

UPDATE

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HOSPITALS BEWARE! UNION ORGANIZING AMONG RESIDENTS GROWS AS MORE LEGAL CHALLENGES TO THEIR EFFORTS ARE REJECTED

Resident-targeted unions are gaining strength across the country, targeting medical students at conferences even before they graduate, with an emphasis on achieving better patient care and improved working conditions. The Committee of Interns and Residents (“CIR”), an affiliate of the Service Employees International Union, already represents over 13,000 residents across the country, and its ranks continue to grow.

St. Barnabas Hospital in New York is the latest to succumb to union organizing efforts among its residents, with a recent decision from Region 2 of the National Labor Relations Board sustaining the rights of residents to organize and rejecting legal challenges by the hospital based on the “educational” focus of the residents’ roles and responsibilities.

Union organizing for residents gained momentum following the Board’s 1999 decision in Boston Medical Center, which reversed 23 years of Board law and newly characterized interns and residents as more akin to physician employees – with attendant rights under the National Labor Relations Act – than students. There, the Board rejected the hospital’s argument that the residents entered into a relationship with the hospital to fulfill state required educational requirements rather than to earn a living, with the money the residents received serving as living allowances (like other students), rather than salary. The residents’ receipt of workers’ compensation insurance, paid vacation, sick leave, malpractice insurance and health benefits all demonstrated that a financial relationship – indicative of an employment relationship – actually existed with the hospital. Furthermore, the residents spent 80% of their time in direct patient care as opposed to educational activities. The Board viewed their on-the-job training as similar to apprentices learning a trade who continue to receive training in order to maintain their licenses.

St. Barnabas tried to distinguish its residents from those at issue in the Boston Medical Center case on the grounds that its program was more “education” oriented. Citing to the lectures the residents were required to attend, the grades they received, and the homework assignments they were given, the hospital argued that its residents should be viewed as students, not employees. The Board’s Regional Director disagreed, finding that the significant amount of time spent by the St. Barnabas’ residents on providing medical services to patients could not support a “student” characterization, as their roles are not sufficiently dissimilar from those of the residents in Boston Medical Center. The Regional Director concluded that residents’ grades are similar to employee performance evaluations, and lecture attendance and homework assignments are similar to continuing education requirements in other professions. That the residents were highly supervised and trained did not negate their otherwise employee-like status.

On June 11, 2009, St. Barnabas filed a request for review of the Regional Director’s decision with the National Labor Relations Board, essentially asking the Board to reconsider Boston Medical Center and return to their characterization of residents as “students” with no rights to seek union representation or collectively bargain regarding wages, hours and working conditions. Given that the Board only has two of its five appointed members in place, it is likely that the fate of the St. Barnabas residents’ organizing efforts will be on hold for the near future.

While only 12% of residents across the country are currently members of unions, it appears that unions like CIR are using the current state of health care in our nation to attract interest to their cause among activist medical students – who will become the next generation of interns and residents. Accordingly, this is a good time to review your intern/residency policies and assess your organization’s vulnerability to an organizing effort. Consider whether there is good communication between residents and those who supervise them. Even more importantly, consider whether interns and residents understand the legal significance of union authorization cards and the current secret ballot election process, whether your supervisors are prepared to respond effectively to unionization efforts within the boundaries of the law, and whether interns and residents will be prepared to protect themselves against potential pressure from union organizers – or their fellow residents – to sign cards.