

Hospital Ordered To Bargain Over Nurses' Dress Code

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**Gerald F.
Lutkus**

Of Counsel
(Retired)

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An NLRB administrative law judge has held that a New Jersey hospital violated the National Labor Relations Act when it altered its dress code policy for nurses. The hospital in March 2012 implemented a new dress code for nurses to create a sense of professionalism among nurses and to communicate to the public and patients the departments in which the nurses were performing work. Most nurses were to be outfitted in navy blue scrubs and the hospital provided nurses with three sets of scrubs. The operating, delivery and cardiac rehabilitation nurses would be required to wear colors and patterns specific to their departments as decided by the departments.

After announcing the decision to change the dress code, the Health Professionals and Allied Employees Union asked to negotiate over the new dress code policy. The union also requested information regarding the hospital's decision to change the dress code. According to the ALJ's opinion, the hospital did not respond to the request to bargain nor did the hospital respond to the union's request for information.

Before the ALJ, the hospital argued that the change in the dress code was a *de minimis* change and that under prior board law for a change to be subject to bargaining, it must be "material, substantial, and significant."

The ALJ's opinion suggests, but does not clearly state, that the union and the hospital were still negotiating over the terms of a 1st CBA. As a result, the ALJ did not interpret contract language but instead examined traditional board law in reaching his decision that a change in the color of the uniforms was in fact a material change and was therefore a mandatory subject to bargaining. The hospital's unilateral change violated Sections 8(a)(5) and 8(a)(1) of the National Labor Relations Act.

The ALJ also found a violation of the Act in the employer's failure or refusal to provide information. If a union seeks information regarding the terms and conditions of employment, according to the ALJ, the information requested is presumptively relevant to the union's proper performance of its duties. A union is entitled to receipt of the requested information unless the Employer can present sufficient evidence to rebut the presumption. Here, the hospital failed to present such evidence; therefore, the hospital was statutorily obligated to respond.

A copy of the ALJ's decision is [available here](#).