

FEDERAL COURT OVERTURNS UNION BUTTON BAN AT HOSPITAL

By Judd H. Lees

The Ninth Circuit Court of Appeals (which has jurisdiction over the state of Washington) recently overturned a ruling by the National Labor Relations Board which had allowed a hospital to prohibit nurses from wearing union buttons “in any areas . . . where they may encounter patients or family members.” In doing so, the Court undermined the presumption in favor of such employer bans absent substantial evidence that union buttons offend clients.

In Washington State Nurses Association v. NLRB, the Washington State Nurses Association sought a review of a Board holding that such a button ban was justified. The issue arose during labor negotiations involving the Nurses Association and the Sacred Heart Hospital when nurses wore union buttons stating “RNs Demand Safe Staffing” in areas where they could encounter patients or family members. The employer was understandably concerned that patients and the public would reasonably interpret the message as a claim that the hospital’s staffing levels were unsafe. It therefore banned the wearing of the buttons in both patient care areas and in areas where they would be viewed by the public.

Under Section 7 of the National Labor Relations Act, employees generally have a protected right to wear union insignia in the workplace absent a safety issue or, in the healthcare context, potential concerns of patients and family members. As a result, employer restrictions on the wearing of such buttons in areas of immediate patient care are presumptively valid but restrictions beyond that area are presumptively invalid.

The Nursing Association filed a charge with the National Labor Relations Board and the Board determined that the hospital overcame the presumption of invalidity of a ban outside of patient care areas by showing “special circumstances” since, according to the Board, the “safe

staffing” message was inherently disturbing to patients and their families. On appeal to the Ninth Circuit Court of Appeals, the Court disagreed and determined that the hospital failed to present substantial evidence in the record that patients or family members were actually offended or concerned by the button. In the Court’s estimation, the evidence presented by the hospital was “speculative at best.” The Sacred Heart decision underscores the critical review employed by the courts when reviewing employer bans on union buttons. If such bans are found wanting in the hospital setting, one can expect even lesser deference in other settings.