



NLRB Reaffirms Medical Interns and Residents are Statutory Employees

By Bruce Buchanan, King & Ballow Partner

bbuchanan@kingballow.com

Medical interns and residents, or house staff, may organize into unions. A recent decision issued by the National Labor Relations Board reaffirmed a previous decision finding medical interns and residents to be statutory employees with the right to organize. This may signal an increase in collective bargaining attempts.

On June 3, 2010, in *St. Barnabas Hospital*, 355 NLRB No. 39, the NLRB, by a vote of 2 to 1, with Chairman Liebman and new NLRB member Becker in the majority, denied the hospital's request for review of the NLRB Regional Director's decision to direct an election for organizing the hospital's interns and residents.

The hospital challenged the directed election asserting the Regional Director should have considered a previous NLRB decision determining that interns and residents are not statutory employees with rights to organize. *Brown University*, 342 NLRB 483 (2004). In *Brown University*, the NLRB found teaching assistants (TAs) and research assistants (RAs) are not statutory employees when their employment status is contingent upon their continued enrollment as students; the money received by the TAs and RAs is financial aid, not income for work; and the relationship between the graduate assistants and the university was primarily educational, not that of an employer-employee.

However, previously, the NLRB had held medical interns and residents, or house staff, are statutory employees with a right to organize under the Act. *Boston Medical Center, Boston Medical Center*, 330 NLRB 152 (1999), The Board noted the following elements demonstrate an employer-employee relationship which confers the right to organize: (1) they



work for an employer within the meaning of the NLRA; (2) they are compensated for their services, although it is in the form of a stipend, plus fringe benefits, including paid vacations, sick leave and health, dental, life and malpractice insurance; (3) they spend up to 80% of their time at the hospital engaged in direct patient care; and (4) the advanced training in their specialty is not inconsistent with “employee” status.

The NLRB rejected the hospital’s reliance upon *Brown University*, stating *Boston Medical Center* had been the law for over a decade, and no court of appeals had questioned its validity. Furthermore, peaceful and fruitful collective bargaining had taken place between house staffs and hospitals under both federal labor law and state collective-bargaining laws. Moreover, the *Brown University* decision was based on a factual analysis of what TAs and RAs actually do. The role of TAs and RAs at universities is different from that of house staff at medical centers.

Member Schaumber dissented and stated he would grant review to consider the Employer’s contentions regarding the decision in *Brown University*. Based upon this decision confirming the NLRB’s current position towards construing statutory employee status to medical residents and interns, providers may anticipate an increase in collective bargaining efforts.

For more information contact: Bruce Buchanan, Partner at King & Ballow, bbuchanan@kingballow.com, phone (615) 726-5484.

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