Labor Practices: "RNs Demand Safe Staffing" Buttons May Be Worn On Campus, Court Says.

During negotiations for a new collective bargaining agreement to cover the hospital's RN's, nurses began wearing buttons saying, "Together Everyone Achieves More," "Staffing Crisis – Nursing Shortage – Medical Errors – Real Solutions," and "RNs Demand Safe Staffing."

The hospital banned wearing of the last button in any area of the campus where nurses might encounter patients or family members.

Unfair Labor Practice Ban Extended Beyond Direct Patient-Care Areas

The US Court of Appeals for the Ninth Circuit ruled the hospital committed an unfair labor practice because the button ban extended to non-patient-care areas of the campus as well as direct-patient-care areas.

The court expressly discounted testimony from the hospital's vice president of human relations that several nurse managers had voiced their concerns that the button could have a negative impact on patients and family members.

The court said the testimony was speculative as to any real adverse impact of the nurses' buttons if worn by nurses only in non-patient-care areas.

Patient Safety is Legitimate Concern In Nurses' Union Negotiations

Recent US private-sector unfair labor practices cases have established that the effects of hospital nurse-staffing policies on the quality of patient care are legitimate concerns for the hospital's nurses.

Nurses and their representatives are entitled to express their concerns about nurse-patient ratios and mandatory overtime policies in appropriate locations on their employers' campuses in the context of union organizing and collective bargaining.

A ban on a particular message's expression everywhere on campus requires convincing proof that the time, place and manner of the message does in fact disturb patients or their families. **Wash. State Nurses Assn. v. NLRB, __ F. 3d __, 2008 WL 2096970 (9th Cir., May 20, 2008).**

The US National Labor Relations Act makes it an unfair labor practice for a private-sector employer to interfere with, restrain or coerce employees in the exercise of their rights.

Employees' rights in this context include 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.

The National Labor Relations Board has recognized in general terms that union members have a protected right to wear union insignia in the workplace.

In healthcare the employer nevertheless can ban wearing of union insignia in direct-patient-care areas.

However, a restriction by management against employees wearing union insignia in other areas of the healthcare campus, for example, the cafeteria, gift shop and first-floor lobby, will most likely be ruled an unfair labor practice.

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT
May 20, 2008

Whistleblower: Terminated Staffer Gets Settlement.

A convalescent hospital's director of staff development complained to the director of nursing that a new hire did not have a valid nursing license or a social security number. That would make it unlawful for the hospital to hire her. The nurse was hired anyway but quickly terminated.

The staff development director also complained that it was highly unsanitary to send direct patient-care CNA's out to push garbage dumpsters from the rear to the front of the hospital. Three days later she was fired for alleged negative comments about the facility's new management.

Her wrongful termination lawsuit in the Superior Court, Alameda County, California was settled for $115,000. **Salonga v. D&R RCH Corp., 2008 WL 2101429 (Sup. Ct. Alameda Co., California, February 8, 2008).**

Whistleblower: Lawsuit Dismissed.

A nurse manager sued her former employer under the state's whistleblower law alleging she was fired in retaliation for her complaints to management.

Her complaints to management were that surgical instruments were not being sterilized correctly for the operating room and, further, that operating-room nursing staff were being discouraged from reporting the situation.

The New York Supreme Court, Appellate Division, ruled that the nurse manager had to point to a specific law or regulation and prove exactly how her former employer was violating it. Even a reasonable belief that possible violations of the law might have been occurring is not enough to qualify as a whistleblower. **Berde v. North Shore, __ N.Y.S.2d __, 2008 WL 1748333 (N.Y. App., April 15, 2008).**