

SPLIT NLRB HOLDS HOSPITAL CANNOT BAN UNION INSIGNIA IN WORKPLACE

On April 20, 2018, a majority panel of the National Labor Relations Board (“NLRB”) ruled that Long Beach Medical Center, Inc., an operator of hospitals in the Long Beach, California area, violated Section 8(a)(1) of the National Labor Relations Act (“NLRA”) by maintaining an overly broad rule that prohibited employees from wearing small badge holders that carried their union’s insignia on them.

The Hospital required all employees to visibly wear employer-issued identification badges at all times while on hospital premises. The Hospital’s policies also required registered nurses to either affix their identification badge directly to their uniform, or attach it to a retractable string pulley that allows it to be stretched out when it must be identified or swiped. Additionally, a policy called “Appearance, Grooming and Infection Prevention Standards for Direct Care Providers” stated that badge reels may only be branded with logos or text approved by the Hospital, thus prohibiting employees from wearing badge reels branded with union insignia.

In *Long Beach Medical Center*, the Board’s majority, which included Members Mark Gaston Pearce and Lauren McFerran, first held that a separate dress code policy, which only allowed for Hospital-approved pins, badges, and professional certifications to be worn, was presumed to be invalid because it was not limited to direct patient care areas, and no special circumstances warranted such a broad restriction. Next, the Board majority held that the badge reel rule was also unlawful, reversing the Administrative Law Judge’s finding.

The Board noted that under the NLRA, employees generally have a right to wear union insignia at work in the absence of special circumstances. However, in the context of healthcare facilities, a prohibition on union insignia in immediate patient care areas is presumed to be valid. The Hospital argued that it only intended its policy to be applied in patient care areas, but the Board majority found that limiting the rule to “direct patient care providers” did not exclude the possibility the rule would affect the rights of employees when they were outside immediate patient care areas. The rule was therefore overly broad and unlawful. The Board found no evidence that employees disrupted healthcare operations, disturbed patients, or interfered with the Hospital’s goal of providing quality patient care, by wearing their union badge reels.

Member William J. Emanuel, a Trump appointee currently under scrutiny for alleged violations of his ethics pledge, dissented. He believed that the rule was intended to apply only in immediate patient care areas, where employers are given greater leeway to ban pins, badges, and buttons. According to Member Emanuel, the Hospital had legitimate concerns about infection control, security, and the institution’s public image that justified its prohibition on “unofficial” badge reels.

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