

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEMPLE UNIVERSITY HOSPITAL :
NURSES ASSOCIATION :
 : Case No. PERA-C-06-39-E
v. :
 :
TEMPLE UNIVERSITY HOSPITAL :

FINAL ORDER

Temple University Hospital (Hospital) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on November 15, 2006, challenging a Proposed Decision and Order (PDO) issued October 27, 2006, in which the Board Hearing Examiner found that the Hospital violated Section 1201(a)(1) of the Public Employee Relations Act (PERA) by directing employes to cease wearing a sticker distributed by the Temple University Hospital Nurses Association (Association). The Association filed a timely brief in opposition to the exceptions on December 5, 2006.¹

The facts are briefly summarized as follows. Certain employes at the Hospital, including employes in the bargaining unit represented by the Association, wore a green sticker that was about 2 ¼" square containing the text, "Bring Back Janell," in a circular arch across the top, with the underlined words, "Safety For All Our Staff," underneath. (Finding of Fact 3). After observing employes wearing the stickers in the Hospital, including areas where patients received treatment, a Hospital manager, Naté Parker-Guyton, was told by her supervisor that employes could not wear the stickers "inside the hospital". The Hospital directed the Association representative "to remove the sticker," after which employes removed their "Bring Back Janell Safety for All Our Staff" stickers while inside the Hospital. (Finding of Fact 4).

In its exceptions, the Hospital contends that it banned the sticker in only patient care areas, and argues that the Examiner's finding that the Hospital banned the wearing of the sticker in all areas of the Hospital is not supported in the record. Under prior precedent, Temple University Hospital Nurses Association v. Temple University Hospital, 33 PPER ¶33149 (Final Order, 2002) (Temple I), also involving this employer, the Board determined that employes in hospital settings possess a statutory right to reasonable communication through wearing pins, buttons, and solicitation and distribution of literature, at least in non-work areas and on non-work time. The Hospital seeks to avoid the Examiner's unfair practice determination based on his finding and conclusion that the Hospital's prohibition was overly broad, prohibiting the wearing of the sticker in all areas of the Hospital regardless of whether it was done in areas of the Hospital where patients are not found. In Temple I, the Board drew a distinction between patient care areas where patients are treated and tested, and other areas where a prohibition is overly broad because patients are not found and any purported negative impact on the patients is unsupported. The Hospital here seeks to avoid Temple I by challenging the Examiner's Findings of Fact that the Hospital banned the sticker in all areas of the Hospital.

The findings of fact made by the hearing examiner must be supported in the record by such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942). The testimony of Ms. Parker-Guyton, offered by the Hospital, supports the Examiner's finding

¹ On March 19, 2007, the Board received a subsequent submission from the Hospital directing the Board's attention to Leiser Construction LLC, Case No. 17-CA-23177 (February 28, 2007) which purportedly "reiterates" the holding in Sacred Heart Medical Center, 347 NLRB No. 48 (2006) relied on by the Hospital in its principal brief. Once initial briefs have been filed by the parties on exceptions, the Board follows the practice of the Pennsylvania appellate courts with regard to post-submission communications, Pa.R.A.P. 2501, wherein submissions will not be entertained unless the subsequent authority "expressly reversed, modified, overruled or otherwise affected [authority relied upon] so as to materially affect its status as an authoritative statement of the law for which it was originally cited..." The Hospital's March 19, 2007 post-submission communication states that its subsequently cited case purports to "reiterate" the holding in Sacred Heart, and accordingly it will not be considered by the Board in rendering this decision.

that the Hospital banned the wearing of the sticker "inside the hospital". Ms. Parker-Guyton testified unequivocally that she directed the Association representative and employes to remove the sticker, because she was informed by her superior that employes "could wear them on the outside, but they couldn't wear them inside the hospital." (Notes of Testimony at 41). Indeed, her reasons comport with the testimony of Richard D. Lutman, Assistant Director of Labor Relations for the Hospital, who identified the departments that had received the instruction to have employes remove the sticker, testifying that "I don't believe we got every little department, but ... the nursing department, the transportation department, environmental service, ... dietary ... [and] transportation..." (Notes of Testimony at 60). Accordingly, the Examiner's Finding of Fact that the Hospital had banned the wearing of the sticker inside the Hospital, is supported by the testimony of Ms. Parker-Guyton and Mr. Lutman, and will not be disturbed on exceptions.

The Hospital argues that even if its ban extended beyond patient care areas, it was justified in banning employes from wearing a sticker that read "Bring Back Janell Safety for All Our Staff". The Association counters that under federal case law, the Hospital's ban of the sticker in non-patient care areas of the Hospital was unlawful.

In order to ban employes from wearing union buttons, or in this case stickers, in areas where they may be seen by patients, the hospital must show that its prohibition on wearing a particular button, is "necessary to avoid disruption of health care operations or disturbance of patients." Mt. Clemens General Hospital, 328 F.3d at 847 (quoting NLRB v. Harper-Grace Hospitals, 737 F.2d 576, 578 (6th Cir. 1984); Sacred Heart Medical Center, 347 NLRB No. 48 at 2 (quoting Beth Israel Hospital v. NLRB, 437 U.S. 483, 507 (1978)). Actual complaints from patients or family are not required, Temple I, it is enough for the Hospital to establish that by understanding the message of the button or sticker a reasonable patient or family member would be negatively impacted. In this regard, the Hospital is not required to provide patients to testify about the impact on them, but rather may show that the situation is likely to either disrupt patient care or disturb patients. In the latter circumstance, the employer may rely on the solicitation's objective impact on a reasonable patient.

The Hospital offered evidence through the testimony of Ms. Parker-Guyton and Mr. Lutman, that upon reading "Safety for All Our Staff", patients would have a concern for their own safety. Indeed, Ms. Parker-Guyton noted that the sticker would prompt questions of "what's safe and what's not safe ... [a]nd if the staff's not safe, then are the patients safe." (N.T. 41). Similarly, Mr. Lutman recognized that patients may "wonder whether they were safe." (N.T. 56). It is not unreasonable for patients upon reading "Bring Back Janell Safety for All Our Staff" that they may become concerned about their own safety. A reasonable patient may likely question, 'Is the hospital unsafe without Janell?' or 'If the staff is unsafe, am I safe?' The fact that a patient may have to inquire to find the answer to these questions does not dissolve the conclusion that a reasonable patient upon reading "Bring Back Janell Safety for All Our Staff" may question their own safety and become disturbed by the message.

While nurses and other public employes of a hospital do have an interest in their statutory right to organize and engage in mutual aid and protection, and cannot be entirely foreclosed from communicating with other employes of a hospital, Beth Israel Hospital v. NLRB, 437 U.S. 483, 507 (1978), it cannot be disputed that a hospital has a compelling interest in preserving the well-being and care of patients receiving medical treatment and services at its facility. NLRB v. Baptist Hospital, 442 U.S. 774 (1979); Temple I. A public health care facility's function is to provide effective patient care as it sees fit, and in those areas of the hospital where patients receive personalized and direct treatment the hospital's interest in providing a tranquil environment is of necessity paramount to the right of employes to openly discuss or display their employment concerns under Article IV of PERA. Likewise, in all public areas of the hospital where patients have access and may encounter employes, the hospital's interest in providing a calm environment and avoiding disturbing patients is equally as strong and compelling enough to outweigh the employes' rights to publicly air their concerns over wages, hours and working conditions in a manner which may disturb patients and their families.

Because the Hospital has shown that its ban on the sticker was legitimately connected to patient care, we find, contrary to the Examiner, that the Hospital lawfully banned the sticker in areas of the Hospital where patients may encounter employees wearing the sticker. The Hospital's justified concerns that patients may be disturbed by reading the "Bring Back Janell Safety for All Our Staff" sticker, does not however support its ban of the sticker "in all areas inside" the Hospital. In those non-work areas of the Hospital where only staff have access and no patients are permitted, the Hospital's legitimate concerns over patient care are not implicated, and the Association's statutory interests in communicating with bargaining unit employees prevails.

After a thorough review of the exceptions and all matters of record, the Hospital has violated PERA by banning the Association members from wearing the "Bring Back Janell Safety for All Our Staff" sticker in areas of the Hospital where the sticker would not be seen by patients. However, because the Hospital has shown that, if viewed by patients, the sticker may disturb patients, or be disruptive of patient care, its ban of the sticker from public areas of the Hospital where patients have access, is lawful. Accordingly, as to public areas of the hospital where patients may encounter employees wearing the "Bring Back Janell Safety for All Our Staff" sticker, we will sustain the Hospital's exceptions. The Hospital's exceptions to the Examiner's finding of a violation of Section 1201(a)(1) of PERA, are dismissed, in part, as the Examiner properly found a violation for the Hospital's ban of the sticker from all areas inside the Hospital.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board.

HEREBY ORDERS AND DIRECTS

that exceptions filed by Temple University Hospital are hereby dismissed in part, and sustained in part. The October 27, 2006 Proposed Decision and Order, finding and concluding that the Hospital committed an unfair practice, is hereby reversed in part and sustained in part consistent with the above discussion. The order on page 6 of the Proposed Decision and Order is vacated and the Proposed Decision and Order as amended herein is, in all other respects, made absolute and final.

IT IS FURTHER ORDERED AND DIRECTED

That the Hospital shall:

(1) Cease and desist from interfering, restraining or coercing employees in the exercise of the rights guaranteed under Article IV of the Act.

(2) Take the following affirmative action which the Board finds necessary to effectuate the policies of the Act:

(a) Immediately rescind any restriction on the wearing of the sticker at issue herein by bargaining unit members in all areas of the Hospital where patients do not have access;

(b) Post copies of the proposed decision and order and final order within five (5) days of the date hereof and have the same remain so posted for a period of ten (10) consecutive days; and

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this order by completion and filing of the attached affidavit.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twentieth day of March, 2007. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

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AFFIDAVIT OF COMPLIANCE

Temple University Hospital hereby certifies that it has ceased and desisted from interfering, restraining or coercing employes in the exercise of the rights guaranteed under Article IV of the Act, that it has rescinded any restraint on the wearing of the sticker at issue herein by bargaining unit members in areas of the hospital where patients do not have access, that it has posted a copy of the proposed decision and order and final order as directed, and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public