

REGION 4

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ASHHRA REGION 4 NEWS

VOLUME 1, ISSUE 3

SEPTEMBER 2011

News from Region 4:

We had a fantastic turnout from Region 4 (especially Florida) at the annual conference in Phoenix! We were entertained by outstanding keynote speakers, Henry Winkler and Chip Madera, made a lot of new friends and were educated by presenters on best practices, newest trends and legal updates.

Several Region 4 members served on this year's conference planning committee. Nancy Dinon (committee chair from Florida), Joan Rodriguez (Florida) and Gwen Hill (South Carolina) did an excellent job in selecting presenters for the conference in Phoenix.

We partnered again this year with Region 7 for our annual breakfast which was a terrific opportunity to network with folks outside our region. I was excited to see all of the attendees from our region at the Chapter Leadership Conference on Saturday. This was a full day of presentations on how to successfully manage our chapters.

Congratulations to Elizabeth Parsons from Easley Baptist in South Carolina for winning the Metlife Scholarship for our region. Metlife provides one \$1500 scholarship per region for those interested in attending ASHHRA's annual conference, so keep this in mind for next year's conference in Denver.

Also, be sure to check out ASHHRA's new logo and updated website at www.ASHHRA.org.



We had our third Region 4 conference call on August 31st, which was attended by Joey Boyce from South Carolina and Cathy Roberts from the West Central Florida Chapter. A few others tried to join, but there was some confusion about the call in number. I encourage the chapter presidents or designee to participate in the calls so that I will have information about your chapter to add to the newsletter. The date of our next call is November 16th. I have sent dial in information to the chapter presidents and will forward again prior to the dates.

Region 4 Consultant

Teresa Threlkeld,

Director of Human Resources

AnMed Health

706 East Greenville Street

Anderson, SC 29621

Phone: 864-512-1751

Fax: 864-512-1952

teresa.threlkeld@anmedhealth.org



Please feel free to call or email me if
you have any questions, ideas,
comments, or suggestions.

PREVENTATIVE MEDICINE : *Legal Tips for Healthcare Employers*

By: W. Jonathan Martin II and David Phippen

For more information on FLSA trends in health care, contact Jonathan Martin at jmartin@constangy.com or 478-621-2407, or any other Constangy attorney at www.constangy.com.

In another thinly-veiled effort to open the floodgates to union victories in representation elections, the National Labor Relations Board's three-member Democrat majority has overruled a long-standing standard for determining bargaining unit appropriateness in the non-acute health care industry. In *Specialty Healthcare and Rehabilitation of Mobile*, the majority of the Board ruled that a petitioned-for unit comprised solely of Certified Nursing Assistants was appropriate where the employees shared a "community of interest." Although the Board has never previously approved a CNA-only unit, it has now found the job-based unit classification to be presumptively appropriate. It also held that, in order to overcome the presumption, a challenging party would bear the burden of proving that excluded employees shared an "overwhelming community of interest" with the employees in the petitioned-for unit. This constitutes a significant — and far-reaching — departure from the established law.

For more than 20 years, the Board had held that in the non-acute health care industry concerns about a proliferation of small bargaining units warranted special rules and that the Board should consider unit appropriateness factors beyond the traditional "community of interest." This was based on the Board's ruling in *Park Manor Care Center*, as well as the admonitions of Congress in enacting the Health Care Amendments to the NLRA. Accordingly, a heightened standard has consistently been applied to non-acute care facilities, in an effort to balance an employee's right to unionize with the facility's interest in minimizing the number of bargaining units in a health care setting. The *Specialty Healthcare* decision abrogates 20 years of consistent precedent in this regard, and eliminates any protections against unit proliferation in these facilities.

Brian Hayes, the lone Republican appointee to the Board, pointed out in a dissent that the Board had historically not used the traditional "community of interest" standard alone in its unit determinations, but had appropriately proceeded "to a further determination of whether the interests of the group sought [that is, the petitioned-for unit] are sufficiently distinct from those of the other employees to warrant the establishment of a separate unit." He criticized the majority for adopting a test that would encourage unions to engage in incremental organizing of small units and a fragmentation of workforces for collective bargaining purposes, jeopardizing labor relations stability.

Specialty Healthcare is likely to affect other industries, as well. The Board's new standard could easily be expanded to apply to *all* bargaining unit determinations, allowing bargaining units based on individual job classifications at any stand-alone facility, and thus a proliferation of small units almost unchecked by any reasonableness considerations.

The upshot of the decision is this -- it will allow unions to win more elections in small groups when they lack broader support in the workforce. Unions will be able to target small employee groups to organize and gain beachheads in their organizing of larger workforces.

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Upcoming Regional Events:

- Mississippi Society for Human Resources Administration** 37th Annual Meeting, October 12-14, in conjunction with the Balch and Bingham's 2011 Labor and Employment Law Seminar, October 13-14, will be held at the Beau Rivage Resort & Casino in Biloxi, Mississippi. Registrations will be accepted online at www.mhanet.org.
- Alabama Healthcare Human Resources Professionals** fall conference will be held October 20-21 at the Island House Hotel in Orange Beach, Alabama. Registration information is available through Rachel Frey, 256-233-9179.
- West Central Florida Healthcare Human Resources Association** will hold their holiday meeting on November 11th from 9:30am-2:00pm at Maggiano's Restaurant in Tampa, Florida. Information concerning this meeting is available through Cathy Roberts, (phone) 863-284-1609 or (email) cathy.roberts@lrmc.com.

SAVE THE DATE:

**September 22 - 25,
2012**

**ASHHRA Annual
Conference to be held
In Denver, Colorado**

HR Metrics Tool Survey Deadline Extended!

The ASHHRA HR Metrics Tool Survey will be open until October 14th. Input your fiscal year 2010 data and get industry benchmarks.

Questions?
Contact Adrienne H. Lo in
Customer Support at
(703) 918-3740 or at
Adrienne.h.lo@us.pwc.com

Reminder:
Be sure to use the ASHHRA website for all your
HR resource needs:
www.ashhra.org

CONFERENCE AWARDS

Congratulations Region 4 Winners:

OUTSTANDING CHAPTER ACHIEVEMENT:

Farrar Stewart

*Assistant Director of HR
Lexington Medical Center
West Columbia, South Carolina*

OUTSTANDING CHAPTER OFFICERS:

• **Joey Boyce**

*HR Manager
Tuomey Healthcare System
Sumter, South Carolina*

CHAPTER MANAGEMENT AWARDS:

4 STAR AWARD

**South Carolina Healthcare
Human Resources
Association**

• **Rosalie Gibson**

*HR Generalist
LeBonhuer Children's Hospital
Memphis, Tennessee*

PREVENTATIVE MEDICINE: (CONT'D FROM PAGE 2)

For example, where a union finds a group of employees – no matter how small – in a job classification with a "community of interest," it will be able to petition the Board for an election based simply on the "community of interest" the employees have and a showing of representation interest in that group. At the petition stage, there will be no consideration of other factors the Board has historically applied; meanwhile, the party opposing the unit will face an uphill battle trying to show that excluded employees should be included in the unit based on the "overwhelming community of interest" standard. With *Specialty Healthcare* as the guide, the single job classification bargaining unit is presumptively appropriate. Unions will be able to organize and win elections in piecemeal fashion, and can leverage power in a small group with a potential to cause disruption across a larger workforce they could not successfully organize under prior Board standards.

This is a dramatic shift in Board law, and the repercussions will be felt far beyond the health care industry. Unfortunately, it is only one of many significant changes undertaken in the eleventh hour of the Liebman Board. To learn more about how these changes can affect your workforce, or to ensure that your company is in compliance with the quickly-expanding Board rules, please contact your Constangy attorney.

About Constangy, Brooks & Smith, LLP

Constangy, Brooks & Smith, LLP has counseled employers on labor and employment law matters, exclusively, since 1946. A "Go To" Law Firm in Corporate Counsel and Fortune Magazine, it represents Fortune 500 corporations and small companies across the country. Its attorneys are consistently rated as top lawyers in their practice areas by sources such as Chambers USA, Martindale-Hubbell, and Top One Hundred Labor Attorneys in the United States, and the firm is top-ranked by the U.S. News & World Report/Best Lawyers Best Law Firms survey. More than 130 lawyers partner with clients to provide cost-effective legal services and sound preventive advice to enhance the employer-employee relationship. Offices are located in Alabama, California, Florida, Georgia, Illinois, Massachusetts, Missouri, New Jersey, North Carolina, South Carolina, Tennessee, Texas, Virginia and Wisconsin. For more information, visit www.constangy.com.

| Name | Title | Organization | Address | Zip | Phone | Email Address |
|------------------------|--|---|--|-------|--------------|---------------------------------|
| Gail Duke | Director, Human Resources | Clarendon Memorial Hospital | PO Box 550 Manning, SC | 29102 | 803-4358463 | gduke@clarendonhealth.com |
| Regina Grice | HR Manager | Charleston Hematology Oncology Associates | 2085 Henry Tecklenburg Dr 2nd FL, Charleston, SC | 29414 | 843-577-6957 | Regina.grice@choasc.com |
| Suzanne Kirk | Director, Human Resources | Memorial Health University Medical Center | 4700 Waters Avenue, Savannah, GA | 31404 | 912-350-1339 | kirksul@memorialhealth.com |
| Kelly Estes | Associate General Counsel | Healthsouth Corp. | 3660 Grandview Parkway , Ste 200, Birmingham, AL | 35243 | 205-970-4099 | Kelly.estes@healthsouth.com |
| Debra Cheek | Manager, Volunteer Emp Services | Moffitt Cancer Center | 12902 Magnolia Drive, Tampa, FL | 33612 | 813-972-8348 | Debra.cheek@moffitt.org |
| Amy Durham | Director, Strategic Workforce Mgt. | Moffitt Cancer Center | 12902 Magnolia Drive, Tampa, FL | 33612 | 813-745-7812 | Amy.durham@moffitt.org |
| Michele Talka | Director, HR Operations | Moffitt Cancer Center | 12902 Magnolia Drive, Tampa, FL | 33612 | 813-745-7887 | Michele.talka@moffitt.org |
| Ashley Dudley | Business Partner/Clinical Opera. | Moffitt Cancer Center | 12902 Magnolia Drive, Tampa, FL | 33612 | 813-745-6712 | Ashley.dudley@moffitt.org |
| Doerte Heimbeck | Director, Org Development | Moffitt Cancer Center | 12902 Magnolia Drive, Tampa, FL | 33612 | 813-745-4138 | Dorte.heimbeck@moffitt.org |
| Larisa Zadorecky | Director, Human Resources | Bonita Health Center | 3501 Health Center Blvd, Bonita Springs, FL | 34135 | 239-949-6117 | lz@bonitahealthcenter.com |
| Lee Corbin | Manager, Comp & Benefits | Moffitt Cancer Center | 12902 Magnolia Drive, Tampa, FL | 33612 | 813-745-7889 | Leeanne.corbin@moffitt.org |
| Yvonne McColloch | Manager, HR Program Support | Moffitt Cancer Center | 12902 Magnolia Drive, Tampa, FL | 33612 | 813-745-4269 | Yvonne.mccolloch@moffitt.org |
| Joanne Olson | VP, HR | Moffitt Cancer Center | 12902 Magnolia Drive, Tampa, FL | 33612 | 813-745-4127 | Joane.olson@moffitt.org |
| Laurie Buehler | HR Business Partner | Moffitt Cancer Center | 12902 Magnolia Drive, Tampa, FL | 33612 | 813-745-6789 | Laurie.buehler@moffitt.org |
| Catherine Kreston | Chief People Officer | Interim Healthcare | 1600 Sawgrass Corp Pkwy, Ste 100, Sunrise, FL | 33323 | 954-858-2663 | ckreston@interimhealthcare.com |
| Darla Hager | HRIS Administrator | Venice Regional MedCtr | 540 The Rialto, Venice, FL | 34285 | 941-483-7616 | Darla.hager@hma.com |
| Mary Stokes | Director, Human Resources | Florida Proton Therapy Inst. | 2015 Jefferson St, Jacksonville, FL | 32206 | 904-588-1466 | mstokes@floridaproton.org |
| Cynthia Roman | Director, Human Resources | Florida Community Health Centers, Inc | 219 Sandpiper Ave, Royal Palm Beach, FL | 33411 | 561-844-9443 | croman@fchcinc.org |
| Cindy Coffman | Admin Director, HR | Tidewell Hospice | 7351 Capital Drive #100, Sarasota, FL | 34202 | 941-552-5902 | ccoffman@tidewell.org |
| Julie Schilson | EVP, Human Resources | Tidewell Hospice | 6310 Capital Drive #100, Bradenton, FL | 34202 | 941-552-5917 | jschilson@tidewell.org |
| Darcey Ipock | HR Specialist | AnMed Health Med Ctr | 706 East Greenville Street, Anderson, SC | 29621 | 864-512-1860 | Darcey.ipock@anmedhealth.org |
| Jane Allen | CEO | Smart Work Network, Inc | 880 S Pleasantburg Drive, Greenville, SC | 29607 | 864-233-3007 | jane@smartworknetwork.com |
| Justina DeBerry | Director of Provider Relations & Recruitment | United Healthcare Group - Inspiris Inc | 4015 Wisdom Way, Smyrna, TN | 37167 | 615-523-5606 | Justina.deberry@inspiris.com |
| Amber Murphy | Manager, HR Generalist | Vanguard Health System | 2311 N Berrys Chapel Rd, Franklin, TN | 37069 | 615-665-6230 | amurphy@vanguardhealth.com |
| Jeff Pierce | Director, Human Resources | Maury Regional Med Ctr | 1224 Trotwood Ave, Columbia, TN | 38401 | 931-380-4017 | jepierce@mauryregional.com |
| Martha Abercrombie | Director, Human Resources | Grace Healthcare LLC | 7201 Shallowford Rd, Chattanooga, TN | 37421 | 423-308-1845 | mabercrombie@gracehc.com |
| Melissa St Clair | HR Specialist | AnMed Health Med Ctr | 706 East Greenville Street, Anderson, SC | 29621 | 864-512-1164 | Melissa.stclair@anmedhealth.org |
| Steve Hope | VP, Corporate Services | Methodist Rehab Ctr | 1350 Woodrow Wilson Dr, Jackson, MS | 39216 | 601-981-2611 | |
| Jonathan Martin | Partner | Constangy, Brooks, & Smith, LLC | 577 Mulberry St, Macon, GA | 31201 | 478-750-8600 | jmartin@constangy.com |
| Aaliyah Newell | Director, Human Resources | Planned Parenthood SE | 3369 N Hembree Rd, Marietta, GA | 30062 | 708-715-1908 | Aaliyah.newell@ppfa.org |
| Judy Turk | Director, Employee Benefits & Svcs | Northeast Georgia Health System, Inc. | 723 Spring St NE, Gainesville, GA | 30501 | 770-219-7644 | Judy.turk@nghs.com |
| Becky Wiggins | Director, Human Resources | Harbin Clinic, LLC | 200 E 2nd Ave, Rome, GA | 30161 | 706-378-5464 | bwiggins@harbinclinic.com |
| Leslie Cummings Harris | Payroll/Employee Svcs Supervisor | Kaiser Permanente | 3234 Rockmill Dr, Ellenwood, GA | 30294 | 678-949-0005 | lcummingsharris@aol.com |
| Heather Owen | Partner | Constangy, Brooks, & Smith, LLC | 200 W Forsyth St, Jacksonville, FL | 32202 | 904-356-8900 | howen@constangy.com |
| Michael Malfitano | Partner | Constangy, Brooks, & Smith, LLC | 100 N Tampa St, Tampa, FL | 33602 | 813-223-7166 | mmalfitano@constangy.com |
| Cindy Coffman | Admin Director, HR | Tidewell Hospice | 7351 Capital Dr, #100, Sarasota, FL | 34202 | 941-552-5902 | ccoffman@tidewell.org |
| Julie Schilson | EVP, Human Resources | Tidewell Hospice | 6310 Capital Dr, #100, Bradenton, FL | 34202 | 941-552-5917 | jschilson@tidewell.org |
| Keri Higgins Bigelow | President | Living HR, Inc. | 2907 W. Estrella St, Tampa, FL | 33629 | 813-857-7101 | keri@livinghr.com |
| Lisa Couch | HR Business Partner-Talent | University Comm. Hosp | 23148 Emerson Way, Land O Lakes, FL | 34639 | 813-971-6000 | lcouch@mail.uch.org |
| Clark Sharon | Senior Consultant | Towers Watson | 4301 W Boy Scout Blvd, Ste 570, Tampa, FL | 33607 | 813-287-7304 | Bill.sharon@towerswatson.com |