American Hospital Association

Employee Relations

Background

America's hospitals recognize and appreciate the compassion, hard work and dedication their employees demonstrate in caring for patients and communities, which is why the AHA is committed to working with all stakeholders to identify strategies, resources and policies that support caregivers. However, we are concerned that certain misguided initiatives by organized labor would jeopardize the care Americans expect and deserve from their hospitals and threaten workers' confidentiality in their decision to unionize.

Labor issues will be in the forefront this year under a unified Democratic Congress and administration. Here is a snapshot of issues that will likely be in play in 2009.

Card Check. *The National Labor Relations Act* (NLRA) guarantees employees the right to a federally supervised private ballot election during union organizing drives; however, that protection is threatened by the misleading *Employee Free Choice Act* (S. 560/H.R. 1409), which would amend the NLRA to require employers to recognize the union solely through the "card check" process, thus permitting labor unions to avoid secret ballot elections. Under the card check approach, union authorization cards may be signed in the presence of an interested party, for example, a union organizer or a pro-union co-worker. The cards are then presented as representing the true intent of the workers. Once cards are signed by 50 percent plus one workers, the employer and the National Labor Relations Board (NLRB) must immediately recognize the union as a bargaining agent. The NLRB is barred from conducting a subsequent election.

The AHA opposes S. 560/H.R. 1409 because it would change the current union election system that is based on the bedrock principle of democracy: free and fair elections where ballots are cast in private, free from outside influence and pressure. The legislation also would impose initial contact binding arbitration between employers and employees if, after 120 days of negotiation, no contract agreement has been reached. The decision by the arbitrator would be final; the contract not subject to ratification by the employees; and would remain in effect for two years or until a new contract is agreed upon, whichever comes first. Further, the bill would increase the penalties imposed on employers who are found to have committed unfair labor practices during a union organizing drive or negotiation of a first contract. These enhanced penalties apply only to employer, not union, violations.

There is strong support for the legislation among House Democrats, but prospects and timing in the Senate are uncertain. Proponents of card check need 60 Senate votes for cloture, which is a Senate parliamentary procedure that ends debate and allows a bill to go to the floor for an up or down vote, where only 51 votes are needed for a bill to pass. The AHA is strongly urging senators to vote "no" on

cloture thereby blocking the bill from moving to the Senate floor for consideration, and preventing passage of the legislation.

The AHA and its American Society for Healthcare Human Resources Administration (ASHHRA) support the *Secret Ballot Protection Act* (S. 478/H.R. 1176), which would amend the NLRA to require that union recognition be based on a secret ballot election conducted by the NLRB. The bill would protect the interests of both the employer and the employee by ensuring that both sides have an opportunity to make their case, and that those employees are able to express their decision in private**, free from undue pressure or influence.**

The AHA and ASHHRA are members of the Coalition for a Democratic Workplace, a group of more than 560 organizations representing workers, employers, associations and others united to defeat card check legislation. Recent polling of union members and all voters, conducted for the coalition, showed that a strong majority – more than 80 percent – favor a federally supervised election as a means "to protect the individual rights of workers."

NLRA Definition of "Supervisor." In the extremely complex and fast-paced world of hospital decision making, it is critical that the charge nurse's supervisory role be unencumbered and not conflicted by labor and management issues, which is why **the AHA opposes any attempts to modify the NLRA that would limit charge nurses' responsibilities.** Previously, Congress considered legislation that would remove two functions from the NLRA definition of supervisor – "assigning" and "responsibly directing" other employees, and require supervisors to spend a majority of their time performing other duties, such as hiring, firing and disciplining other employees. Removing these functions from the NLRA definition of "supervisor" would enable supervisors to be eligible for inclusion in the collective bargaining unit and subject to all union work rules and discipline.

Current NLRB guidance on when charge nurses are supervisors strikes a reasonable balance in establishing the criteria for when charge nurses function as supervisors. Not every charge nurse is a supervisor – it is the responsibilities that make the difference. On a day-to-day basis, charge nurses are often the most visible individuals "in charge" of a hospital unit, stepping in when there is a crisis or conflict and providing a management voice to patients, families and other employees. We must preserve the ability of charge nurses to carry out their roles as the voice of management without being subject to conflicting loyalties and threats of union discipline.

Mandatory Lifting. Hospitals couldn't exist without hardworking nurses and caregivers – they are the backbone of patient care – and protecting their health and preventing injuries are priorities. That's why virtually every hospital has lifting devices to assist nurses and other caregivers in transferring patients.

However, the AHA expects legislation to be reintroduced this year that would set unreasonably strict guidelines that could jeopardize – and even prevent – proper patient care. Efforts to eliminate the manual lifting of all categories of patients, including newborns and pediatric patients, except during a declared state of emergency, would have a devastating effect on hospital operations and patient care. (A "declared state of emergency" includes those specified by the federal, state, or local government.)

When patients need to be transferred, nurses and other caregivers must have flexibility in making decisions about patient care. This is especially critical in an emergency, when a patient's life could hang in the balance. Restricting manual lifting only to times when a government official has declared a state of emergency fails to take into account the emergencies that happen every day in a hospital – when quick thinking and action can save a life.

Nurse Staffing Patterns. Many factors influence a hospital's staffing plan to ensure patients receive appropriate care, including the experience and education of its RNs, the availability of other caregivers, patients' needs and the severity of their illnesses and the availability of technology. A major consideration, however, is the availability of the RNs themselves. While the recession temporarily has eased workforce vacancies in some areas, once the economy improves, severe shortages will return. The demand for registered nurses (RNs) and other health care personnel will continue to rise when the "baby boomers" begin to retire next year. The Bureau of Labor Statistics reports that the U.S. will need more than 1 million nurses by 2020.

The Registered Nurse Safe Staffing Act (S. 54) would require health care providers to establish and implement nurse-patient ratios within the health care setting. **The AHA and ASHHRA oppose efforts that limit hospitals' flexibility to determine appropriate staffing patterns for health care workers.**

We need to focus on ensuring that the U.S. has an adequate supply of nurses. That's why the AHA and ASHHRA support the *Nurses' Higher Education and Loan Repayment Act* (H.R. 1460), which would establish a federal student loan repayment program for nurses who obtain a graduate degree in nursing and agree to teach full time at an accredited nursing school for at least four years. In addition, the AHA and ASHHRA are working with Congress to reauthorize the *Nurse Reinvestment Act*.

Restrictions on Unavoidable Overtime. One way hospitals cope with the RN shortage is to ask staff to remain voluntarily on patient care units after the completion of a scheduled shift, also referred to as unavoidable overtime. Sometimes hospitals may, out of necessity, require health care staff to remain on their shift until replacement staff can be found.

Unavoidable overtime is the staffing vehicle of last resort, limited to crisis situations that would put patients in danger of not receiving the care they require. **The AHA and ASHHRA believe this issue is best addressed within the institutional setting and oppose legislation that would prohibit the use of unavoidable overtime.** Patients may be at risk if hospitals cannot require staff to work overtime when unforeseen circumstances prevent the use of relief staff at the end of a scheduled shift.