Labor Relations: Circuit Court Follows Ruling That Nurses Are Supervisors, Not Employees.

The US Circuit Court of Appeals for the Eighth Circuit has followed the legal precedent set earlier this year by the US Supreme Court. See: *Labor Relations: US Supreme Court Sees Nurses As Supervisors, Not Employees.* Legal Eagle Eye Newsletter for the Nursing Profession, (9) 8, Aug. 01, p.1.

Nurses Seen As Supervisors, Not Employees

In legal terminology supervisors and employees are mutually exclusive categories. Only employees and not supervisors have rights under Federal labor law. An employer can be ordered by the National Labor Relations Board (NLRB) to bargain with a union representing the employer's employees, not the employer's supervisors.

Nurses who supervise other nurses are supervisors. They get a paycheck from the same facility as the rank-and-file nurses, but in labor-law terminology they are not employees, they are supervisors. They are part of management and they do not belong in a labor union. That is not new.

This year the US Supreme Court began to see rank-and-file staff registered nurses as supervisors, if their positions involve supervising and directing the activities of non-licensed staff who provide direct patient care.

The Eighth Circuit Court of Appeals applied the Supreme Court's rationale to registered nurses and licensed practical nurses at a nursing home owned by a large national corporation who were being organized by the United Steelworkers of America, AFL-CIO.

The court looked carefully at the staff nurses' day-to-day responsibilities in the nursing home and concluded they used their independent professional judgment to supervise and direct the nurse's aides, which is one of the legal hallmarks of being a supervisor rather than an employee. The court overruled the NLRB which had ordered the employer to bargain with the union. **Beverly Enterprises-Minnesota, Inc. v. NLRB, 266 F. 3d 785 (8th Cir., 2001).**

The US Supreme Court ruled earlier this year that nurses at a developmental facility whose job is to direct the activities of non-licensed nurse's aides are supervisors and not employees.

Nurses who are supervisors and not employees do not have rights under the National Labor Relations Act (NLRA). That is, even if they form or join a labor union their employer has no legal obligation to bargain with the union.

The Supreme Court's rationale was that the NLRA applies only to employees, not supervisors.

In this case the nurses are also supervisors. Applying the logic of the Supreme Court's decision, their employer, a major corporation that owns and operates nursing homes, did not violate the NLRA by refusing to bargain with their union.

The National Labor Relations Board was in error.

The Board should have seen the nurses as supervisors whose disputes with management are outside the Board's jurisdiction to resolve.

UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT, 2001.

PCA: Nurse Did Not Use Anti-Siphon Tubing, Court Says Manufacturer

A patient who was herself a licensed practical nurse received an over-infusion of Demerol through a patient-controlled anesthesia (PCA) device while in the hospital recovering from shoulder surgery.

She experience global brain damage which prevented her from completing her training as a registered nurse. She sued the hospital for malpractice.

The hospital destroyed the actual syringe involved in the incident. Later the hospital's expert witness inspected an identical syringe from the same manufacturer and found nothing wrong with it.

The hospital has no legal basis to reduce the patient's verdict by laying off any percentage of fault on the manufacturer.

The nurse should have used anti-siphon tubing to prevent over-infusion of the narcotic.

COLORADO COURT OF APPEALS, 2001.

The Colorado Court of Appeals said all the evidence pointed to the nurse's neglect to use anti-siphon tubing. The nurse had done that before with a PCA. It would be purely speculative to hold the manufacturer partially at fault, the court ruled. **Chavez v. Parkview Episcopal Medical Center, 32 P. 3d 609 (Colo. App., 2001).**