

WHEN CAN HEALTH CARE EMPLOYERS RESTRICT PRO-UNION EMPLOYEE BADGES?

The National Labor Relations Board ("NLRB") recently had the opportunity to return to the subject of employer policies restricting nurses and other employees from wearing pro-union insignia in the workplace.

THE RULES

The NLRB decision focused on two policies, which were challenged by their employees.

The first policy, dealing with appropriate dress and grooming, applied to all employees and provided that "only approved pins, badges, and professional certifications may be worn."

The second policy addressed appearance, grooming and infection prevention specifically for direct care providers and required them to wear identification badges that could be readily seen while at the hospital. While the policy allowed these employees to wear a badge reel, the reel could "...only be branded with Memorial/Care approved logos or text."

THE NLRB'S POSITION

Under existing Board law, employees have the right to wear union insignia at work in the absence of special circumstances. A unique rule has been developed for health care facilities. In such facilities, restrictions on wearing union insignia in patient care areas are presumptively valid. Conversely, rules that restrict wearing union insignia in non-patient care areas are presumptively invalid, unless the employer can establish special circumstances that justify the rule.

THE DECISION

In a 2-1 decision, a panel of the NLRB found both policies to be invalid. The first policy was stricken as being presumptively invalid since it was not limited to patient care areas. Likewise, the second policy was stricken because, although it was limited to patient care providers, it was not limited to the times when those providers were in patient care areas. The panel of the Board likewise found that there were no "special circumstances" that would have otherwise supported the policy, noting that the hospital "...presented no evidence showing that employees in any way disrupted healthcare operations or disturbed patients by wearing badge reels branded with union insignia."

It is noteworthy that the Board panel was made up of two Obama administration appointees (Mark Gaston Pearce and Lauren McFerran) and one Trump administration appointee (William Emmanuel). Emmanuel wrote a dissenting opinion disagreeing with much of the majority's decision.

PRACTICAL TAKEAWAYS

It is clear that the NLRB is willing to take a close look at employer policies that address and limit the wearing of union insignia. Health care employers are well advised to review their policies and make sure that any such limitations are restricted to the wearing of unapproved insignia in patient care areas only. While it is possible that the NLRB rules discussed above will be modified by the current NLRB, until then, it is best to comply.

If you have questions about this decision, please contact **Bruce Bagdady** at bbagdady@hallrender.com or (248) 457-7839 or your regular Hall Render attorney.