

Labor Law: Court Says Mandatory Flu Vaccinations Are Not Allowed By Union Contract With Nurses.

The hospital's attempts to encourage its nurses to get flu vaccinations resulted in only 55% compliance, so hospital management decided to require flu vaccinations for all of its nurses as a fitness-for-duty requirement for their jobs.

The hospital held back during the flu vaccination shortage of 2004 and put its new policy into effect for the 2005 flu season. The nurses' union objected and the dispute was referred to binding arbitration. The arbitrator ruled for the union. The US District Court for the Western District of Washington turned down the hospital's appeal and upheld the arbitrator.

Management Rights Clause

The court pointed out that the collective bargaining agreement between the hospital and the nurses' union contained very typical generic language known as a management-rights clause.

The court, however, sided with the arbitrator's, and not with the hospital's interpretation of the management-rights clause. It allows management unilateral authority over the hospital's business affairs and patient-care standards but does not apply to personnel policies. Personnel policies have to be ironed out in negotiations between labor and management. Personnel policies cannot be dictated unilaterally by management, the court said.

Zipper Clause

The agreement contained still more generic legal language known as a zipper clause, which says that matters not discussed in negotiations are not covered by the agreement. The arbitrator and the court agreed the accepted principle for interpreting a zipper clause is not to give management unilateral discretion but to require negotiation of novel personnel issues which come up while a contract is in effect. **Virginia Mason Hosp. v. Washington State Nurses Assn.**, 2006 WL 27203 (W.D. Wash., January 5, 2006).

The nurses' union did not agree with the hospital's interpretation that the collective bargaining agreement with the nurses permitted the hospital to require flu vaccinations for nursing personnel.

The dispute went to an arbitrator, following the widespread practice that labor/management disputes must go to arbitration.

The agreement does not deal explicitly with the issue. The arbitrator ruled that the generic management rights and zipper clauses in the collective bargaining agreement pertained only to business operations and patient-care standards and did not grant the hospital unilateral authority to impose personnel standards that should be ironed out through collective bargaining.

There is no public policy in this country articulated in our public laws and government regulations that nursing personnel have to have flu vaccinations to work in a hospital.

UNITED STATES DISTRICT COURT
WASHINGTON
January 5, 2006
