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Workers' Federal Suits Against Hospitals Over Unpaid Breaks Go Forward

BY JOEL STASHENKO

THE COLLECTIVE bargaining agreements that two large health care providers have with their employees do not preclude the workers from filing federal court claims of wage payment improprieties under the Fair Labor Standards Act, a federal judge has determined.

Western District Judge William M. Skretny rejected the arguments by Catholic Health and Kaleida Health that §301 of the federal Labor Management Relations Act

precludes the Fair Labor Standards Act (FLSA) claims and that the proper forum for workers' wage complaints are the grievance and arbitration procedures spelled out in its labor agreements, not the courts.

Section 301 governs suits brought by unions for violation of labor contracts.

"The FLSA confers upon Plaintiffs independent statutory rights for all of the factual predicates asserted in their support of their FLSA claims," Judge Skretny wrote in both *Hinterberger v. Catholic*

Health, 08-cv-380S, and *Gordon v. Kaleida Health*, 08-cv-378S.

The claims in both actions are identical and Judge Skretny's 22-page rulings last week were virtually word-for-word except for the names of the plaintiffs and defendants. The same attorneys, J. Nelson Thomas and Michael J. Lingle of Dolin, Thomas & Solomon in Rochester, represent the plaintiffs in both actions.

The workers in each case allege their employers automatically deduct 30 minutes of pay from their daily checks for meal breaks,

whether they worked during their breaks or not; that the health providers do not pay employees for mandatory training sessions and do not compensate employees for work they are expected to do before and after their regularly scheduled shifts.

Judge Skretny wrote that the FLSA specifically requires that employees be "com- » Page 4

'Hinterberger v. Catholic Health' will be published tomorrow.

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Hospital Suits

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pletely relieved" of work duties for their lunch breaks to be considered "bona fide meal periods" and for employers to withhold compensation for those breaks.

The federal law also prohibits employers from failing to pay workers when the employer "suffers or permits" work to be done—covering the claim that employees are expected to work before and after their shifts—and recognizes that employer-sponsored training or meetings are "generally counted as working time," according to Judge Skretny's decisions.

He also refused to dismiss the employees' claim that their alleged forced work during meal breaks violates New York Labor Law §162. The two health providers had argued that §301 of the Labor Management Relations Act also preempts alleged violations of state law when wage and work issues are addressed in collective bargaining agreements with workers.

Judge Skretny disagreed.

"Section 301 does not always preempt state claims," he wrote in both rulings. "When a claim derives from an independent substantive provision of state law, preemption has no application."

New York Labor Law §162 specifically recognizes an employee's right to a meal break free from work duties, the judge noted.

He did dismiss two other claims brought by the plaintiffs under New York Labor Law: the contentions that the employers were not paying workers for mandatory training sessions and for work before and after their shifts. State Labor Law contains no "substantive provisions" against those practices, as it does against being required to work during unpaid meal breaks, the judge held.

The plaintiffs are hourly workers at institutions run by Catholic Health and Kaleida Health, two not-for-profit corporations. The employees include nurses, licensed practical nurses, health care aides and other employees.

Between them, Catholic Health



Judge Skretny

and Kaleida Health employ more than 17,000 hourly workers. The employees are seeking compensation for the hours they contend they were compelled to work, but for which they were not paid. That includes overtime, when hours worked exceeded 40 a week. Both complaints contended that Kaleida and Catholic Health were "deliberately indifferent" to violations of state and federal wage laws.

Motions are pending before Judge Skretny to convert both cases into class actions.

Kaleida Health, based in Buffalo, is the largest health care provider in western New York, with 9,500 employees at five hospitals and other facilities in eight counties. Buffalo General Hospital is among its institutions.

Catholic Health employs 7,800 workers at four hospitals, including St. Joseph Hospital in Cheektowaga. The Roman Catholic Diocese of Buffalo is among the Catholic-based groups sponsoring the health consortium.

Dolin, Thomas & Solomon has sued other large upstate medical providers for unpaid wages. In 2006, the firm reached a \$9 million settlement with the University of Rochester, Strong Memorial Hospital and its affiliates on claims similar to those filed against Kaleida Health and Catholic Health. Workers received up to \$700 each in compensation.

In November, the firm filed suits in the Northern District against large medical centers in Syracuse and Utica, also alleging uncompensated, though worked, meal breaks and other wage law violations. The cases are *Fengler v. Crouse Health Foundations Inc.*, 5:08-cv-1221, *Hamelin v. Faxton-St. Luke's Healthcare*, 6:08-cv-1219, and *Colozzi v. St. Joseph's Hospital Center*, 5:08-cv-1220.

Mr. Thomas said some hospitals and urgent-care medical facilities

expose themselves to wage violations by their policies of automatically deducting 30 minutes for meal breaks from hourly workers' time sheets. Facilities can avoid the potential problems by introducing systems where employees use swipe cards when going on and coming back from breaks, Mr. Thomas said.

Many kinds of hourly hospital employees, not just nurses and others who directly care for patients, are often expected to interrupt meal breaks, he said.

He said the tight finances of the health care industry contributes to the problem.

"Medicine is becoming increasingly a financially driven business," he said. "That means less staff. Less staff means less coverage. Less coverage means less people to cover breaks."

Spokesman Dennis J. McCarthy said Catholic Health "highly values its relationship with its associates."

"Catholic Health intends to steadfastly defend against these allegations and attempt to win dismissal of what we still believe to be a dubious lawsuit," he said in a statement. "Catholic Health respects its associates and believes they are properly paid for all time worked, including overtime."

Michael P. Hughes, vice president for Kaleida Health, called the claim a "self-serving effort by an out-of-town law firm intent on exploiting our hard-working employees."

"Unfortunately, this law firm has a track record of this type of activity in other communities, such as Rochester," Mr. Hughes said. "Our commitment to our employees is unquestionable and we will vigorously defend ourselves against this lawsuit."

Susan C. Roney of Nixon Peabody in Buffalo represents both Catholic Health and Kaleida Health.

Jonathan Wolfe Greenbaum of Washington, D.C., is assisting Ms. Roney and Elizabeth A. Malloy of Buchanan Ingersoll & Rooney of Philadelphia is assisting in the Catholic Health case.

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