

## Labor Law: Hospital Must Collect Union Dues, Fire Non-Union Nurses. Court Throws Out Arguments Based On Nursing Shortage.

The US Court of Appeals for the Eighth Circuit has upheld an order of the US National Labor Relations Board (NLRB) requiring a hospital to discharge its nurses who refused to pay the union initiation fee and union dues as required by the union-security clause in the nurses' collective bargaining agreement.

The court overruled several arguments made by the hospital.

### State Law

As a general rule, the US National Labor Relations Act (NLRA) does not permit the NLRB or the US courts to enforce a clause in a collective bargaining agreement which requires an employer to violate state law.

State law (Missouri) does require hospitals to maintain adequate levels of nurse staffing to meet their patients' needs. However, according to the court, that does not invalidate a union-security clause requiring a hospital to discharge a certain number of its nurses.

### Nursing Shortage / Public Policy

Even if the hospital's statistics are accurate that there is a nursing shortage, that is no justification to ignore a union-security clause, the court said. The court pointed out the hospital had dealt with a nurses' strike in the past by hiring temporary replacement workers and by shifting patients and nurses between locations affected and not affected by the work stoppage.

### Congressional Intent

The court found no basis for the argument the NLRA gives special treatment to health care employers with regard to union-security clauses.

### Current Union Contract

The court would not consider the question whether the 2001 union contract (union security clause) or the newer 2004 contract (no union security clause) actually applied to this case as the hospital had not raised that issue with the NLRB. St. John's Mercy Health System v. NLRB, \_\_\_ F. 3d \_\_\_, 2006 WL 229912 (8th Cir., February 1, 2006).