

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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July 26, 2024

Via UPS Overnight Delivery

Sally Seymour

Chief Executive Officer

HCA Florida Bayonet Point Hospital

14000 Fivay Road

Hudson, FL 34667

Re: Your Employees' Rights to Engage in Labor Organizing

Dear Ms. Seymour:

As the exclusive bargaining representative of approximately 460 registered nurses (RNs) at HCA Florida Bayonet Point Hospital (HCA), Teamsters Local Union No. 79 has raised concerns in recent weeks that HCA management may be engaging in unlawful conduct. We are aware of HCA's past record of labor abuses and safety issues.¹ This letter is intended to head off possible conflict and respectfully advise your management team of HCA employees' legal rights to participate in labor organizing and mutual aid activities. We urge you to refrain from interfering with your employees' rights, and we are poised to take action should you fail to abide by the mandates of federal law.

As you may know, Section 7 of the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-169, guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. As interpreted and applied by the federal courts and the National Labor Relations Board (NLRB), Section 7 safeguards a variety of activities, which include signing union

¹ See, for example: Christopher O'Donnell, *Pasco hospital intimidated workers who discussed unionizing, feds say*, Tampa Bay Times, (February 8, 2023), <https://www.tampabay.com/news/health/2023/02/08/pasco-hospital-intimidated-workers-who-discussed-unionizing-feds-say/>; Joel Stinnett, *Doctors at Florida HCA Healthcare hospital allege facility is 'dangerous'* Nashville Business Journal (February 16, 2023), <https://www.bizjournals.com/nashville/news/2023/02/16/roaches-ceiling-leaks-issues-allaged-hca-florida.html>; Cynthia McFadden, *Whistleblower says he's facing retaliation for speaking out about hospital management*, NBC News (February 17, 2023), <https://www.youtube.com/watch?v=5BmE5IFrsgg>

authorization cards, *see, e.g., RAV Truck and Trailer Repairs, Inc. v. NLRB*, 997 F.3d 314, 325 (D.C. Cir. 2021), discussing unionization, *see NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112-13 (1956), discussing wages and other terms and conditions of employment, *see, e.g., Cintas Corporation*, 344 NLRB 943 (2005), *enf'd, Cintas Corp. v. NLRB*, 482 F.3d 463 (D.C. Cir. 2007), distributing union literature, *see Eastex, Inc. v. NLRB*, 437 U.S. 556, 572-74 (1945), soliciting union membership, *see, e.g., Nations Rent, Inc.*, 342 NLRB 179 (2004), wearing or displaying union insignia, *see Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945); *Brandeis Mach. & Supply Co. v. NLRB*, 412 F.3d 822, 177 (7th Cir. 2005), and participating in work stoppages, pickets, or other workplace protests. *See NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962); *Pauma v. NLRB*, 888 F.3d 1066, 1081 (9th Cir. 2018); *Eastex*, 437 U.S. at 565-67. Additionally, Section 7 authorizes employees to enter or remain on their employer's property for the purpose of pursuing such activities. *See Lechmere Inc. v. NLRB*, 502 U.S. 527, 533 (1992); *see also Bulova Watch Co., Inc.*, 208 NLRB 1587 (2015).

Section 8(a)(1) of the NLRA prohibits employers from “interfer[ing] with, restrain[ing], or coerc[ing]” employees in the exercise of the rights guaranteed under Section 7. 29 U.S.C. § 158(a)(1). Section 8(a)(3) precludes employers from “discriminat[ing] in regard to hire or tenure of employment or any term or condition of employment” in order to “discourage membership in any labor organization.” *Id.* § 158(a)(3).

Under these provisions an employer may not, among other things, discipline, demote, suspend, discharge, surveil, or in any other fashion discriminate or retaliate against employees to punish or discourage organizing activities or union support. Moreover, it may not threaten, either explicitly or implicitly, to take any such action, nor apply any workplace rule so as “to restrict the exercise of Section 7 rights.” *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646 (2004). Doing any of the above violates federal law and can result in liability, including but not limited to remedies such as employee reinstatement and backpay for lost wages and all direct and foreseeable pecuniary harms suffered as a result of the illegal practice. *See* 29 U.S.C. § 160(c); *Thryv, Inc.*, 372 NLRB No. 22 (Dec. 13, 2022).

Moreover, the Supreme Court has recognized that the NLRA forbids employers to restrict off-the-clock Section 7 conduct — even on the company's premises — absent “special circumstances,” *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803 n.10 (1945), which render such a restriction “necessary to maintain production or discipline.” *Lechmere*, 502 U.S. at 533 (quoting *Peyton Packing Co.*, 49 NLRB 828, 843-44 (1943), *enf'd*, 142 F.2d 1009 (5th Cir. 1944), *cert. denied*, 323 U.S. 730 (1944)). Accordingly, since organizing activities in nonworking areas of the facility, including parking lots and breakrooms, rarely if ever impact operations or discipline, an employer is rarely if ever permitted to curtail them. *See, e.g., ITT Indus. v. NLRB*, 251 F.3d 995, 1001 (D.C. Cir. 2001).

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The NLRA's coverage extends to healthcare employees specifically. Pub. L. 93-360, § 1(a), (b), 88 Stat. 395; 29 U.S.C. § 152(14). Hospital employees are fully entitled to the protections conferred by the statute. *See Beth Israel Hosp. v. NLRB*, 437 U.S. 483, 497 (1978). Indeed, the federal courts have unambiguously recognized that the Act grants hospital employees "undisputed rights ... to engage in self-organizational activities." *St. John's Hosp. & School of Nursing, Inc. v. NLRB*, 557 F.2d 1368, 1374 (10th Cir. 1977). The Supreme Court has emphasized that a hospital may not prevent employees from pursuing union activities in places "other than immediate patient-care areas" except for the very narrow circumstances in which such a prohibition is "necessary to avoid disruption of health-care operations or disturbance of the patients." *Beth Israel Hosp.*, 437 U.S. at 495, 507.

Where a hospital discriminatorily discharges union supporters, *see, e.g., Hospital San Pablo, Inc.*, 327 NLRB 300 (1998), *enf'd*, *NLRB v. Hospital San Pablo, Inc.*, 207 F.3d 67 (1st Cir. 2000), prevents employees from discussing the union, *see, e.g., St. John's Hosp.*, 222 NLRB 1150 (1976), *enf'd*, *St. John's Hosp. & School of Nursing, Inc. v. NLRB*, 557 F.2d 1368, 1374 (10th Cir. 1977), denies off-duty employees access to nonworking areas for organizing purposes, *see Presbyterian Medical Center*, 227 NLRB 904 (1977), *enf'd*, *NLRB v. Presbyterian Medical Center*, 586 F.2d 165 (10th Cir. 1978), forbids union solicitation by employees, *see Presbyterian/St. Luke's Medical Center*, 258 NLRB 93 (1981), *enf'd*, *Presbyterian/St. Luke's Medical Center v. NLRB*, 723 F.2d 1468 (10th Cir. 1983), promulgates rules that unfairly limit the wearing of union buttons, stickers, insignia or slogans, *see Washington State Nurses Association/Sacred Heart*, 526 F.3d 577 (9th Cir. 2008); *HealthBridge Management, LLC v. N.L.R.B.*, 798 F.3d 1059 (D.C. Cir. 2015), or surveils employees' organizing efforts, *see, e.g., Saint Vincent's Hospital*, 265 NLRB 38 (1982), *enf'd in rel. part, NLRB v. Saint Vincent's Hosp.*, 729 F.2d 730 (11th Cir. 1984), it violates federal law.

It is our hope you will use all necessary means to ensure that HCA fully complies with federal law and respects your employees' Section 7 rights. We assure you that the International Brotherhood of Teamsters will not tolerate any form of illegal unionbusting behavior. If HCA management unlawfully interferes with employees' organizing efforts or commits any other unfair labor practice, Local 79 is prepared to take all legal action necessary to protect and vindicate the rights not only of Teamsters members but of all RNs in the bargaining unit.

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We appreciate your attention to this important matter. Should you have any questions or concerns, please contact our office.

Sincerely,



Jason Lopes
Director
IBT Health Care Division

JL/lpl

cc: Sean M. O'Brien, IBT General President
Brian A. Rothman, IBT Local 79 President