

LABOR AND EMPLOYMENT PRACTICE GROUP

Summer 2005

HEALTHCARE UNION UPDATE

UNIONS FOCUS ON EXPANDING THEIR REACH; THE UNION SUCCESS RATE IN HEALTHCARE

The AFL-CIO, a federation of 58 unions representing 13 million workers, released a report in April 2005, with its recommendations and plan of action. Among other ways of promoting union expansion, the AFL-CIO is proposing to:

- increase its strategic organizing funds to \$22.5 million;
- encourage and facilitate unions to merge; and
- extend recruitment and increase membership from 900,000 to 2 million by the end of next year.

Within the healthcare industry, there are more than 8 million employees still eligible for organizing, which represents several billion dollars annually in potential union dues. Only 12.9 percent of employees in all industries were union members in 2004. Of that total, 7.9 percent were in the private sector. While these numbers disclose a continuing decline in union membership, in 2004 there were 340 elections held in healthcare, and Unions won 235 of those elections. **That results in a Union victory rate of 69.1 percent. This compares to a Union victory rate in 2004 of 43.3 percent in manufacturing.** Based upon the Unions' success rate in healthcare, one should anticipate that union organizers will continue to make this area one of their key targets.

UNIONS ACTIVE IN ORGANIZING HEALTHCARE EMPLOYEES

The California Nurses Association ("CNA") continues to expand throughout the United States. Currently, the CNA has 55,000 union members. The CNA is a strong force within the hospital arena, and the CNA has obtained significant economic gains in many of its collective bargaining agreements. The CNA organizing campaign will focus on patient care, and this Union will have RN union organizers endeavoring to organize RNs. If the CNA selects a specific target, this union is well funded, very well organized, and a formidable opponent in any campaign.

Within the Missouri/Illinois area, local union organizer, Sharon Penrod, is a member of the Editorial Board for *Revolution*, the Journal for RNs and Patient Advocacy, which was founded by the CNA. With this connection, one might expect anticipate the CNA will at some point single out a midwest hospital for a major organizing drive.

The United Nurses Association ("UNA"), which is part of the American Nurses Association, was formed in 1999, and has a membership of approximately 100,000. The UNA has raised more than \$8 million dollars, and a significant portion of those funds will be used to organize nurses. The UNA is also in discussion with the Service Employees International Union ("SEIU") concerning joint organizing opportunities, whereby the UNA will focus upon organizing RNs, and the SEIU will focus on non-professional employees.

The American Federation of Teachers (“AFT”) has also been an active force in organizing RNs. A campaign by the AFT centers upon home visits by union organizers in an effort to obtain total support within the hospital prior to the filing of a petition. The AFT has a separate healthcare unit, and has been successful in winning 70 percent of the elections. The AFT also boasts that it has a 100 percent success rate in achieving first year contracts.

The United Food and Commercial Workers (“UFCW”) have been active in organizing hospital and nursing home employees throughout the United States. However, the UFCW only won 33.3 percent of its elections in 2004.

Finally, if the CNA targets a hospital in the Midwest, the CNA will not make the same mistakes during a union campaign which we have witnessed from the SEIU and the UFCW.

WHAT’S NEW WITHIN UNIONIZED HOSPITALS —THE ARBITRATION PROCESS

In February 2005, Arbitrator Michael Stutz held in a ruling involving North Adams Regional Hospital in North Adams, Massachusetts that the Hospital must “cease and desist” from admitting more patients than nurses can safely care for. Grievances were filed under the Collective Bargaining Agreement by RNs alleging unsafe staffing. The Union maintained their patient loads increased from five (5) to six (6) patients to ten (10) to twelve (12) patients. Within his decision Arbitrator Stutz stated, “In order for nursing practice to meet these professional standards, it is

beyond dispute that nurses must have a patient assignment load, including number and acuity, that allows sufficient time to meet all the basic standards of care.”

While the Arbitrator did not require, as the Union requested, that the hospital be compelled to hire more RN staff, the Arbitrator held that “should census or acuity become too high, then management must correct the situation by adding nurses, stopping admissions, or taking other measures to ensure that nursing assignments remain within safe parameters.”

Mary McConnell, RN, Chair of the Nurses’ Union at North Adams Regional Hospital, stated in the March/April, 2005 edition of *Revolution*, the journal for RNs and patient advocacy which is funded by the California Nurses Association, the following: “It is our sincere hope that our administrators have learned a lesson through this process, and will now heed nurses’ judgment in these situations. However, we intend to spend a great deal of time educating our members of the importance of documenting very carefully their objective to unsafe staffing assignments so that we have a detailed record to take back to the Arbitrator should that ever become necessary.”

This is one of the first reported cases that involves an arbitrator dealing with RNs’ claims of unsafe staffing levels, and the Hospital’s obligation to admit and assign patients. From a practical standpoint, this case also highlights the need for a strong management rights clause with regard to staffing so that an arbitrator cannot substitute his judgment for that of the Hospital’s Administrator. More importantly, this case demonstrates the need to have effective in-house communication programs with RNs so as to address patient care issues. This is one of the keys to maintaining a union-free environment.

STRIKE AND WAGE SETTLEMENTS

The table below highlights some of the strikes in healthcare in 2004 and 2005:

Date/Location	Strike	Outcome
August 2004	Group Health Cooperative of Puget Sound: 2200 Nurses, Medical Assistants, Social Workers and Custodians end the 19-month strike.	Wage increase for Registered Nurses and Service Staff of 4.5 percent in January, followed by 3.5 percent in the next three Julys; contract ratification bonus of \$2,375 or \$875; co-pays for individual coverage of \$10, and family coverage of \$40; those co-pays will increase to \$15 and \$70 by June 2008; base salary of \$84,000 for nurses at the top of the scale.
December 2004: San Francisco, CA	Sutter Health Facilities in Santa Rosa and Lakeport: 600 Nurses and other hospital employees conducted a five-day strike. Forty percent of the represented nurses crossed the picket line at Santa Rya Medical Center and Sutter Warrack Hospital. Fifty-seven percent of the represented workers reported to work at Sutter Lakeside Hospital.	Sutter locked out employees for four days; the Union and Hospital have agreed to confer with a federal mediator. The Unions are aiming for a uniform contract that equalizes pay and benefits across the Sutter Bay area facilities.
January 2005: St. Louis, Missouri	St. John's Medical Center: UFCW maintained that approximately 700 represented nurses crossed the picket line within a unit of 1,500 nurses. St. John's Medical Center stated the number of represented nurses crossing the picket line was much higher. The strike lasted approximately five weeks.	Three percent annual raise for some nurses; provides nurses a once a year opportunity to withdraw from the Union; requires that the Hospital tell the Union about changed healthcare benefits; and calls for nurse representation on a professional nursing practice committee.

SPECIAL ALERT — NURSING HOMES

The nursing home industry continues to be an area ripe for unionization. The Service Employees International Union continues to expand within this sector. Because of the relatively small size of nursing homes as compared to hospitals, union organizers do not need to make a significant financial commitment. If a union seeks to organize your nursing home, we have found one of the best techniques for success is to locate former union members who will share testimonials on the disadvantages of union membership within the healthcare industry. These former union members/business representatives will share their experiences on why a union is not in the best interest of the employee, the residents, and the employer.

MAINTAINING A UNION FREE ENVIRONMENT

The keys to maintaining a union free environment continue to center upon effective employee relations programs and ensuring that front-line supervisors are treating employees with respect and in a non-discriminatory manner.

The following strategies have in the past been keys to maintaining a union free environment:

- (a) demonstrate that leadership has a vision for the future, and invite employees to participate within that vision;
- (b) advise your employees of the current state of affairs; establish written action plans for successfully dealing with these concerns;
- (c) conduct follow-up meetings with your employees to demonstrate your commitment to accomplishing the items referenced in the action plan;
- (d) emphasize within employee meetings your past accomplishments;
- (e) establish rotating committees to deal with patient care matters; and
- (f) emphasize that your institution has competitive wages and benefits.

If you feel that your institution would benefit from a training program involving union avoidance strategies, then please contact a member of the Labor, Benefits and Employment Practice Group in either Missouri or Illinois.

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