work and to employee bulletin boards; (2) granting certain access rights to other employee organizations while denying the same rights to the Charging Party; and (3) by refusing to deliver and discarding Union mail properly addressed to employees at their business address.

An informal conference was held on September 6, 1979. At the conclusion of the informal conference, it appeared the parties had resolved many of the issues alleged in the Unfair Practice Charge. The remaining issues were set for formal hearing in December of 1979. Thereafter, both parties requested that the formal hearing be indefinitely continued and that another informal conference be scheduled in January of 1980 in view of the fact that the purported settlement between the parties did not materialize.

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[1]The Higher Education Employer-Employee Relations Act is found at California Government Code Section 3560 et seq. All section references are to the Government Code unless otherwise specified.

On January 21, 1980, a second informal conference was held and the parties settled all issues of the Unfair Practice Charge except those matters relating to the denial of union access to places where the employees work. The parties agreed that the unsettled portions of the Charge should be held in abeyance while they attempted to reach stipulations as to the facts still at issue. Charging Party agreed to notify PERB when it desired to proceed.

On September 5, 1980, a Complaint and a Notice of Formal Hearing issued. For reasons not revealed in the official files, the formal hearing scheduled for November 1980 was continued until January 16, 1981.[2] On the day the hearing was scheduled to commence, representatives of Charging Party, Respondent and the Administrative Law Judge took a prearranged tour of the Acute Care Hospital.[3]

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[2]In their briefs there is an exchange between Charging Party and Respondent attributing responsibility for any delay in starting the formal hearing to one or the other of the two parties. It is concluded that all parties have exhibited a good faith effort to move this matter to formal hearing and conclusion. The complexity of facts and issues has made the attainment of that goal difficult.

[3]The facilities viewed during the all-day tour are areas where access is sought and denied as well as alternative areas where access has been offered. The tour assisted the parties and Judge in understanding and visualizing the testimony which followed in the formal proceedings.

At the conclusion of the tour, the parties discussed whether the Charge adequately delineated all the locations to which the Union was allegedly denied access. After substantial discussion, it was agreed that the Charge should be amended to more particularly state each and every area to which access was sought and denied. Respondent was then to be given time to answer and to delineate alternative areas where access was granted.

A third informal conference was requested and held on April 16, 1981. Charging party filed an Amended Charge on April 21, 1981. Respondent filed an Answer on May 11, 1981. Additionally, Respondent filed a Motion to Dismiss certain paragraphs of the Amended Charge which restated matters settled by the January 21, 1980, settlement agreement. No ruling was necessary on the Motion to Dismiss because by letter dated May 4, 1981, Charging Party advised PERB that the inclusion of matters otherwise settled was an oversight.

The Amended Charge added additional areas of the Center for Health Sciences where the Union had sought and the Employer had denied access. The Answer variously admitted and denied the allegations of the Charge. Additionally, the Answer listed certain alternate areas to which access had been granted by the Respondent. A few days later an Amended Answer was filed which

did not substantially differ from the Answer filed earlier.[4] On May 18, 1981, the formal hearing commenced and on November 10, 1981, the hearing concluded after approximately 23 days of testimony and an additional tour of the subterranean floors of the Acute Care Hospital.

During the entire course of the proceedings in this matter, the parties continually were encouraged to discuss settlement of some of the disputed areas. The parties worked diligently with their respective principals to effectively reduce the areas of dispute concerning access to this vast health-care facility.

On October 7, October 27 and November 5, 1981, Charging Party and Respondent entered into three separate settlement agreements covering access to a substantial portion of the buildings in dispute. Portions of the settlement agreements provided that certain areas would be resolved by reference to the ultimate ruling in the instant matter. By the close of the hearing, the parties had withdrawn from final consideration many of the areas in dispute and were able to substantially reduce the time necessary for formal hearing.

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[4]The Complaint and Answer were also amended on the record at the opening of the formal hearing; however, the amendments did not substantially alter the basic allegations or Answer.

Pursuant to a briefing schedule, final briefs were filed on February 16, 1982, and the matter was deemed submitted.

II. FINDINGS OF FACT

The remaining dispute concerning access to the UCLA Center for Health Sciences is largely limited to the patient floors of the Acute Care Hospital and the operating room. In order to better understand the legal and factual positions of the parties, it is advisable to briefly describe the entire UCLA Center for Health Sciences.

A. An Overview Of the UCLA Center For Health Sciences.

The UCLA Center for Health Sciences is housed in a number of buildings on the UCLA campus as well as in certain off campus buildings within walking distance to the Medical Center. In total, the buildings which comprise the Center for Health Sciences cover almost 2.7 million square feet of working space. Many of the buildings are connected by corridors and subterranean tunnels. Other buildings are immediately contiguous to one another and may be reached through hallways, doorways, etc. Despite the contiguity of the various facilities in the Center for Health Sciences there is little evidence that employees leave the specific location to which they are assigned on a daily basis. However, daily assignments and location of work may change. Also, there are some employees such as laboratory technicians who may move throughout the Medical Center.

At the hub of the Center for Health Sciences lies the Acute Care Hospital. More particularly described below, the Hospital consists of ten floors above ground.[5] The patients are on floors 2 through 10. On subterranean levels A and B there are various in/out patient clinics and facilities, including an emergency room, radiology department, urology department, some administration rooms and an operating room.[6]

Immediately to the north of the Hospital, lies the School of Medicine. This building, has at least seven floors above ground, and is attached physically to the Hospital. The School of Medicine may be reached from some of the corridors in the Hospital. However not all doors between the Hospital and the School of Medicine are open on every floor. The School of Medicine contains various classrooms, conference rooms, research laboratories and some academic offices with support staff. There are no doctors' offices where patients are seen. Finally, the School of Medicine has large auditoriums on every floor. It is these auditoriums as well as certain conference rooms which Respondent offers to the Union as alternate access areas.

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[5]The Hospital contains 715 patient beds including 88 intensive care beds. In 1979-1980 there were 22,631 inpatient admissions; 55,759 emergency cases and acute care clinic visits and 129,727 outpatient department visits.

[6]Joint Exhibit 1 and "Insert A," show an overview of these facilities.

Unlike the Hospital, the School of Medicine is not a 24 hour operation. Most of the classes end at 5:00 or 6:00 p.m.; however, there is evidence that some classes in the School of Medicine meet as late as 10:00 p.m.

Immediately to the east and adjacent to the patient care floors of the Hospital are the outpatient clinics. The clinics found on floors 2 through 7, are connected to the Hospital by hallways. The clinics usually operate between the hours of 8:00 a.m. to 5:00 p.m. There is little or no interchange of patients and staff between clinics and the Hospital.

The School of Public Health is contiguous to and north of the seven floors of the School of Medicine. The School of Public Health contains offices, laboratories, conference rooms and classrooms.

Slightly to the east of the clinic wing of the central structure in the Center for Health Sciences is a three-story building which houses the School of Dentistry. This building contains dental clinics, laboratories, classrooms and offices.

The Brain Research Institute primarily contains research laboratories and is contiguous to the School of Medicine. This "L" shaped structure joins the School of Medicine to the Neuropsychiatric Institute, which is immediately adjacent to the west end of the Hospital.

The Neuropsychiatric Institute is contiguous with the subterranean and first seven floors of the Hospital and can be reached by both, subterranean and above-ground corridors. The Neuropsychiatric Institute houses the Department of Psychiatry, the Department of Neurology and has many areas for treatment of inpatients with psychiatric disorders. The Neuropsychiatric building has numerous locked wards. Employees working in this facility seldom interchange daily work locations with employees working in other locations throughout the Center for Health Sciences.

The Jules Stein Eye Institute building is located immediately to the south of the Hospital and the Neuropsychiatric Institute. This building has operating rooms on the subterranean floors, clinics on the first floor and research laboratories and patient care areas for pediatric and adult ophthalmology on the third floor.

The Factor Building located to the north and east of the Hospital and School of Medicine, contains the School of Nursing on the first six floors and an outpatient oncology unit on the eighth and ninth floors. There are offices, conference rooms, classrooms and a library located in the facility. The Factor Building also contains research space and laboratories.

Immediately to the south of the outpatient clinic wing is the Marion Davies Children's Clinic. This facility houses operating rooms for thoracic surgery, pediatrics and various

outpatient clinics and research laboratories.

The Jerry Lewis Building is a small 50,000 square foot facility to the north and west of the Brain Research Institute. It is here that UCLA conducts research for neuromuscular disorders.

All the facilities described above are connected by subterranean corridors on A, B and C levels. Many of the contiguous areas can also be reached through connecting doors and corridors, above ground.

Off campus, approximately two blocks from the Hospital, are the off-campus facilities: the Rehabilitation Center, Warren Hall, the Weyburn Building, the Security Pacific Bank Building, the Saken Building, the Sanford Building and Monty's Building.

Many of the above-described facilities of the Center for Health Sciences are no longer in contention as a result of the settlement agreements. However, they do house certain alternate rooms which Respondent contends are relevant to the question of whether the Hospital's access regulations are reasonable.

B. The Hospital, a General Description.

The Union seeks to organize the registered nurses, licensed vocational nurses, housekeeping personnel, technicians and support staff working in the Center for Health Sciences. These employees assist the Hospital in its mission as a tertiary care patient facility and its ancillary function as a school to

train students in the medical profession. It is undisputed that as a tertiary care facility, many of the persons treated at the UCLA Hospital are acutely ill. Many patients have diseases or infirmities which are severe, if not terminal, which are complicated to treat, if not evanescent to diagnose, and which quite often cannot be treated in any other facility. The critical nature of the illness of persons treated at UCLA requires the use of a number of sophisticated diagnostic tools and treatment techniques.

It is also undisputed that all patients, are observed by many highly skilled physicians. In addition, most patients at the UCLA Hospital, will be observed by groups of medical students. The large number of staff and students on the patient floors creates a more congested environment then in a non-teaching facility.

The Acute Care Hospital is comprised of twelve floors on which the inpatient population receives some sort of care and treatment. There are numerous laboratory facilities for diagnosis and treatment on the subterranean floors: BH, B, and A. The Hospital's emergency room and the operating room are found on these floors. Access to the operating room is the only issue in dispute on subterranean floors A and B. However, the location and configuration of the subterranean floors in relation to the rest of the Acute Care Hospital is relevant to

an understanding of the contentions of the parties in this case.[7]

The first floor of the Hospital contains no rooms for patient treatment or care, except for one small area denominated a patient profile unit which is near the main lobby entrance. This area is utilized for gathering information relating to the admission of new patients. Floors 2 to 7 of the Hospital have the same structural layout. These floors can be best described as two Greek crosses adjacent to one another forming the western and eastern sections of the patient floors. The configuration of patient floors 8, 9 and 10 is different. The rooms on these floors run east and west along a central corridor.

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[7]Joint Exhibit II contains floor plans of all of the subterranean and above ground floors of the Acute Care Hospital. In addition, Joint Exhibit II contains floor plans of the various buildings making up other portions of the University of California Center for Health Sciences. For purposes of these proceedings, the parties agreed that those areas which the Hospital viewed as patient care and treatment areas would be outlined in blue pen. In agreeing to this marking of areas, the Union did not concede that the areas within the blue markings were in fact patient treatment areas. Within the areas marked in blue, are found certain areas highlighted in pink. These areas represent the rooms to which the Union seeks access and has been denied access. Outside of the areas marked in blue, are rooms highlighted in green. These represent the alternative rooms which the Employer offers to the Union. Finally, Joint Exhibit II contains markings in brown pen which, by the use of arrows indicate the specific description of certain locations, at issue in these proceedings.

The patient floors of the Hospital are joined by a central east-west corridor denominated corridor 7 by the Hospital. Corridor 7 runs from the outpatient clinics through the Hospital itself and beyond connecting these facilities with the Neuropsychiatric Institute. This corridor forms the main central corridor of floors 8, 9 and 10. There are two corridors running north and south which divide major sections of floors 1 through 7. These bear even numbers and are denominated corridor 6 running through the center of the western wing of the Hospital and corridor 4 which runs through the center of the eastern wing of the Hospital.[8]

All floors of the Hospital, are accessible by three major elevator banks each containing four elevators. These banks of elevators are denominated "k" on the western end of the Hospital and "n" on the eastern end of the Hospital. Still farther to the east there is an "o" bank of elevators which services the eastern end of the Hospital as well as the outpatient clinic facilities on floors 2 through 7. In

[8]The rooms on each of the floors of the Hospital have been given numbers. The first number or letter is that of the floor on which the room is located. The next number is that of the corridor where the room is located. Next are three numbers which designate the room number itself. Thus, rooms on the third floor, on corridor 7 will bear numbers 37- and a three digit number thereafter which indicates the number assigned to the room. By understanding the method of numbering the rooms, one can easily locate the disputed areas on the exhibits in this case.

addition, there are staircases throughout the various floors which permit up and down foot traffic.[9]

This brief overview indicates the structural layout of the Acute Care Hospital and indicates the method of denominating of rooms throughout. It should be helpful for the reader of the record to follow on the graphic exhibits which are attached to this record to locate various rooms and facilities in dispute.

C. The Hospital, a Floor by Floor Description.

1. First Floor.

The first floor of the Acute Care Hospital, contains a number of areas available to union organizers for meetings with employees. These include the cafeteria, a vending machine area, large open-air patios and a doctors' dining room. Except for the doctors' dining room, these areas are usually accessible to union organizers when open. However, the cafeteria closes at approximately 8:00 p.m. and does not reopen until the morning hours. Use of the patios is limited by weather and darkness. The vending machine area is open at all times. Solicitation in the cafeteria is limited by Hospital regulation to conversations between one union organizer and one employee. Group meetings are not permitted

[9]An overview of the corridors and the elevator banks may be found in a joint Exhibit II, Page 5, Insert A.

in this area; nor may literature be left on unattended tables in this area.[10]

In addition, there are five conference rooms on the first floor which may be scheduled for meetings. Scheduling of these rooms requires advance arrangements with Hospital administration. There is dispute as to the ease with which these rooms can be scheduled. However, it is clear from the record that usually a week, if not more, is required to schedule these rooms. More or less difficulty will be encountered depending upon the flexibility of the party requesting the room. In addition, there is some evidence that while rooms may be scheduled there has been some displacement of parties to other rooms after assignment has been made.

2. Second Floor.

The entire second floor of the Hospital is devoted to pre- and post-natal care of mothers and infants. There is a labor and delivery section; an obstetrical post-partum unit; a neonatal intensive care unit, primarily for the care of premature infants; an adult medical and surgical intensive care unit; and several new-born nurseries. In order to enter the labor and delivery wing of the second floor, persons must be

[10]The union has not challenged the reasonableness of these regulations for rooms on the first floor.

gowned.[11] At the center of each of the two sections of the second floor are nursing stations.[12] On each of the successive floors above there are nursing stations in the same location as on the second floor. In addition, there is a third nursing station located in the center of the two sections of the second floor.

On the second floor, as on all successive floors, there is usually a chart room adjacent to each nursing station. Patient records are kept in these chart rooms and nurses are required to record certain statistics relating to the observation and treatment of patients. Doctors also utilize the charts and chart rooms to set out instructions for the hospital staff and to review patient care. It is undisputed that the charts are essential and confidential patient records. The chart rooms, proximate to the nursing stations, at times are open to the activities of the nursing station. The record reveals that the nursing stations are areas where staff congregate and discuss patient care and from time to time discuss other matters of a personal and casual nature. The nursing stations are the hub

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[11]The requirement that persons entering this area be gowned means that a sterilized hospital gown is worn over ordinary street clothing. No change of clothing is required. The gown ostensibly reduces the transmission of infectious matter from clothing.

[12]All nursing stations throughout the floor plans are marked in yellow.

of the various sections of the Hospital. It is the nursing station which receives and answers a patient's call for help and the nursing station is the repository for patient treatment equipment and medication. There is also evidence that staff may take breaks in the nursing station or chart room.

The second floor is highly congested and along with the third and the fourth floors is one of the older sections of the Hospital. Built in 1955, these floors lack the uniformity and spaciousness of the structure above them. Thus the second floor has a double corridor 7 with rooms on the extremes of the corridor as well as with rooms running down the center of corridor 7. In the western section of the floor there is a neonatal intensive care unit (ICU). In this unit, infants are kept in monitored incubators and the nursing staff often remains close by the infants' bedside.

Within the neonatal ICU there is an employee lounge for staff working in that area. There is also an employee lounge at one end of the labor and delivery unit.[13] In the center of the two sections of the second floor there is an obstetrics classroom for the obstetrical nursing unit. It is unclear whether the purpose of this classroom is to train expectant

[13]Charging Party contends there are two lounges in labor and delivery and alternatively seeks access to one or the other. Room 26-154B is a lounge and room 26-170 is a doctors' sleeping room. For purposes of this Proposed Decision room 26-154B is considered the only lounge in labor and delivery.

mothers or staff. Also in the center segment of the second floor there is found an employee lounge consisting of approximately 100 sq. ft. and nearby there is a locker room in which employees on this floor change clothes take breaks and eat lunch.

It should be noted that the second floor is accessible to the first floor by three staircases in the western section of the floor and by three staircases in the eastern section of the floor and by a staircase immediately behind the "n" elevators. These staircases serve the floors above as well.

The second floor, and the floors above, may be reached by elevator banks "k" in the western section of the Hospital and elevators "n" and "o" in the eastern section. These banks of elevators are across from the east and west nursing stations on the second floor. The location of the nursing stations in relation to the elevator banks is the same on the floors above.

The record also reveals that visitation on the second floor is more restrictive than on other floors. Thus testimony indicated that visiting rights were limited to close members of the family, often fathers or grandparents and sometimes not even the latter. Also the hours of visitation are quite limited. On this floor, as is the case throughout the Hospital, many of the patients have unusual medical problems or complications.

The Union seeks access to the second floor as described above. More particularly, SEIU requests access to the neonatal ICU lounge, the labor and delivery lounge as well as another room which has been described as a doctors' sleeping room, the small employee lounge midway between the east and west sections of the floor and the locker room lounge nearby. The Union also seeks access to all chart rooms and to the classroom in the center of the second floor.

3. Third Floor.

The third floor of the Hospital is less congested than the second floor. This floor is devoted to pediatric care and the patients range in age from infancy to approximately 18 years of age. The infants are kept in the western section of the floor and the adolescents and older patients are dispersed throughout the remainder of the floor. Also in the western section of the floor there is a pediatric intensive care unit. In the eastern section of the floor there is a bone marrow critical care unit which is considered an "isolation" area. The Hospital performs bone marrow transplants on many children and this is a delicate and critical operation requiring much care and risk for the patient.

Children on the third floor are sometimes free to roam about the hallways and unlike the second floor, visiting hours are 24 hours a day on this floor. Parents are permitted to remain with the children as much as possible. The floor

contains a family waiting room where parents often stay overnight when their children's condition dictates.

The two nursing stations in each section of the third floor and the adjacent chart rooms are in locations similar to those on the second floor. Additionally, in the western section of the third floor there is a chart room and a lounge immediately behind the "k" bank of elevators. It appears that these two rooms are open and adjacent to one another. Also in the western segment of the floor there is an all-purpose conference room which is used both as an employee lounge as well as a place for doctors to meet with parents and with other staff members as well as for staff conferences. In the center of the floor is the Wright Library which is a research area for physicians and students. Staff and patient conferences are also conducted in the library . Additionally, there is a chart room in the center of the eastern end of the third floor immediately across from the nursing station.

One may leave the floor and enter the outpatient clinics by moving directly east on corridor 7 and one may also enter the School of Medicine from corridor 6 and corridor 4. All doors to these areas are unlocked.

The Union seeks access to the employee lounge immediately behind the adolescent chart room as well as the multi-purpose conference room, all chart rooms and the Wright Library.

4. Fourth Floor.

The fourth floor, as with the second and third is congested. Like the lower floors, there are two nursing stations in the center of each section with chart rooms immediately behind them. The fourth floor is primarily an intensive care floor for coronary patients and has a coronary critical care unit, a respiratory care unit, and a coronary observation unit for those patients leaving the intensive care area.

A large portion of the floor is devoted to cancer patients and there is a medical intensive care unit and a laminar airflow unit which assists in the complete isolation of patients whose immune system has been obliterated by disease. The acuity of the illness of patients on this floor is quite high and the degree of continuous monitoring and care is substantial. There is a multi-purpose room where employees may take lunch and coffee breaks. The room, which is approximately 139 sq. ft. in dimension and serves other functions as well, is located in the western section of the floor. In the eastern section of the floor there is an employee lounge of approximately 133 sq. ft.

Near the entrance to the coronary care unit is a learning laboratory. This room contains a video machine, heart-sound simulators, blackboards, screens, computers with laboratory read-outs and facilities for charting. The testimony in the

record reflects that at times this room has been used by staff for taking breaks and other casual meetings. It is clear, however, that this room is used for training, for observation and for familiarizing staff with the equipment contained in the room. It is also clear that from time to time outside sales persons utilize this room to demonstrate their wares. However, it is concluded that the primary function of this room is care of patients or training for care for patients.

The Union seeks access to the employee lounge, the multi-purpose/conference room, the chart rooms and the learning lab on the fourth floor.

5. Fifth Floor.

The fifth floor is a medical floor to care for patients who have acute medical disorders. Here there are patients who are receiving rehabilitation care, including patients who overflow from the acute coronary care observation unit and patients with joint and gastro-intestinal disorders. In addition, there is a hemodialysis unit for patients with kidney disorders.

The configuration of the floor is much the same as the fourth floor. There are nursing stations located in both the eastern and western sections of the floor immediately above those on the floors below. Chart rooms are adjacent to each of these nursing stations. There is an additional nursing station in the western section of the floor with an adjacent chart

room. There is an occupational therapy room on this floor which is utilized to train or retrain patients in the use of day-to-day common household and other equipment while being treated for arthritis and other diseases which require rehabilitation therapy. Additionally, the floor contains three classrooms which largely are for in-service training of staff. Two of these classrooms are adjacent to one another and are separated by soft collapsible walls. Finally, there is one employee lounge of almost 200 sq. ft near the classrooms in the center section of the floor.

The Union seeks access to the occupational therapy room, the employee lounge, the classrooms and chart rooms on the fifth floor.

6. Sixth Floor.

The sixth floor of the Hospital is a general surgical floor with some emphasis on orthopedics and urology. Patients on this floor may have undergone head, neck and thoracic surgery. This latter group of patients can be found in the eastern wing of the sixth floor, in a large intensive care unit where patients are consistently monitored. The floor contains two nursing stations immediately above the nursing stations on the floors below. Also adjacent to each nursing station is found a chart room. There is an employee lounge almost in the center of the floor between the two wings. This lounge is approximately 200 sq. ft. and is in the same location as the

lounge on the fifth floor. There are two classrooms on this floor which can be divided by a soft collapsible wall. They are found in the approximate center of the floor between the "k" and "n" elevators. These classrooms are used in the same manner and for the same purpose of those on the fifth floor. The floor is open to the School of Medicine from corridors 4 and 6 and open to the clinics by corridor 7 at the western end of the floor. Corridor 7 connects the Neuropsychiatric Institute and the Hospital at the west end.

The Union seeks access to the employee lounge, to the chart rooms and to the classrooms.

7. Seventh Floor.

The seventh floor of the Hospital again is a general surgery floor with some emphasis on gastro-intestinal problems and cancer, heart and plastic surgery patients. As with the floor below, there is a large intensive care unit immediately above the one on the sixth floor and there is also an intensive care unit in the western wing of the floor. The seventh floor is almost an exact copy of the sixth floor with nursing stations, chart rooms, lounges and classrooms all in the identical positions described for the sixth floor. In addition there are three more chart rooms, two behind the west wing nurses station and one immediately north of the west wing nurses station. The School of Medicine may be entered from the seventh floor by corridor 4 and 6, the clinics may be entered

on the east end of the floor by corridor 7 and the Neuropsychiatric Institute may be entered on the west end of the floor by corridor 7.

The Union seeks access to all lounges, chart rooms and classrooms on the seventh floor.

8. Eighth Floor.

The eighth, ninth and tenth floors, differ in their total configuration from the floors just described. First, these floors consist of rooms bordering corridor 7 on the north and the south in a single line. The floor is rectangular in shape and, descriptively may be divided into eastern and western sections. These upper floors are not contiguous with or easily accessible to any other structure. There are no hallways or corridors directly linking the eighth, ninth and tenth floors to other sections of the Center for Health and Sciences.

Specifically, the eighth floor is a general medicine floor with some emphasis on dermatology and illnesses related to that medical specialty. There are two nursing stations on the floor, one in the eastern and one in the western section of the floor with chart rooms adjacent to each station. In addition, in the center of the floor there is an employee lounge and a classroom. The classroom is almost immediately adjacent to the stairs and the "n" bank of elevators.

The Union seeks access to all chart rooms, the employee lounge and the classroom on the eighth floor.

9. Ninth and Tenth Floors.

The ninth and tenth floors of the Hospital are reserved for private room patients who pay substantially more for services and receive what is known as "hotel housing and services." Thus, patients on the ninth and the tenth floor have single rooms and specialized food. The rooms are decorated to appear less like a hospital.

Patients treated on the ninth and tenth floors generally have a wide range of infirmities. The ninth floor has an intensive care unit at the eastern end of the floor. The tenth floor contains a bone marrow transplant area. Apart from these distinctions, both floors contain nursing stations and chart rooms in identical locations. Both floors have a 214 sq. ft. employee lounge, located in the center of the floor near the "n" and "o" bank of elevators. Both floors also have a "library" which on the ninth floor is known as the Hazel Wilson Library and on the tenth floor is known as the Nat King Cole Library. These two rooms have been used for staff meetings and in-service training. They are also used by visitors as waiting rooms and are used by patients as locations where they can go to get away from their rooms.

The Union seeks access to the chart rooms, the lounge and the libraries on the ninth and tenth floors.

D. Operating Room.

Access to the operating room of the Hospital is also at issue here. The operating room is located north of corridor 7 and elevator banks "k" and "n"$_f$ on A and B floors. The operating room is directly accessible to the patient floors of the Hospital through the "n" bank of elevators.

While the operating room is located on two separate floors on which separate functions relating to surgery take place, it is considered by the Hospital to be a single, integrated facility. Both floors are protected by locked electronic doors which limit access, In addition there are video receptors at each locked entrance so that staff can identify the persons seeking to enter the area or move between the floors.

All employees including doctors, nursing staff and housekeeping staff, enter the A floor in street clothes. They are provided with separate locker rooms on the A floor in which they change clothes. In addition to the locker rooms, there is a doctors' lounge where the doctors dictate reports, a doctors' dressing room, a pathology room, an anesthesia staff room and an anesthesia library on the A floor.

There is also a staff lunch room in which all staff may take breaks and have lunch. The lunch room is supplied during the hours of approximately 11:00 a.m. to 1:30 p.m. by certain cafeteria staff from the main Hospital cafeteria. Without special clothing, these personnel enter the operating room with

carts of food and engage in the sale of that food during the lunch room hours. The food supply is sometimes replenished during the lunch hour.

During lunch and coffee breaks, staff discuss matters relating to their work and engage in the general banter which takes place during employee free time. The one difference between the operating room lunch room and other employee lounges and the Hospital cafeteria is that all staff, including doctors, may use this small facility at the same time. In addition, there is a classroom adjacent to the lunch room and the employees may utilize this classroom as an extension of the lunchroom when it is not otherwise used for classroom purposes. The two rooms are separated by a collapsible soft wall and may be closed off when desired.

Finally there are five "dome rooms" on the A floor. These are really not rooms but rather are sunken areas adjacent to the corridors which form the perimeter of the A floor operating room. The glass domes in the center overlook approximately five operating rooms. There is a sound system connecting the dome room to the operating room which permits the persons in the dome room to hear the activities in the operating rooms below.

It is the practice of the Hospital to keep these domes covered at all times with hospital draping, except when a class or an individual is observing the operation on the floor

below. Persons observing activities in the operating room must stand directly over the glass dome to see the procedures, thus precluding people in the hallway from seeing into the operating room. It is found that unless a person steps down into the square area characterized as the dome room, one cannot usually see what is going on in the operating room.

The A floor connects to the B floor by stairwell. Employees entering the B floor must be dressed in surgical garb and cannot usually enter the B floor in street clothes. Further, employees must be scrubbed to enter any one of the 15 operating rooms in the Hospital's operating facility. The record reflects that from time to time family members and salespersons are permitted to go on the B floor.

The usual hours of surgery are 7:45 a.m. to approximately 3:30 p.m. Monday, Tuesday, Thursday and Friday and 8:45 a.m. to 3:30 p.m. on Wednesday. On weekends the operating room maintains two 12 hour shifts with a skeleton crew of one working nurse per shift and four nurses on call. There is no regularized schedule for employees in the operating room. Their duties are measured by the length of time allotted for a given operation. Employees may be relieved for breaks during the course of an operation depending upon the availability of relief staff and the nature of the surgery. The record reveals that most operating room employees take breaks and eat lunch in the operating room lunch room.

The Union only seeks access to the A floor lunchroom, classroom locker rooms, the nurses' locker room and the nurses' lounge.

E. Alternate Rooms.

The Hospital takes the position that patient floors and the operating room are immediate patient care and treatment areas and it is reasonable to deny the Union access. The Employer has offered in excess of 100 alternative areas where access to employees may be obtained. However, many of these rooms are alternatives to areas no longer in contention in this proceeding and will not be discussed in these findings. Only those alternative rooms reasonably proximate to the areas still in contention will be discussed briefly in this summary of facts.

On the first floor of the Hospital, the open patios, the cafeteria, the vending machine area and various private rooms, which can be scheduled for meetings are offered as alternatives. In addition, the Employer has offered alternative rooms in the School of Medicine. On the first floor is an auditorium adjacent to the Hospital. This auditorium may be scheduled for meetings and holds approximately 150 people. There are auditoriums in the same location on each upper floor of the School of Medicine which are approximately a two-minute walk from the most remote area of the same respective patient floor of the Hospital.

In addition to the auditoriums, the Hospital is offering the Chapman Room which is a conference room or library on the second floor, the Lawrence Library on the third floor, the Department of Surgery Library on the fourth floor and the conference room for the Department of Plastic Surgery, the urology conference room, and an additional conference room adjacent to the clinics on the sixth floor. On the seventh floor the Hospital has offered two surgery conference rooms in the School of Medicine.

All of the alternative rooms in the School of Medicine must be scheduled through persons responsible for scheduling rooms in the appropriate department of the Medical School. There is testimony that scheduling may be difficult depending upon the time when the rooms are wanted. One physician testified that he had given up trying to schedule classrooms in the School of Medicine because of the difficulty in obtaining such classrooms.[14]

Additionally, the Hospital has offered alternate rooms on the A and B levels of the Hospital. Specifically, on the B level the Hospital has offered four rooms fairly proximate to the facilities which are known as the operating room. Throughout the other facilities of the Center for Health Sciences, the Employer has offered rooms as an alternative to

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[14]See the testimony of Dr. Comer, medical director of the operating room.

the requested rooms on the patient floors of the Hospital or in the operating room. In most instances the rooms must be scheduled through a central scheduling office charged with the responsibility of insuring that the rooms are available at the time sought.

F. Duty and Non-Duty Hours and Activities of the Hospital Employees.

The Hospital is a 24 hour facility requiring nursing, housekeeping and technical coverage at all times. In order to accommodate the 24 hour schedule, the Hospital operates on either 8, 10 or 12 hour shifts. The record reveals that even during the course of the hearing, some staff in various locations of the Hospital were changing from 8 to 10 hour shifts, others were experimenting with 12 hour shifts. Regardless of the length of the shift, there is a one-half hour overlap to accommodate those employees coming on and those employees going off shift. Thus, the 8 hour shift is from 7:00 a.m. to 3:30 p.m. and from 3:00 p.m. to 11:30 p.m. and from 11:00 p.m. to 7:30 a.m. The 10 hour shift, largely in the pediatric unit on the third floor, is from 7:00 a.m. to 5:30 p.m. and from 1:00 p.m. to 11:30 p.m. and from 10:30 p.m. to 9:00 a.m. The 12 hour shifts operate from 7:00 a.m. to 7:30 p.m. and 7:00 p.m. to 7:30 a.m. Employees on a 12 hour shift will work three days on, four days off. Generally employees will rotate between day, evening and night shifts.

However, it is possible for an employee to elect to work the night shift all the time since this is a less desirable shift. The employees on evening and night shifts are given a pay differential.

All employees receive two 15 minute breaks, and an unpaid one-half hour lunch. Employees working a 12 hour shift receive three 15 minute breaks and an unpaid 30 minute lunch. The record reflects that employees are free to accumulate their lunch and coffee breaks so that some employees may take a 30 minute lunch and two 15 minute breaks at one time. Other employees may take three 15 minute breaks at one time. Still others take their breaks when they can throughout the day.

The record is somewhat unclear as to which employees take regular breaks.[15] However, it is found that for the most part there are no predictable times when all employees take breaks and there are no single blocks of time when employees either choose to lump together their breaks or to take their lunch breaks. Largely the determination of when and how long an employee takes a break is made by the employee based upon the needs of the patients and other work related factors. The record indicates that these determinations often are based on ad hoc determination by the individual employee. In certain areas of the Hospital an employee's ability to take breaks is

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[15]Irregular and unpredictable breaks are more likely to occur amongst the nursing staff than amongst the other staff sought to be organized.

more limited than in other areas. Thus, in intensive care areas, while employees are encouraged to take breaks, oftentimes they cannot get on any regular break schedule. In the neonatal intensive care unit some employees take their breaks or lunches at the side of the infants' incubator.

In the operating room there is no absolute lunch and break schedule for employees. Breaks are often determined by the nature, course and duration of an operation. On weekends operating room employees are usually not able to leave the operating room area because of the skeleton crew.

Employees testified that in the operating room the majority of the employees take their breaks in the lunchroom provided on the A floor. The percentage of employees breaking in the lunchroom may vary between 95 percent during the week and 99 percent on weekends.

On the second floor, testimony was less precise, but a majority of employees testified that they took their breaks on the floor itself despite the fact that the second floor is a brief stairwalk from the cafeteria on the first floor.

On the remaining floors employees variously testified that they would take their breaks on the floor and some would leave the floor going to the cafeteria when it was open. Others would go outside the Hospital in order to take their lunch and coffee breaks. The ability of the employees to leave the area in which they work depends in part upon the location of the

employee and the amount of time allowed for lunch or breaktime. Employees working on the upper floors of the Hospital are more reluctant to leave the floors because of the time consumed in going to the lower floors of the facility or outside the facility on the somewhat slow but soon to be improved elevators of the Hospital.

At the very least, an employee must expend as much as five minutes in getting to and from an area outside the floor on which they work if they rely upon elevators. A substantial number of employees testified that they took their coffee and lunch breaks in lounge facilities on the floor on which they worked. Other employees testified that they sometimes took their breaks in chart rooms on the floors on which they worked. There was testimony that from time to time parties and other recreational activities occurred in the classrooms on various floors of the Hospital, in the occupational therapy room on the fifth floor of the Hospital and in the learning lab on the fourth floor of the Hospital near the coronary care unit.

Various witnesses further testified that during the day they might be inclined to take their breaks in the cafeteria or go to the cafeteria for food. However, in the evenings and at night employees are less likely to leave the various floors on which they work. Many employees testified that they bring their own lunches and take their breaks on the patient floors. This practice is more convenient and less time consuming than

to try and leave the floors only to be required to return in the short period of time available for breaks and/or meals. Witnesses variously testified of their reluctance to leave their respective areas of work due to the desire to care for the patients and the need that they be on call in case of an emergency.

III. ISSUE

Whether, the Employer has unlawfully denied the Union access to the employees by refusing to permit union organizers to engage in solicitation on the patient floors of the Acute Care Hospital and in the operating room.

IV. CONCLUSIONS OF LAW

It is the contention of the Union that the Employer has unlawfully denied SEIU organizers the right to solicit employees in lounges and other rooms in which employees customarily take their breaks and otherwise spend their non-work time. The Hospital contends that the ban on solicitation on all patient floors of the Acute Care Hospital and the operating room is both reasonable and consistent with its statutory obligations and private sector case law. The Hospital argues these areas are immediate patient care and treatment areas and the denial of access and the right to solicit in these areas is lawful. Similarly the Hospital takes the position that the operating room in its entirety is a patient care and treatment area to which access may be

reasonably denied the Union.

A. Employee Organization Access Rights in California.

Sections 3565 and 3568 of the California Government Code, set forth the access rights of employee organizations and the related rights of employees under HEERA. These sections provide in relevant part:

> Higher education employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation. . . and for the purpose of meeting and conferring. Higher education employees shall also have the right to refuse to join employee organizations or to participate in the activities of these organizations. . . . (Cal. Gov. Code, sec. 3565.)
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> . . . . . .
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> Subject to reasonable regulations, employee organizations shall have the right of access at reasonable times to areas in which employees work. . . . (Cal. Gov. Code, sec. 3568.)

The language of HEERA coupled with existing PERB decisional law indicates that non-employee organizers enjoy the same right to solicit on an employer's premises as employee organizers. (See Regents of the University of California, Lawrence Livermore National Laboratory (4/30/82) PERB Decision No. 212; California State University, Sacramento (4/30/82) PERB Decision No. 211-H; see also State of California (Department of Corrections) (5/5/80) PERB Decision No. 127-S; Marin Community College District (11/19/80) PERB Decision No. 145; Long Beach Unified School District (5/28/80) PERB Decision No. 130;

Richmond Unified School District, et al. (8/1/79) PERB Decision No. 99. Thus, PERB has made no distinction between employee and non-employee organizers in affording access to an employer's property.[16] (Cf. ALRB v. California Coastal Farms, Inc and UFW (1981) 117 Cal.App.3d 971.)

By contrast private sector cases afford employee organizers greater access rights than those afforded to non-employee organizers. (See NLRB v. Babcock and Wilcox Co. (1956) 351 U.S. 105; Republic Aviation Corp. v. NLRB, (1945) 324 U.S. 793 **[16 LRRM** 620]; Chrysler Corp. (1977) 232 NLRB 466 [96 LRRM **1382];** Tri-County Medical Center (1976) 222 NLRB 1089 [91 LRRM 1323]; GTE Lenkurt, Inc. (1973) 204 NLRB 921 [83 LRRM 1684].) **This** distinction is in part due to the fact that under the National Labor Relations Act, as amended (hereafter Act or NLRA), (29 U.S.C. 151 et seq.)there are no employee organization rights per se. Rather an employee organization **derives** its right to access and to solicit employees from the rights of the employees themselves. Under HEERA employee organizations have been granted an express right of access to

[16]This is not to say that in the appropriate set of circumstances PERB may determine that greater access rights should be afforded to employee organizers than to non-employee organizers. However, to date PERB has not been required to make such a distinction based upon the facts of the cases before it.

areas in which employees work on an employer's premises.[17]

PERB has repeatedly acknowledged that under the laws it administers an employee organization's right of access is not without qualification. Thus the general rule is that employee organizations have a presumptive right of access, subject to the employer's right to reasonably limit access consistent with the needs to carry out the business and functions which underpin the mission of the particular employer in question. (See cases at page 38, supra.) PERB will permit the rebuttal of the presumptive right of access by a showing that limitations which make up an employer's no-solicitation rule are reasonable in the circumstances of the particular case. In a recent decision concerning an employee organization's right to have access to a national security facility, PERB stated:

> Rather than rebutting the presumptive right of access totally, we view national security considerations as a weighty factor to be considered in reaching the necessary accommodation between Charging Parties'

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[17]It is noteworthy that a recent Ninth Circuit Court of Appeals case enforcing a National Relations Labor Board (hereafter NLRB) Order has permitted union organizers to come on to the private property of an employer. This case involves the property rights of a general contractor as against union's right of access to the employees of his subcontractors. The decision appears to open the door to greater access rights of non-employee organizers. See NLRB v. Villa Avila, et al. (9th Cir. 1982) F.2d [LRRM] enforcing (1980) 253 NLRB No. 10 [105 LRRM 149977

> statutory right of access [and the University's] operational needs. Consideration of the operational realities at the Lab is necessary to determine whether particular restrictions on access to the Lab imposed [by the University] are reasonable. Lawrence Livermore National Laboratory, supra, at p. 14.

There is very little PERB precedent on the specific issue of accommodating the operational needs of a hospital employer to the needs and rights of employees and unions to obtain information and exercise free choice. However, in recent years a burgeoning, yet wavering, body of private sector law has analyzed these competing interests and sheds light on what is a reasonable restriction on access and related rights in the health care industry.[18]

B. The Private Sector Law Regulating Union Solicitation in Hospitals.

1. In General.

Early on in its decisional law the NLRB considered the right of employers to control the time, place, and manner in which unions could solicit employees on the employer's premises. The NLRB established a series of presumptions which would be used to test the validity of employer bans on union

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[18]Cases involving the federal labor laws are persuasive precedent in the interpretation of similarly worded California labor relations statutes. Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507]; Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51; cf also, Carlsbad Unified School District (1/30/79) PERB Decision No. 89.

solicitation and distribution of literature. In 1943, the NLRB announced that employer bans against solicitation on company property in non-work areas during non-work time are presumptively invalid. (Peyton Packing Company, Inc. (1943) 49 NLRB 828; accord, Stoddard-Quirk Mfg. Co. (1962) 138 NLRB 615 [51 LRRM 1110]. See Republic Aviation Corp. v. NLRB, supra.) This private sector presumption seeks to balance the employees' right to organize with the employer's interest in property rights and in fulfilling the operational exigencies of a business.

In 1974, the NLRA was amended to include employees of non-profit health care institutions.[19] Following the amendment of the Act, the NLRB and the courts were faced with the issue of the standards to be applied to employer bans on solicitation of employees in a hospital setting.

2. The Hospital Presumption.

In the hospital setting the NLRB departed from its usual presumption that employer rules against solicitation in non-work areas during non-work time are invalid.[20] In

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[19]Non-profit hospitals came within the coverage of the NLRB when section 2(2) was amended to delete from the definition of employer the provision that an employer shall not include "any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual. . ." (29 U.S.130 sec. 152(2))

[20]See generally: Recent Developments (1979-1980) 25 Vill. L. Rev. 583; The No Solicitation-No Distribution Rule and Presumptions of Validity; Conflict in the Health Care Field (1980) 32 Mercer L.Rev. 619.

St. John's Hospital and School of Nursing, the Board recognized the need for a different presumption applicable only to hospitals, stating:

> We recognize that the primary function of a hospital is patient care and that a tranquil atmosphere is essential to the carrying out of that function. In order to provide this atmosphere, hospitals may be justified in imposing somewhat more stringent prohibitions on solicitation than are generally permitted. (St. John's Hospital and School of Nursing Inc., (1976) 222 NLRB 1150, [91 LRRM 1333], enforced in part and denied in part (10th Cir. 1977) 557 F.2d 1368, [95 LRRM 3058].)

Accordingly, in St. John's, the NLRB devised a special presumption for health care institutions. This presumption made a solicitation ban presumptively valid in "immediate patient care areas" and presumptively invalid in all other areas of the hospital. As defined by the NLRB, "immediate patient care" areas include patient's rooms, operating rooms, and places where patients receive treatment, such as x-ray and therapy areas. Ibid.

On cross-petitions for review and enforcement, the Tenth Circuit Court of Appeal, expressed dissatisfaction with the distinction drawn by the NLRB between "immediate patient care areas" and other patient access areas noting:

> Once it is admitted that union solicitation is disruptive of the tranquil atmosphere essential to the Hospital's primary function . . . it is unreasonable to conclude that these adverse effects of union solicitation

> will occur in some patient access areas but not in others.
>
> (St. John's Hospital v. NLRB, supra, 95 LRRM at 3062.)

The court denied enforcement of that part of the Board's order which would have permitted distribution of Union literature in lounges, cafeterias, and other non-immediate patient care areas. (St. John's Hospital v. NLRB, supra, 95 LRRM at 3064.)

However, in Beth Israel v. NLRB, the U.S. Supreme Court upheld the NLRB's presumption stating:

> We . . . hold that the Board's general approach of requiring health-care facilities to permit employee solicitation and distribution during non-working time in non-working areas, where the facility has not justified the prohibitions as necessary to avoid disruption of health care operations or disturbance of patients, is consistent with the Act. (Beth Israel v. NLRB (1978) 437 U.S. 483 [98 LRRM 2727, 2736]).

The Court held that the NLRB's presumption strikes an appropriate balance between the legitimate interests of hospital employees, patients and employers. (Beth Israel v. NLRB, supra, 98 LRRM 2727; see also Los Angeles New Hospital (1979) 244 NLRB 960 [102 LRRM 1189] enforced (9th Cir. 1981) 640 F.2d 1017, [106 LRRM 2855.]

A year later the Supreme Court reaffirmed this holding in NLRB v. Baptist Hospital (1979) 442 U.S. 773 [101 LRRM 2556]. However, the Court expressed reluctance in presuming the invalidity of hospital rules prohibiting solicitation in

hospital corridors and public sitting rooms on patient floors. Ibid.

In both Beth Israel, supra, and Baptist Hospital, supra, the majority consisted of five Justices, with the minority taking a different view of the validity of the NLRB's presumption. While deferring to NLRB expertise, the Supreme Court left open, as a factual question, the issue of exactly what areas are to be designated as immediate patient care.[21] The majority insisted on a case by case balancing test, weighing the particular circumstances in individual hospitals as they came before the Board. (NLRB v. Baptist Hospital, supra, 101 LRRM at 2562; see also Baylor University Medical Center v. NLRB, (D.C. Cir. 1978) 578 F.2d 351 [97 LRRM 2669, 2675] vacated in part, remanded (1978) 439 U.S. 9 [99 LRRM 2953] modified and remanded to NLRB (D.C.Cir. 1979) 593 F.2d 1290 [100 LRRM 2340].)

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[21]In Beth Israel, Justices Blackmun, Burger, Powell and Rehnquist concurred in the result but disapproved of the presumption. They agreed with the Tenth Circuit's opinion in St. John's and argued that "the potential impact on patients and visitors of Union solicitation and distribution of literature in hospitals requires the Board to make a far more sensitive inquiry into the actual circumstances of each case." (Beth Israel v. NLRB, supra, 98 LRRM at 2739.)

In Baptist Hospital, Justice Brennan, Burger, Marshall and White concurred in the result, with Justice Burger again disapproving the Board's presumption and the other concurring Justices disapproving the lower appellate court's standard of review. (NLRB v. Baptist Hospital, supra, 101 LRRM at 2563.)

Thus the Supreme Court observed:

> In discharging its responsibility for administration of the Act, the Board must frame its rules and administer them with careful attention to the wide variety of activities within the modern hospital. The Union, and other labor organizations involved before the Board in cases similar to the present one, have adopted this view, urging the Board to abandon the simplistic "immediate patient care" criterion. (NLRB v. Baptist Hospital, supra, 101 LRRM at 2562 n. 16.)

3. The Shifting Burden of Proof.

Under the NLRB's presumption, prohibitions against solicitation in immediate patient care areas are presumptively valid and solicitation in other areas may be legitimately prohibited if justified by the hospital as necessary to further patient care. (Intercommunity Hospital, (1981) 255 NLRB No. 45 [106 LRRM 1357, 1361].)

However, the NLRB's inquiry does not end with a determination that the location in question is not an immediate patient care area. (Baylor University Medical Center v. NLRB, (D.C. Cir. 1981) 662 F.2d 56, 108 LRRM 2041, 2047.) Rather, upon such determination, the burden merely shifts to the employer to prove that solicitation would directly affect patient care by disturbing patients or disrupting health services. (NLRB v. Baptist Hospital, supra, 101 LRRM at 2559; NLRB v. Presbyterian Medical Center, (10th Cir. 1978) 586 F.2d 165, [99 LRRM 3137, 3139]; Eastern Maine Medical Center, (1980)

253 NLRB 244 [105 LRRM 1665, 1667 n. 9].) Thus, the effect of the presumption is to shift the burden of proof to the Union in immediate patient care areas and to the hospital in other areas.

In Beth Israel Hospital v. NLRB, supra, the Supreme Court agreed that "in the context of health care facilities, the importance of protecting patients from disturbance cannot be gainsaid" and added that a hospital could also lawfully prohibit solicitation where necessary to avoid disruption of health care operations. The Court later explained the distinction between disruption and disturbance as follows:

> Solicitation may disrupt patient care if it interferes with the health-care activities of doctors, nurses, and staff, even though not conducted in the presence of patients. And solicitation that does not impede the efforts of those charged with the responsibility of caring for patients nonetheless may disturb patients exposed to it. (NLRB v. Baptist Hospital, supra, 101 LRRM at 2559 n. 11.)

Thus, proof of either disruption of service or disturbance of patients may be sufficient to validate a hospital's ban on solicitation. However, since Union solicitation is presumptively invalid except on non-working time, disturbance of patients, rather than disruption of health services, has been the more prominent concern of the NRLB and the courts.[22]

[22]In balancing the interests of patients against that of hospital employees, the federal courts have been more

The NLRB has refused to extend the concept of disturbance to the families or visitors of patients or to other third parties. (Eastern Maine Medical Center, supra, 105 LRRM at 1668-1669.) In another context PERB has refused to endorse, as reasonable, a no-solicitation rule designed to protect other unit members from the "disturbance" of Union organizing. (See Long Beach Unified School District, supra). And the NLRB has held that "a rule which only restricts conversations related to unions is discriminatory and therefore unlawful." (Liberty Nursing Homes, Inc. (1979) 245 NLRB 1194 [102 LRRM 1517].) However, two years earlier, the NLRB held that "beneficent acts," such as permitting a charity drive to be conducted in the hospital, "fall short of establishing discrimination in application of a no-solicitation rule." (Lutheran Hospital of Milwaukee (1976) 224 NLRB 176, [92 LRRM 1231].)

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protective of patients than has the NLRB. One federal court said:

> [I]t seems clearly preferable in resolving any doubts as to how best to accommodate these conflicting interests to err on the side of protecting the patients—to whom irreparable injury might be done—rather than on that of a labor organization which can at worst suffer a brief, albeit unjustified delay. (Baylor University Medical Center v. NLRB, supra, 97 LRRM at 2671).

The NLRB, on the other hand, has viewed the disturbing effects of union solicitation as no greater than that of other forms of solicitation—such as charitable and business solicitation—which are permitted by hospitals. (Baylor University Medical Center, (1976) 225 NLRB 771, [92 LRRM 1640].)

Thus, proof of disruption of patient care or disturbance of patients is to be considered in the decision whether to permit solicitation in certain areas in a hospital. Evidence of such disturbance or disruption might validate bans on solicitation even in areas not devoted to immediate patient care.

4. Alternative Areas.

The availability of alternative areas for solicitation may become a relevant factor to be weighed in balancing the interests of patients and employees. (St. John's Hospital v. NLRB, supra, 95 LRRM at 3058; Baylor University Medical Center v. NLRB, supra, 97 LRRM at 2675 n. 57). While the availability of alternative areas is not a relevant inquiry in the typical industrial setting, it may be a relevant factor in hospital access cases:

> While outside of the health-care context, the availability of alternative means of communication is not, with respect to employee organizational activity, a necessary inquiry, [citation omitted], it may be that the importance of the employer's interest here demands use of a more finely calibrated scale. For example, the availability of one part of a health-care facility for organizational activity might be regarded as a factor required to be considered in evaluating the permissibility of restrictions in other areas of the same facility. (Beth Israel Hospital v. NLRB, supra, 437 U.S. at 505.)

The Supreme Court indicated in Beth Israel Hospital, supra, that the availability of alternative areas for solicitation might make a no-solicitation ban more acceptable. (Accord, Baylor University Medical Center, supra, 108 LRRM at 2046.)

On the other hand, the lack of viable alternative areas may require that a union be granted access to an otherwise restricted area. In Albert Einstein Medical Center, (1979) 245 NLRB 140 [102 LRRM 1508] the NLRB held that the lack of alternative areas for solicitation counterbalanced an interest in protecting patients from undue disturbance. In Baylor University Medical Center v. NLRB, the court stated that areas available for solicitation may in some hospitals be so limited that "an employer may be forced to permit solicitation where he otherwise could legitimately ban it." Baylor University Medical Center v. NLRB, supra, 578 F.2d at 358-9; see also Intercommunity Hospital, supra, 106 LRRM at 1363.

In conclusion a balancing test is to be applied in determining whether to grant union access to Hospital areas for the purpose of membership solicitation, In immediate patient care areas, the Hospital's solicitation ban is presumptively valid. In other areas, the Hospital must prove that disturbance of patients or disruption of patient care would occur. In the course of balancing interests, the NLRB or reviewing court may weigh the interests of the employees and patients and the feasibility of alternative access areas to determine whether or not to permit solicitation in a requested area. In any event, the factual questions which give rise to the presumptions and their rebuttal are to be determined on a case by case basis. (NLRB v. Baptist Hospital, supra.)

These above principals are helpful in assessing whether the Employer in the instant case has reasonably denied SEIU access to the patient floors and the operating room.

C. The Validity of the Hospital's Total Ban Against Solicitation on the Patient Floors of the Acute Care Hospital.

The Employer has promulgated a ban against solicitation by union organizers anywhere within the patient floors of the Acute Care Hospital. This no-solicitation rule would exclude union organizers from all areas on these floors, including employee lounges, classrooms, nursing stations, chart rooms, conference rooms and multi-purpose rooms. A review of the case law indicates that such a broad ban on union solicitation, without more, is overly broad. It will be recalled that the private sector cases defines patient-care areas, at a minimum, as the patients' rooms and treatment areas where they receive care. Beth Israel v. NLRB, supra, 437 U.S. 483; NLRB v. Baptist Hospital, supra, 422 U.S. 773; St. John's Hospital v. NLRB, supra, 95 LRRM 3058. In no reported case has the NLRB or a court found that an entire patient floor constituted a patient care and treatment area. The closest decision which extended patient care areas to the central corridor of a very small hospital still permitted union solicitation in the employee break rooms within the confines of the small hospital facility. (See Intercommunity Hospital, supra, 106 LRRM at 1362-1363.)

Thus, in accordance with the private sector case law, it may be concluded that the total exclusion of union organizers from the patient floors of the Hospital is presumptively invalid subject to rebuttal by record evidence that Union organizers should be banned from all areas of the patient floors because they will create a disturbance or disrupt patient care.

The Employer urges that the broad denial of access is permissible since the UCLA Hospital is a tertiary care facility with critically ill patients, many of whom do not survive their stay. Further, Respondent argues that the facilities are congested, caused in large part by the fact that the facility is a teaching hospital with great numbers of students and faculty constantly involved with the activities on the patient floors. Finally, the Hospital argues that the presence of union organizers passing through the hallways will disturb the patients who are either in their rooms or who ambulate through the hallways as part of their therapy and recovery. Ambulation is especially common on the third and sixth floors of the Hospital.

The record reveals that some of the Respondent's stated concerns are true. However, there is no showing that the nature of the patients at UCLA or its qualities as a teaching hospital make it any different than the facilities of Baylor University Medical Center or other facilities in which total bans on access have not been countenanced by the courts and the

NLRB. Nor does the record justify a finding that congestion at the UCLA Hospital is so great as to deny access to at least employee break rooms. (Intercommunity Hospital, supra.)

The record does not substantiate that union representatives merely passing through the corridors of the Acute Care Hospital in order to reach permissible areas for solicitation, will disrupt the treatment of patients or disturb any patients on the floors of the Hospital. While there was testimony that patients ambulating in the halls might sacrifice a degree of privacy if passed by a union organizer, it is doubtful that either seeing or being seen by representatives of the union would register in the mind of a patient as a matter of any concern or substantial significance. Indeed, there is little factual support to lead to the conclusion that the patients would even be aware that the persons they saw in the hallways were outsiders to the purposes of the floor itself.

The Hospital has failed to show by anything more than conjecture that the presence of union organizers on the patient floors will disrupt patient care or disturb patients. The generalized arguments about the delicate nature of treatment, the devastating possibilities of mistake, do not rise to the level of substantial evidence to justify the total exclusion of union organizers.

Finally, the Hospital argues that there is no need for access to the patient floors in view of the substantial number

of alternative rooms made available to union organizers for the purpose of solicitation. As noted in the discussion of law above, alternative rooms may be a factor to be considered when determining whether an employer's no-solicitation ban is reasonable. In this case, the Employer offers a number of rooms throughout the Center for Health Sciences which are alternatives to the rooms on the patient floors.

Although the Employer has offered over a 100 alternate rooms, a large number of these rooms are some distance away from the patient floors of the Hospital. The alternate areas closest to the Hospital are those found in the School of Medicine and on the first floor of the acute care facility. The rooms on the first floor of the Hospital consist of the cafeteria which is open to the public and operates from early morning hours until about 8:00 p.m.; the vending machine area which is open at all times; outdoor patios; a doctors' dining room and certain conference and meeting rooms. The areas in the School of Medicine close to the floors of the Hospital are found on floors one through seven and include auditoriums and classrooms which are approximately a two-minute walk in one direction from the most remote point on a given floor of the Hospital.

The record reveals that all meeting and conference rooms on the first floor of the Hospital as well as all classrooms in the School of Medicine must be scheduled. The scheduling of these rooms may take a week or less but often may require more

advanced notice. In addition, the scheduling of these rooms is handled on a departmental basis. Thus, there are different persons responsible for the scheduling of rooms depending upon their location in the Center for Health Sciences. The record reveals that the ability to schedule rooms by the Union or any other person is at best unpredictable. Some rooms are more easily scheduled than others. During the day classrooms are usually filled. Some of the conference rooms may be scheduled by certain groups at certain times for as long as a year in advance. The record shows that there is no predictable place offered as an alternative room where, on short notice, an employee organization can regularly schedule a meeting of employees.

In addition to the difficulties in scheduling there was substantial testimony by employees that they were reluctant to travel to the alternate rooms in the School of Medicine. Some employees testified that they did not know where the School of Medicine was. Others testified that they had rarely, if ever, been in the facility and that they were reluctant to go into this unfamiliar area. Many employees testified that they were reluctant to leave the immediate security of their own Hospital floor to go to the School of Medicine or even to travel to the first floor of the facility during the evening and night hours, since these areas involve passing through corridors and

hallways which were otherwise deserted.[23]

Regardless of whether there is in fact a security problem at the Hospital, the employee witnesses credibly testified of their concern for personal safety. This concern whether based upon actual experience with crime or violence is explicable due to the working environment of most employees. The UCLA Hospital is a huge facility and operates on a 24 hour basis. Other adjacent facilities where alternate rooms have been offered are utilized primarily during the daytime hours. Thus, substantial portions of the Center for Health Sciences adjacent to the Hospital are not regularly used during the evening hours. The inference that employees would be concerned for their safety in going into new and unfamiliar areas, is supportable by the record in this case.

The cafeteria and the vending machine areas and patios on the first floor are a considerable distance from the floors above. Elevator transit time can take as long as five minutes to reach these areas. In addition, the cafeteria is only open until 8:00 p.m. While the vending machine area is open

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[23]There was substantial evidence at the hearing that employees were concerned with security at the UCLA facility. While the testimony that there is in fact a security problem at UCLA is inconclusive, many employees testified that they were concerned about their safety when they left their specific work areas. Others testified that they had heard rumors or read stories or articles which indicated that crime and violence on the UCLA campus have created a danger for them. Witnesses for the Hospital indicated that security was no serious problem and that the incidents of crime were not inordinately high.

24 hours a day, its constant use is usually limited to the daylight hours. The patios, while available for union organizing, are subject to variations in weather as well as the fact that they would unlikely be used in the evening hours.

Finally, except for the cafeteria, the vending machine area and the patios, none of the alternate areas constitute natural gathering places of employees. The NLRB, with court approval, has recognized that union solicitation and organizing best takes place in the working environment familiar to employees. Thus the NLRB and the Supreme Court have acknowledged repeatedly that natural gathering places of* employees are far more conducive to union organizing than areas unfamiliar to employees. See Beth Israel Hospital v. NLRB, supra, 437 U.S. at 490, 505. As the Supreme Court has said: "We have long accepted the [NLRB's] view that the right of employees to self-organize and bargain collectively . . . necessarily encompasses the right effectively to communicate with one another regarding self-organization at the jobsite." (Id. at 491 [emphasis added] cf. also Central Hardware Co. v. NLRB, (1972) 407 U.S. 539 [33 L.Ed.2d 122; 92 S.Ct. 2238].)

It is thus concluded that the alternate areas offered by the Employer to justify the total exclusion of union organizers on the patient floors of the Acute Care Hospital are not sufficiently viable to swing the balance in this case to support the validity of the Hospital's no-solicitation rule.

The total ban against solicitation on the patient floors of the Hospital is overbroad and therefore constitutes an unreasonable restriction on the Union's right of access. This broad no solicitation rule violates Section 3571(a) and (b) of HEERA.

D. The Specific Rooms on the Patient Care Floors to which the Union Seeks Access.

Having found that the total ban against solicitation on the patient floors to be unreasonable, it becomes necessary to analyze specific rooms sought by the Union on the patient floors of the Hospital to determine whether access should reasonably be permitted. In so doing, the same balancing test will be applied. Thus, the rooms in question will be analyzed to determine whether they constitute immediate patient care or treatment areas. If they do not, then a ban on their use would be presumptively invalid. However, the Hospital may rebut the presumption by showing that disturbance of patients or disruption of patient care might occur if the rooms are used for union organizing.

1. Lounges.

The Union seeks access to the rooms denominated as employee lounges on each of the patient floors of the Hospital. Employee lounges are located in the approximate center of floors 5 through 10. Each lounge is located within a few steps of the two major banks of elevators serving the floor and persons going to the lounge can be seen from the nursing

station. Some lounges contain lockers, couches and toilet facilities. Each of these lounges may be closed off from the hallways and afford privacy to the persons inside and to the discussions taking place.

On the fourth floor there are two rooms used by employees as lounges for breaks and lunches. In the eastern section of the fourth floor there is a lounge used almost exclusively by the employees. In the western section of the floor, there is a multi-purpose room. The record reveals that doctors and staff may use this room to discuss matters relating to patients. However, the record reveals that this room is essentially a break room for the western end of the fourth floor.

The third floor contains only one lounge immediately behind the chart room in the western section of the floor.

The second floor contains several lounges. In the center of the floor there is a locker room lounge where employees often change clothes and take breaks. There is a lounge almost immediately adjacent to it. Within the neonatal Intensive Care Unit, there is an employee lounge for employees working in that unit. Additionally, there is a lounge within the labor and delivery area of the floor in the western end of the second floor and the record reveals that anyone in this area must wear a hospital gown.

All lounges may be closed off from the surrounding areas by doors. Except for the multi-purpose room on the fourth floor of the Hospital, each of the lounges on the floors are used for the purpose of breaks and lunch periods. They are used almost exclusively by the employees sought by the Union and they are places where the employees customarily take their breaks. The record indicates that the employees often break on the floors on which they work. Whether this is because of the time constraints, the desire to be near their patients or the provincialism which characterizes the unwillingness of the employees to travel throughout the facility, the record is clear that these rooms are customary gathering places for employees during their rest periods.

It is concluded that the ban on solicitation in the lounges on the patient floors is presumptively invalid in that these are non-patient treatment, care or access areas of the Hospital. However, the Hospital seeks to rebut this presumption by showing that the use of the lounges would create a disturbance to the patients or would disrupt patient care.

The Hospital makes the argument that access of union organizers to the employee lounges would disrupt patient care. Behind this argument is the theory that employees need the lounges to decompress from the strain of the pressure-charged atmosphere which characterizes the inpatient care Hospital facilities at UCLA.

Ostensibly, the Hospital contends that union organizers would interfere with decompression and thus would disrupt effective patient care. The record reveals that at least the nursing staff on the patient care floors experiences some pressure and emotional strain in the performance of their duties. There is no evidence as to the effects of the work on the housekeeping and other ancillary staff.

The Hospital's argument that the lounges are for the purpose of decompression, has a superficial appeal. However, were one to subscribe to this notion, there would be no place where employees take breaks or eat their lunch which would be available to discuss union matters.

Decompression and the need for rest and relaxation, is not indigenous to the Hospital setting. The argument that union organizing activities during break periods will disrupt the employees during work time has found little support as a justification for a no-solicitation rule. The theory would fly in the face of every decision affording access to hospital employees which clearly permit unions to engage in organizing activities during break and rest periods in non-patient care areas. The Hospital actually seeks to extend the definition of patient care and treatment to employee breakrooms and restrooms and therefore to employee break and rest times. This extension would be unwarranted.

The Hospital also argues that presence of Union organizers

in the lounges would disturb the patients. Each of the lounges has doors which can be closed and there is no basis for concluding that conversations within the lounge would be overheard by the patients in their rooms or ambulating down the halls. As discussed above, the record is equally devoid of any evidence that Union organizers who traffic the halls to reach the employee lounge would disturb the patients. There is no evidence on the record that patients are aware of who passes by their room or their purpose for walking the hallways. Thus, there is little evidence to show that patients would be disturbed by the presence of union organizers passing from the areas of access to the employee lounges on the floor.[24]

One area where some disruption might arguably occur would be on the second floor where the facilities appear to be most congested. The lounge in the labor and delivery section requires that anyone going through that section must be gowned. Thus there would be some disruption in requiring that any union organizer seeking entrance to that area put on a hospital gown before entering. This might create some disruption but more likely would be better characterized as creating a slight burden on the Hospital to insure that union

[24]Of course, there is no evidence to show that patients will be more disturbed by the presence of union organizers than they would by the presence of anyone else legitimately permitted on the floor, be they visitors of other patients, the teachers and students of the UCLA School of Medicine or the floor staff itself.

organizers were properly attired when reaching the employee lounge.

There is also a lounge in the neonatal ICU wing of the second floor. Union organizers going to this lounge would have to go through the ICU unit. There is no evidence in the record that the passage of union organizers to this lounge would be disruptive of patient care or would disturb the infants in the incubation facilities within the ICU. Indeed, probably these patients would be the least likely to be disturbed by the presence of any union organizers. Any disruption caused by merely walking through the ICU unit to this lounge would be minimal.

Finally, the lounges in the center of the second floor are characterized by congestion. One is also a locker room where employees change clothes. While there might be some minimal disruption, in these crowded areas, it is doubtful that this would justify exclusion of union organizers. Moreover, the presence of union organizers in a locker room has been found to be permissible when that is the only area of access. Here the lounge and locker rooms are natural rest places for employees.

Balanced against the possible disturbance and disruption which access to the second floor lounges might cause, is the fact that the second floor is unique to the operations of the Hospital. The record shows that staff in the neonatal ICU do not regularly leave that area of the Hospital. Employees tend

to take their breaks nearby their work so that they can constantly monitor the patients. These employees often do not go to any other lounges or break areas within the Hospital and access to them can best be achieved by access to the employee lounge in the neonatal ICU.

As to the lounge in labor and delivery, employees there once scrubbed and gowned, would be less likely to leave that area than would other employees in the Hospital. It makes some sense to permit access of union organizers to the labor and delivery lounge and to require the Hospital the minimal burden of insuring that persons seeking access be appropriately gowned.[25]

Finally, as with the other areas, the employees who break in the center lounge on the second floor tend to stay on the floor due to the character of the nursing care required. Thus, despite the possible inference of some disruption due to congested activities, the union organizers should be permitted to engage in activities within the second floor lounge areas.

The Hospital has not shown substantial evidence that disruption of patient care or disturbance to patients will result if union organizers are permitted to have access to

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[25]AS discussed at p. 17 supra, the union also requested alternative access to the doctors' sleeping room (26-170) in labor and delivery (Charging Party's Opening Brief p. 39). In view of this finding no access is granted to the doctors' sleeping room.

each of the lounges on the patient floors of the Hospital. On the other hand were access limited to certain lounges or areas on certain floors, the result might be to increase the numbers of employees leaving their work site and trafficking throughout the corridors and passageways of the facility. Thus, it is concluded that the ban against solicitation of employees in the lounges on the patient floors of the Hospital is overly broad and unreasonable.

While an absolute ban against access and solicitation in employee lounges is unreasonable, some regulation is permissible. As discussed in the remedy section below, the Hospital should be permitted to limit the number of employee organizations which may solicit at any one time. Further, the Hospital should be able to limit the number of employees and union organizers in the employee lounges. In this regard, where the lounges are extremely small (under 130 sq. ft.) and where the lounges are located in the center of an intensive care unit such as the neonatal ICU or labor and delivery, or where the lounges are adjacent to a nursing station, the number of union organizers permitted in these areas may reasonably be limited to no more than one person. Other regulations, consistent with reasonable use and access to employees may be promulgated by the Respondent. However, the invitation to promulgate reasonable regulation of access is not an invitation

to restrict that access so that it becomes non-workable.[26]

2. Classrooms.

The Union seeks access to various classrooms on the patient floors of the Hospital. Several of the rooms form one or two classrooms depending upon whether a folding partition is used.[27]

The record reveals that the purpose of these rooms is for in-service training of the nursing and medical staff. Unlike classrooms in School of Medicine, the patient floor classrooms are used on an ad hoc basis. Thus, witnesses testified that classes discuss methodology of patient care as well as problems relating to specific patients who might even be brought into the classroom. In addition, there is evidence that classes relating to the use of equipment might be conducted in these classrooms when training is required. Usually training in these classrooms is for small groups of employees. No regular classes appear to be conducted in the patient floor classrooms.

The record contains some generalized testimony that at times patients are permitted to go into the classrooms to get

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[26]See discussion at pages 80-83 below.

[27]The classrooms sought by the Union are rooms numbered 27-265, 37-328, 57-236, and 87-233. The following rooms are classrooms divided by a folding partition 57-241/57-231; 67-241/67/231 and 77-241/77-231.

away from their rooms. Families of patients sometimes utilize the classrooms as areas of privacy and locations for consultations with physicians. The classrooms may also be used for formal and informal rounds and consultations amongst physicians concerning the patients on the floor.[28] There is no question that when scheduled for classes or when used for consultations or rounds, the classrooms on the patient floors are used for functions which relate to patient care and treatment. Were union organizing to take place during the time when these rooms are utilized for classes or consultations there would be disruption and interference with patient treatment and care.

However, the record shows that the rooms are not utilized full time. Classrooms are used on an, as needed, sporadic basis. During the remainder of the time, they remain unused, or they are used by the Hospital as overflow or adjunct locations and for miscellaneous other functions for which there are other viable locations on the floors.

It is concluded that the ban on union organizing activities in the classrooms on the patient floors of the Hospital is over broad. While it is appropriate to ban union solicitation in

[28]Access to the Wright Library is not considered here. The Wright Library is more appropriately categorized as a multi-purpose room rather than a classroom, and it does not fit the generalized discussion of classrooms here. The Wright Library will be dealt with in the discussion below.

the classrooms when used for classes or consultations relating to patient care, the ban cannot be justified during the times when the rooms are not being used for these purposes. In view of the limited size and number of lounges on the patient floors, the Union should be permitted to utilize classrooms when available.

The availability of the classrooms to unions will thus depend on two factors: (1) whether the employee lounges provide an adequate location for Union meetings on the patient floors and (2) whether the classrooms are being utilized for training or consultations directly related to patient care. The classrooms should thus be available as adjunct areas of union access when there is no conflict with the training and consultation functions of the classrooms concerning specific cases on the patient floors.

3. Chart Rooms.

In addition to other rooms, Charging Party seeks access to the majority of the chart rooms on each of the patient floors.[29] In the main, the chart rooms are located behind or adjacent to the nursing stations on the patient care floors. They are often open to the nursing station and employees at

[29]The chart rooms sought are 27-249 B, 24-206 C, 36-215, 37-187, 34-216, 36-181, 44-206 C, 46-205 B, 56-179, 56-205 B, 54-206 B, 66-205 A, 64-206 A, 77-318, 76-187, 76-205 A, 76-213, 74-206 A, 87-311 A, 87-187 A, 97-302 A, 97-202 A, 107-302 A and 107-202 A.

work in the nursing station frequently move back and forth between the station and the chart room. Unless doors are closed, discussions in the chart room may be heard at the nursing station.

The adjacent nursing stations are the central hub of the floor directing visitors, doctors, and nursing staff to the patients. Various kinds of patient treatment equipment, drugs, syringes, are kept at these locations. The activities of the nursing station as well as treatment materials there are accessible to those utilizing the chart rooms.

The functions which take place in the chart room are related to patient care. They involve recording of information about the patients by nurses and doctors. Staff must keep a constant record of data relating to patient monitoring and treatment. There is testimony that at times employees drink coffee and even take breaks in chart rooms and nursing stations.

It is concluded that the chart rooms are related to patient care and treatment. Although the chart rooms are not areas where patients are actually treated, they are areas where matters vital to the patients' treatment and care take place. One can speculate that discussions in chart rooms might distract, disrupt or disturb those trying to carry out the charting functions. On the other hand, charting and reference to charts is sporadic and the record reveals that often

non-work related conversations take place in the chart rooms.

Although the balance here might be tipped towards access if alternative rooms were not available, the Proposed Decision in this case obviates the need to grant the Union access to the chart rooms. Thus, because access will be granted to the lounges and other areas which bear far less relationship to immediate patient care, it is concluded that the ban on solicitation in the chart rooms is reasonable and does not unlawfully deny the Union or employees their rights under the HEERA.[30] (Compare NLRB v. Baptist Hospital, Inc., supra, 442 U.S. at 784-787, Intercommunity Hospital, supra, 106 LRRM at 1361-1363.)

4. Other Rooms.

The Wright Library (room no. 37-231) is located on the third floor. This room is used from time to time as a research library and is often used by medical students and other personnel to study materials for patient-related, medical questions. The room is also used as a study area for certain of the student, medical staff working on the floors, There is little evidence that nursing and housekeeping staff regularly

[30]The NLRB has held that a no-solicitation rule which violates 8(a)(1) of the NLRA is invalid for all purposes and may not be found valid, in part, as applied to a given area. Thus in A.T. & S.F. Memorial Hospitals, Inc. (1978) the NLRB overruled an Administrative Law Judge's finding that an over broad no-solicitation rule was valid to the extent that precluded solicitation from intensive care units. 234 NLRB No. 65, citing The Times Publishing Co. (1977) 231 NLRB 44.

utilize this room for breaks, lunches or any other non-patient care purpose.

The record reveals that there is a conference room/office on the third floor (room no. 37-328). There is little evidence concerning the use of this room. Charging Party refers to it as a "conference/classroom." Respondent does not make any argument that would disclose the actual nature of the room. The only testimony given on the record is that it is a "combination office, conference room." There is no specific testimony that the room primarily relates to immediate patient treatment or care.

Charging Party seeks access to the learning laboratory on the fourth floor (room no. 46-214). This room is located at the entrance to the coronary intensive care unit on the fourth floor. It contains a variety of electronic devices, including video and patient monitoring equipment. The room is used by all staff including the doctors for purposes of monitoring patients as well as for charting, doing rounds and sometimes for classes. There is some evidence that breaks are taken in this room.

The fifth floor occupational therapy/physical therapy is also sought by the Charging Party (room no. 56-178). The occupational therapy/physical therapy room is utilized by patients during the day for various forms of therapeutic training. The room contains equipment used by patients with

rheumatic disorders for therapeutic exercises designed to train and rehabilitate. The record reveals that the room is largely used during the daytime, however, it is open at night for patients. The room is also used for rounds, as a classroom, and for meetings with patients and families.

The Wilson Library and the Nat King Cole Library on the ninth and tenth floors are also areas to which the Union seeks access (room nos. 97-255 and 107-255). These two rooms are available to patients and patients' families. The record reveals that families of patients often wait for their relatives in these rooms and many times will eat in these rooms. In addition, the record shows that from time to time patients, who are able to ambulate, go to these two rooms to find another environment different from that of their room.

The office conference room on the third floor has not been shown by substantial evidence to be an immediate patient care and treatment area. This coupled with the fact that there is only one employee lounge on the third floor, leads to the conclusion that an additional area of access should be available. It is found that either room 37-328 or another room on the patient floor of similar or larger size should be made available to the Union for access to employees. Since there are numerous other areas which are not exclusively devoted to patient care on the third floor, Respondent should be free to choose which area will be designated as an employee access area

in addition to the lounge.

It is concluded that all of the remaining miscellaneous rooms listed above bear a reasonable relationship to patient treatment and care. As articulated in the description, each of the rooms contains either patient monitoring or training equipment and resources or is utilized for purposes of some form of treatment or care.

Further, none of the remaining rooms are regularly used for break or lunch areas by employees. The Wilson Library and the Nat King Cole Library, while not directly related to patient treatment or care, appear to be readily accessible to patients and in part are utilized as secondary care areas for patients when they are able to leave their rooms. The unique nature of the ninth and tenth floors as a special hotel-like accommodation, justifies the retention of these rooms for use by patients.

Except for the third floor, in view of the alternative rooms made available to the Union by this Recommended Decision, it is concluded that a ban on solicitation in the miscellaneous rooms described in this section is not unreasonable and may be maintained by the Hospital without denying the Union or the employees' rights under HEERA.

E. The Hospital Ban Against Solicitation in the Operating Room.

As previously noted, the "operating room" is located on the subterranean floors A and B below the Acute Care Hospital.

While denominated as a single area, the activities are clearly divided between the floors. Thus, the A floor of the operating room consists solely of locker rooms, a lunch room/classroom, a vending machine area, a nurses' lounge, a doctors' lounge, an anesthesia library, an anesthesia staff room, and a pathology laboratory. The B floor consists of fifteen operating rooms and various ancillary offices, supply rooms and washrooms. The Employer argues that both floors of the operating room are devoted to patient treatment and care. However, it is clear that there is a dichotomy of function and activity between the A and B floors.

Employees entering the A floor wear street clothes, carrying with them any dangers of infection resulting from associating with the public. Employees then change clothes on the A floor and it is not until they are appropriately scrubbed and dressed that they enter the B floor where the surgery is performed. No patients whatsoever are found on the A floor. Patients awaiting surgery or recovering from surgery are all kept on the B floor. The entry of patients to the operating rooms is through doors on the B floor. Thus, apart from the denomination "operating room," there is nothing to distinguish the A floor from a separate change/lounge area contiguous to the operating room. (See NLRB v. Los Angeles New Hospital, supra, 106 LRRM at 2858.) The only activity which directly relates to the surgery taking place below is the review of

organs or biopsies by the pathology lab. It is thus concluded that the A floor of the operating room is not an immediate patient care and treatment area and the ban on solicitation is presumptively invalid.

The burden shifts to the Hospital to show that access to the A floor of the operating room would disrupt patient care or disturb the patients. The Hospital argues that the A and B floors are really inter-connected, observing that there is a stairwell by which all employees who have changed on the A floor go to the B floor. The Hospital argues that concern for prevention of infection is a major factor in excluding non-staff from the A floor. In this regard the Hospital points to the acuity of the the patients' condition undergoing surgery in the operating room.

It is concluded that the evidence does not establish sufficient disruption or disturbance to justify exclusion of the Union from the A floor. All operating rooms, at some time or another must deal with patients who are acutely ill. Moreover, all operating rooms must be concerned about the infection which is likely to occur. Employees and others bringing food to the employees or selling drugs and pharmaceutical goods wear street clothes on the A floor. Thus the presence of persons, similarly attired, does not create a risk of infection which would justify their exclusion. This

argument must be rejected.

Next the Hospital argues that the pathological laboratory on the A floor creates a link which justifies a ban against solicitation. While it is true that certain biopsies are performed by the pathology lab on the A floor during the course of surgery, there is no evidence that presence of union organizers on the A floor would disrupt the operations of the pathological laboratory. This argument is rejected.

Next the Hospital argues that persons must be excluded from the A floor because of the need to protect patients' privacy. In this regard, the Hospital urges that the five glass domes which are scattered around the A floor attract persons to look at the procedures taking place in the operating rooms below. Without reaching the question whether a patient's right to privacy is invaded by a non-staff person viewing them while they are under anesthesia, it is concluded that there is no evidence on this record to justify exclusion of union organizers based on invasion of patients' privacy.

The domes to the operating room are usually covered. The testimony indicates they are only uncovered enough to permit persons viewing the operation to see into the room. Persons watching operations either are individual or groups of students, physicians, etc. These persons stand between the adjacent hallway and the domes themselves. Thus, there is little likelihood that anyone in the hallways will be able to

see into the operating room. Indeed, even if the domes were left uncovered, no one passing down the hallways would be able to clearly see a patient in the operating room.

It is thus concluded that there is no danger to patients' privacy by virtue of permitting non-employees to have access to the A floor of the operating room. Should any person violate Hospital policies, excluding non-medical personnel from viewing the activities in the operating rooms, the Hospital could take appropriate action to exclude those persons from the A floor in the future.

Finally the Employer argues that because doctors and other staff share the A floor lunchroom and facilities, non-employees will impede the free flow of medical information between personnel. This argument must be rejected. The doctors and other employees frequently discuss non-medical matters when they are on the A floor. There is nothing in the record to indicate that the staff, when taking a break or changing clothes on the A floor, devote their conversations to matters relating to the surgeries which take place on the B floor. Indeed, the record reveals that a contrary inference may be drawn. The A floor is basically a change of clothes and rest area. Should the medical staff need to discuss patient care related matters on the A floor, there are ample areas where this can occur. There is a doctors' lounge, a doctors' change area, an anesthesia library and staff room and an

employee lounge/classroom which can be divided with a folding partition. Thus, it is doubtful that the presence of non-employee union organizers on the A floor of the "operating room" would disrupt in any way the activities on the B floor of the operating room.

In weighing the Hospital's arguments against solicitation on the A floor of the operating room it is necessary to consider the nature of the work environment. The record shows that employees rarely, if ever, leave the operating room for breaks and lunches. Less frequent are any predictable lunch and break schedules. The record indicates that it is difficult to draw employees away from this work environment once they have begun their workday. Thus there are no reasonable alternatives for access to operating room employees other than rooms which are located on the A floor.

It is concluded that the total ban against solicitation on the A floor of the operating room is overbroad and unreasonably limits the rights of the Union to have access to employees and the rights of employees to have access to union organizers. Non-employee organizers can enter the A floor, and be directed to areas where they can meet with employees to discuss matters of concern to the employees and to the Union. In this regard, it is noted that there are a number of locker rooms on the A floor. The lounge/classroom has a folding partition that would separate the doctors and others eating in the lunchroom from

employees who wish to discuss Union matters with representatives of various employee organizations. In addition there is a nurses' lounge (room no. AS-255) which may be utilized to meet with employees away from the other staff on the A floor.

In summarizing the various areas available to non-employee organizers, it is not the intent here to indicate that they should be given access concurrently to each and every room discussed. Rather, the Hospital may place reasonable restrictions on union organizers and limit them to the various areas of the A floor operating room where their presence is the least disruptive.

F. The Violations Of HEERA.

It has been found that the Hospital has promulgated an overbroad and unreasonable ban against union solicitation on the patient care floors and in the operating room of the Acute Care Hospital. This ban on solicitation unreasonably denies employees and employee organizations their rights under HEERA. Thus it is found that by the promulgation and maintenance of the ban against solicitation described in the sections above, the Employer has unreasonably denied employees' and employee organizations' rights guaranteed by California Government Code Section 3571(a) and (b).[31] It is appropriate that an order

[31]Although the original and Amended Charge purportedly allege a violation of section 3571(d), the amendments to the Charge as well as Charging Party's representation by letter dated May 4, 1981, indicate that this aspect of the Charge was withdrawn.

correcting these violations should issue.

G. The Remedy.

It having been found that the Employer violated section 3571(a) and (b) of HEERA it is appropriate to order that the Hospital revise its access rules to be consistent with this Proposed Decision.

The Higher Education Employer-Employee Relations Act provides that upon finding a violation of its terms, PERB may "take such action . . . as the Board deems necessary to effectuate the policies of [HEERA]" (Cal. Gov. Code, sec. 3563(h)). In fashioning such remedies, PERB is expressly granted the authority to issue cease and desist orders and direct parties to take affirmative action. (Cal. Gov. Code, sec. 3563.3.)

It is appropriate in this case to order the Hospital to cease and desist from maintaining a total ban on solicitation by non-employee organizers on the patient floors of the Acute Care Hospital and in the operating room. Specifically, Respondents should be ordered to cease and desist from maintaining a ban on solicitation in the employee lounges on floors 2 through 10 and a ban on access to the classrooms on the patient floors of the Acute Care Hospital denominated in the decision above when these rooms are not otherwise used for training of staff or employee conferences.

It is important to keep in mind that this remedy is fashioned with full knowledge of the fact that there are competing employee organizations seeking to organize employees at the UCLA Hospital facility. Thus, until an exclusive representative, if any, is selected, it is necessary that the Hospital be given some latitude in fashioning reasonable restrictions upon the rights of access of union organizers to the patient floors, to the lounges on those floors, and to the classrooms. In this regard, it is not unreasonable for the Hospital to require that representatives of employee organizations utilize specific elevators and access routes. Further employee organizations may be required to follow a schedule which would avoid conflicts between competing organizations seeking access to the same location at the same time. The Hospital may reasonably schedule access to the areas and determine the manner in which that access shall be achieved. However, the right to regulate access is not the right to prohibit it.

Similarly, the Hospital will be required to cease and desist from unreasonably limiting access to the A floor of the operating room. In this regard, however, the Hospital is given reasonable latitude to determine the areas in which the access will be permitted as well as to decide the schedule which must be maintained in order to have access to the employees on the A floor.

Finally, it is appropriate that Respondent be required to post a notice which incorporates the terms of this Order. The Notice should be subscribed by an authorized agent of the Employer indicating that the Hospital will comply with the terms of the Order. The Notice shall not be reduced in size. Posting of such Notice will provide employees and employee organizations written notice that the Employer has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of HEERA that employees and employee organizations be informed of the resolution of this controversy and further it will announce the Employer's readiness to comply with the ordered remedy. See Placerville Union School District (9/18/78) PERB Decision No. 69. in Pandol & Sons v. ALRB and UFW (1979) 98 Cal.App.3d 580, 587, the California District Court of Appeal approved such a posting requirement. The United States Supreme Court approved a similar posting requirement in NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

PROPOSED ORDER

Upon the foregoing Findings of Fact, Conclusions of Law, the entire record in this case, and Government Code section 3563.3 of the Higher Education Employer-Employee Relations Act,

IT IS HEREBY ORDERED that Respondents, Regents of the University of California and the University of California at

Los Angeles Medical Center and their representatives shall:

1. CEASE AND DESIST FROM:

(a) Denying to employee organizations a reasonable right of access to the patient floors of the Acute Care Hospital and to the A level of the operating room subject to the Hospital's right to reasonably regulate the number of employee organizations granted access at any one time and the manner in which access shall be achieved to these areas. Such access shall at least include:

(1) All employee lounges on the patient floors 2 through 10 of the Acute Care Hospital and the classrooms on floors 2 through 10 to the extent the classrooms are not scheduled for in-service training of employees or staff conferences;

(2) The employee locker rooms, lunchroom/classroom and nurses lounge on the A floor of the operating room.

(b) Denying to employees their right to form, join, and participate in the activities of employee organizations of their own choosing for all statutorily permissible purposes or to refuse to do so.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT:

(a) Within five (5) workdays after this Decision becomes final, prepare and post copies of the NOTICE TO EMPLOYEES attached as an appendix hereto for at least thirty (30) workdays at the University headquarters office in Berkeley, California as well as in conspicuous places in areas of the University of California at Los Angeles, Center for Health Sciences where notices to employees are customarily posted. This Notice must not be reduced in size and reasonable steps should be taken to see that it is not defaced, altered or covered by any material.

(b) Within twenty (20) workdays from service of the Final Decision herein, give written notification to the Los Angeles Regional Director of the Public Employment Relations Board of the actions taken to comply with this Order. Continue to report in writing to the Regional Director thereafter as directed. All reports to the Regional Director shall be concurrently served on the Charging Party herein.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on July 20, 1982, unless a party files a timely statement of exceptions. In accordance with the rules, the statement of exceptions should identify, by page citation or exhibit number, the portions of the record relied upon for such exceptions. See California Administrative Code title 8, part III, section 32300. Such statement of exceptions

and supporting brief must be actually received by the executive assistant to the Board at the headquarters office of the Public Employment Relations Board in Sacramento before the close of business (5:00 p.m.) on July 20, 1982, in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to these proceedings. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300 and 32305, as amended.

Dated: June 30, 1982

Stephen H. Naiman
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. LA-CE-1-H in which all parties had the right to participate, it has been found that the The Regents of the University of California, University of California at Los Angeles, Medical Center violated Government Code sections 3571(a) and 3571(b).

As a result of this conduct we have been ordered to post this Notice, and will abide by the following. We will:

1. CEASE AND DESIST FROM:

(a) Denying to employee organizations a reasonable right of access to the patient floors of the Acute Care Hospital and to the A level of the operating room subject to the Hospital's right to reasonably regulate the number of employee organizations granted access at any one time and the manner in which access shall be achieved to these areas. Such access shall at least include:

(1) All employee lounges on the patient floors 2 through 10 of the Acute Care Hospital and the classrooms on floors 2 through 10 to the extent the classrooms are not scheduled for in-service training of employees or staff conferences;

(2) The employee locker rooms, lunchroom/classroom and nurses lounge on the A floor of the operating room.

(b) Denying to employees their right to form, join, and participate in the activities of employee organizations of their own choosing for all statutorily permissible purposes or to refuse to do so.

Dated: _____

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, UNIVERSITY OF CALIFORNIA AT LOS ANGELES, MEDICAL CENTER

By _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST Thirty (30) WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.