



## Unions Continue to Covet Healthcare Workers

### *Is Your Hospital Ready?*

By A. Kevin Troutman (Houston)

By now, most hospital and healthcare leaders recognize that their employees represent an increasingly inviting organizing target for unions such as the Service Employees' International Union (SEIU) and the California Nurses Association (CNA). If any question remains, it is "when," not "if" one or more unions will mount some sort of an offensive at your facility.

When they do, they are likely to also enjoy the benefits of legislative changes designed to make organizing easier. As events of the past year have already shown, even traditionally union-free states must prepare for more aggressive Labor activity. Is your hospital ready?

#### **Factors That Make Hospitals Particularly Susceptible To Union Organizing**

By their nature, hospitals are inherently vulnerable to organizing attempts. The environment is intense and demanding. Night-shift and weekend workers can tend to feel isolated from management, especially if management is not regularly visible. Pool and agency nurses who work at more than one facility may not feel the same sense of belonging as do full-time workers.

In addition, a diversity of highly specialized departments can lead to misunderstanding and tension. Cultural differences may also contribute to misunderstandings, especially if a department or shift is composed primarily of workers from a particular background or culture. These factors make it even more important for management to stay tuned in to workers' concerns, through structured systems and by staying plugged in to the rumor mill.

#### **Important Legislative Changes Are Likely To Impact Your Hospital**

In 2009, Congress is certain to re-visit major pro-Labor initiatives. Specifically, some form of the so-called Employee Free Choice Act (EFCA) could soon become law. As currently written, EFCA would undo 75 years of legal precedent and among other things, eliminate secret ballot certification elections. Even if EFCA is watered down and secret ballot elections are not eliminated, political horse-trading will probably result in some other new advantages for Big Labor. The advantages could include a dramatically-shortened election period, which would allow employers as little as 5-10 days to prepare for a union election. Regardless of the form it finally takes, EFCA promises to change fundamental aspects of the organizing process.

The RESPECT Act is also likely to re-emerge next year. If passed, it would significantly narrow the range of individuals who would be considered "supervisors." Consequently, more employees would be eligible to become dues-paying union members and fewer would be permitted to help the hospital present its side of the story during a union campaign.

#### **What Should Your Hospital Be Doing To Prepare?**

No matter how the legislative agenda plays out precisely, employers can take positive, concrete steps now to protect their union-free status. By following these recommendations, you can strengthen your hospital's employee relations program and make it more difficult for unions to mount a successful stealth attack.

- Implement specific steps to identify the issues that are most important to your employees. These will surely include pay, benefits and staffing, but it is critical to understand exactly what your employees are thinking.
- Follow-up. Nothing is worse than seeking employee input, but doing nothing with it. Establish and implement plans to address the issues you have identified.
- Evaluate and promote open communications with employees, in both words and deeds. Employees need to see that you are interested in what is on their minds.
- Ensure that your environment fosters fair employment decisions.

As always, hospitals should ensure that their pay and benefits remain fair and competitive; maintain a safe working environment; and work to maintain a very positive image in the community. With an eye to the impact of the RESPECT Act, you should also evaluate the duties and job descriptions of all supervisory employees, revising them as necessary. Additionally, give some thought to potential issues regarding the composition of bargaining units in the event of organizing efforts. Ideally, all of these preventive activities should be under way now.

You should also begin training supervisors and managers regarding the current labor environment, including possible changes in the law; educate current and new employees on your hospital's position regarding unionization, including your reasons for taking that position; and the status and meaning of EFCA. The goal is to help inoculate employees from card-signing pitches that are likely to be both coercive and inaccurate. Finally, you should begin to identify and develop an internal campaign team.

There is no question that EFCA, the RESPECT Act and aggressive organizing activities in healthcare are near the top of Labor's agenda for 2009. Now more than ever, hospitals cannot wait to get prepared.

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# Good Investigations Pay Great Dividends

By Karen Gieselman (Columbia)

In the current economy, many managers and supervisors are being asked to do more with less, and success in today's market is marked by efficiency. Increasingly, managers and supervisors are being given more authority to handle personnel related matters and have less time to devote to handling such issues with care.

Given the focus on efficiency and productivity, human resources officers, managers and supervisors may be tempted to "cut corners" and invest only minimal effort into an investigation, so as not to divert precious time and resources away from activities directly related to the provision of health care services.

But the importance of proper investigations in avoiding employee-relations headaches is huge. A recent decision by a U.S. Appeals Court underscores this fact. *Furline v. Morrison*.

In this article we'll look at that decision and its consequences. In our next issue, we'll include some tips about how to conduct a proper investigation.

## Howard University Hospital Faced With Charges

In late 2000, Howard University Hospital hired over a dozen new registrars for its Emergency Care Area, most of whom were in their twenties. By 2001, rumors of age discrimination were rampant. Seasoned

registrars such as Cynthia Morrison believed that favoritism was being shown to the younger registrars, and unfounded rumors spread that younger registrars were paid more than veteran registrars.

One day, a screen saver message was left on a computer asking why younger registrars are paid more than their more experienced colleagues. Morrison's supervisor responded by posting his own screen saver message which said that younger employees are paid more because "they are younger, dependable, and more productive, that's why." Morrison complained to the Director of Business Operations, who verbally counseled the supervisor and directed him to apologize to the Emergency Care staff.

In the months preceding the screensaver incident, the Hospital had identified widespread problems with absenteeism and suspected abuse of leave by registrars and, as a result, sixteen of nineteen registrars, including Morrison, were counseled on the need to improve their attendance. Soon after, Morrison took additional unscheduled leave, and received a letter of reprimand – just ten days after Morrison complained about the screensaver incident.

Later, Morrison failed to show up to work on Memorial Day. Morrison's supervisor and the Director of Business Operations, with input from two other supervisors in the Emergency Care Area, recommended that Morrison be suspended for five days under the Hospital's progressive discipline policy. The recommendation was approved by the Hospital CFO and forwarded to Human Resources.

Human Resources then conducted an independent investigation and held a hearing. Morrison was permitted to speak on her own behalf and present evidence. An independent "employee and labor relations specialist" presided over the hearing and recommended the suspension be carried out. Human Resources, the Hospital COO, and the Office of General Counsel approved the decision. Morrison sued in federal district court alleging, that she was retaliated against for complaining about age discrimination. A jury, believing that the age bias of Morrison's supervisor influenced the decision to suspend Morrison, awarded Morrison over \$100,000 in damages.

But on appeal the U.S. Court of Appeals for the District of Columbia Circuit found that the jury's award could not be sustained based on the evidence.

## Investigations are Worth the Time

The Court concluded that even presuming Morrison's supervisor recommended her suspension for a retaliatory or discriminatory reason, Morrison had no evidence that the *actual decision makers* suspended her for discriminatory reasons. The Hospital avoided liability because it conducted an independent investigation. The independent review undertaken by the Hospital's senior officials satisfied the Court that the Hospital's decision to suspend Morrison was free from any influence by her supervisor and reversed the jury's determination.

Federal and state laws often require employers to conduct investigations especially in harassment situations. In some circumstances, you can avoid liability if you can show that you took reasonable care to prevent and promptly correct harassing behavior, and that the complaining employee failed to take advantage of the preventive or corrective opportunities provided. Many other laws require employers to take similar preventive and corrective actions. So conducting thorough, appropriate investigations can help a company minimize risk and avoid liability altogether.

We'll cover some do's and don'ts in the next issue of Healthcare Update.

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