Holladay Park Hospital *and* Oregon Nurses Association, Inc. Case 36-CA-3618

June 21, 1892

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On February 27, 1981, Administrative Law Judge Michael D. Stevenson issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Party filed exceptions and supporting briefs, and Respondent filed an answering brief in opposition to all of the exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge concluded that Respondent did not violate Section 8(a)(1) of the Act by prohibiting its employees from wearing yellow ribbons on their uniforms to indicate support for the Union's position during collective-bargaining negotiations. The Administrative Law Judge found that the yellow ribbons were not union insignia and thus the employees did not have a right protected by Section 7 of the Act to wear them. In the alternative, the Administrative Law Judge found that, even if the yellow ribbons were union insignia, Respondent had shown the existence of special circumstances sufficient to rebut the presumption that its prohibition against the wearing of such union insignia violated Section 8(a)(1) of the Act. The Administrative Law Judge recommended dismissing the complaint in its entirety, finding it unnecessary to rule on the allegation that Respondent violated Section 8(a)(5) of the Act by failing to notify or bargain with the Union about this change in its past practice with regard to employee dress. Contrary to the Administrative Law Judge and for the reasons set forth below, we find that Respondent violated Section 8(a)(1) by prohibiting its employees from wearing yellow ribbons on their uniforms and also violated Section 8(a)(5) by unilaterally implementing this change in its rules as to employee attire.

The Union has represented a unit of RNs and charge nurses at Respondent's nonprofit hospital since 1975. In November 1979, Respondent and the Union began bargaining for a new contract. At that time, Respondent had in effect a written dress code for all nursing department personnel which required nurses "to wear uniforms which meet professional standards of acceptability" and which allowed these uniforms to be either white or pastel colors. In connection with the bargaining in November 1979, unit employees began wearing union buttons regularly on their uniforms at work. These buttons were about 1-3/4 inches in diameter, with a white background and blue letters stating:

RN's*/ONA
*REPRESENTED NURSES

Respondent never objected to the wearing of these union buttons. In addition, Respondent had previously permitted unit employees to wear the following objects on their uniforms at work: red ribbons at Christmas; green ribbons at Christmas and St. Patrick's Day; smile buttons; buttons saying "Pet me, I purr"; buttons saying "Holladay Park Hospital on the Move," which were distributed by Respondent; shamrock pins and buttons saying "Think Green" at St. Patrick's Day; snowmen and Christmas tree pins at Christmas; and corsages.

On February 27, 1980, unit employees held a meeting in a conference room made available by Respondent at the hospital to discuss the lack of progress in contract negotiations; they voted to wear pastel yellow ribbons to demonstrate their support for the Union's bargaining position. Immediately after the meeting, a number of unit employees reported to work on the 3 to 11 p.m. shift wearing yellow ribbons, which were tied in a bow measuring about 3-1/2 by 2-1/2 inches and pinned directly under their union buttons. Respondent Director of Nursing Richey received a telephone call about the nurses' yellow ribbons a few minutes after 3 p.m. and immediately telephoned an order to all nursing supervisors that employees wearing the ribbons be directed to remove them or be sent home. The Union was not consulted about the situation. Richey testified that the reason for the prohibition was to avoid involving Respondent's patients and physicians in the labor dispute. When ordered by supervisors to remove the ribbons or go home, all of the employees involved removed the ribbons. No employee received any discipline as a result of wearing a ribbon.

We disagree with the Administrative Law Judge's finding that the yellow ribbons worn by the employees in this case were not union insignia. Clearly, all of the parties involved in this case perceived the yellow ribbons to be an indication of support for the Union. Thus, not only did the employees decide to wear the yellow ribbons as symbols of their support for the Union's bargaining po-

sition, but the record also reveals that Respondent was aware the employees had just left a union meeting when they reported for work wearing the yellow ribbons and that Respondent had permitted the employees to use one of its conference rooms for the purpose. In addition, Director of Nursing Richey specifically stated that she prohibited the employees from wearing the yellow ribbons to avoid involving Respondent's patients and physicians in the labor dispute. Furthermore, the employees wore the yellow ribbons under their union buttons, which should have indicated to any uninformed observer that the ribbons were union-connected. We find, therefore, that the yellow ribbons were union insignia.

It is well established that employees have a protected right to wear union insignia at work in the absence of "special circumstances." *The Ohio Masonic Home*, 205 NLRB 357 (1973), enfd. 511 F.2d 527 (5th Cir. 1975); *Floridan Hotel of Tampa, Inc.*, 137 NLRB 1484 (1962). The Board has found that such "special circumstances" existed in a health care institution, where the employer was motivated by a genuine concern for the health and welfare of its patients in prohibiting nurses from wearing union insignia at work and there was no evidence of discriminatory enforcement of the employer's longstanding rule against nurses wearing any attachments to their clothing. *Evergreen Nursing Home and Rehabilitation Center, Inc.*, 198 NLRB 775 (1972). However, it is clear that, even though a health care employer claims to be motivated by a legitimate need to protect its patients from controversial issues, the Board will not find such "special circumstances" justifying a prohibition against wearing union insignia if the employer has discriminatorily enforced its dress code to allow employees to wear other types of buttons or attachments. *St. Joseph's Hospital*, 225 NLRB 348 (1976); *The Ohio Masonic Home, supra.*

In this case, the Administrative Law Judge found that "special circumstances" existed to justify Respondent's ban on wearing yellow ribbons because Respondent had a proper and legitimate motive of attempting to prevent patients from being injected into collective-bargaining negotiations. The Administrative Law Judge also found that Respondent had not enforced its dress code in a discriminatory manner since it had permitted the employees to wear union buttons. Contrary to the Administrative Law Judge, we find that Respondent enforced its dress code in a discriminatory manner by prohibiting only the wearing of a particular union insignia. We note that the employees had been permitted to wear various objects on their uniforms, including red ribbons and green ribbons which were presumably at least as conspicuous against their white or pastel uniforms as the pastel yellow ribbons involved herein, and we find it irrelevant that Respondent also permitted the employees to wear another union insignia which it deemed more "professional."[1] Moreover, we note that there is no evidence that the wearing of these yellow ribbons actually interfered in any way with patient care. Therefore, we conclude that Respondent's prohibition of the yellow ribbons was implemented not because of any legitimate concern for the health and welfare of its patients but rather to thwart its employees' concerted activities in support of the Union's collective-bargaining position. Accordingly, we find that Respondent violated Section 8(a)(1) of the Act by prohibiting its employees from wearing yellow ribbons at work.

Although the Administrative Law Judge recommended dismissing the alleged 8(a)(1) violation as unproven, he also concluded that any 8(a)(1) violation found would be *de minimis* or trivial. In reaching this conclusion, the Administrative Law Judge noted that Respondent had committed no other unfair labor practices, that the parties had executed a collective-bargaining agreement after the alleged violation occurred, and that the employees had not attempted to wear the prohibited yellow ribbons after being ordered not to do so. We disagree with the factors relied upon by the Administrative Law Judge and with his conclusion. In determining whether a particular action warrants finding a violation and affording a remedy, it is irrelevant that the respondent may not have engaged in any other unlawful acts, or that the union has been successful in negotiating a contract despite the respondent's unlawful conduct, or that the employees have discontinued their protected concerted activities because of the respondent's unlawful conduct.[2]

Finally, the Administrative Law Judge found it unnecessary to discuss the alleged 8(a)(5) violation in recommending dismissal of the complaint. Inasmuch as it is clear that Respondent changed its past practice by prohibiting its nursing employees from wearing yellow ribbons on their uniforms and that Respondent failed to notify or bargain with the Union before it unilaterally instituted this

[1] While the Administrative Law Judge noted that there was no evidence indicating whether or not Respondent had ever permitted employees to wear more than one item at a time, we note that Respondent had the burden of proving "special circumstances" justifying its prohibition.

[2] See *Robert King d/b/a Regency at the Rodeway Inn*, 255 NLRB 961 (1981). Moreover, Members Fanning and Jenkins note that they have consistently indicated their disagreement with the *de minimis* principle as first espoused in *American Federation of Musicians, Local 76, AFL–CIO (Jimmy Wakely Show)*, 202 NLRB 620 (1973). See, e.g., *Robert King d/b/a Regency at the Rodeway Inn, supra; United States Postal Service*, 242 NLRB 228 (1979); *Gray Lines, Inc.*, 209 NLRB 88 (1974).

change in past pratice, we find that Respondent also violated Section 8(a)(5) of the Act.[3]

CONCLUSIONS OF LAW

1. Respondent Holladay Park Hospital is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Oregon Nurses Association, Inc., is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All registered nurses and charge nurses employed by the Respondent at its Portland, Oregon, facility in the nursing service, surgery and intravenous departments, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

4. The Union is and has been at all times material herein the exclusive representative within the meaning of Section 9(a) of the Act of the employees in the appropriate unit described above for the purpose of collective bargaining.

5. By prohibiting its employees from wearing yellow ribbons as union insignia on their uniforms at work, Respondent has violated Section 8(a)(1) of the Act.

6. By unilaterally, without prior notice to or consultation with the Union, changing its past practice of permitting employees in the unit described above to wear union insignia on their uniforms at work, Respondent has violated Section 8(a)(5) of the Act.

7. Respondent's violations of Section 8(a)(1) and (5) of the Act are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Holladay Park Hospital, Portland, Oregon, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Prohibiting its employees from wearing union insignia on their uniforms at work.

(b) Unilaterally, without prior notice to or consultation with the Union, changing its past practice of permitting unit employees to wear union insignia, ribbons, and other objects on their uniforms at work. The appropriate collective-bargaining unit is:

> All registered nurses and charge nurses employed by the Respondent at its Portland, Oregon, facility in the nursing service, surgery and intravenous departments, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Rescind its prohibition against its employees wearing yellow ribbons as union insignia on their uniforms at work.

(b) Post at its place of business in Portland, Oregon, copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[3] In view of our disposition of this case, we find it unnecessary to rule on the other exceptions to the Administrative Law Judge's Decision.

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and ordered us to post this notice.

WE WILL NOT prohibit our employees from wearing union insignia on their uniforms at work.

WE WILL NOT unilaterally, without prior notice to or consultation with the Oregon Nurses Association, Inc., change our past practice of allowing unit employees to wear union insignia, ribbons, and other objects on their uniforms at work. The appropriate collective-bargaining unit is:

> All registered nurses and charge nurses employed by us at our Portland, Oregon, facility in the nursing service, surgery and intravenous departments, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL rescind our prohibition against our employees wearing yellow ribbons as union insignia on their uniforms at work.

HOLLADAY PARK HOSPITAL

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge: This case was heard before me at Portland, Oregon, on November 25, 1980,[1] pursuant to a complaint issued by the Regional Director for the National Labor Relations Board for Region 36 on May 6, based on a charge filed by Oregon Nurses Association, Inc. (herein called the Union), on March 28 (amended charge filed on May 9). The complaint alleges that Holladay Park Hospital (herein called Respondent) has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (herein called the Act).

Issue

Whether Respondent violated Section 8(a)(1) and (5) of the Act by enforcing a rule prohibiting unit employees from wearing yellow ribbons on their uniforms, where such ribbons were a symbol of solidarity and support for the Union then engaged in contract negotiations and where Respondent did not bargain with the Union prior to enforcement of the rule.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits it is an Oregon corporation operating a nonprofit hospital in Portland, Oregon, and further admits that its annual gross volume of business exceeds $250,000 and that during the same period it purchases goods and materials valued in excess of $50,000 which originated from sources outside the State of Oregon, or from suppliers within said State which in turn obtained such goods and materials directly from sources outside said State. Accordingly, it admits, and I find, that it is a health care institution within the meaning of Section 2(14) of the Act engaged in commerce and in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that Oregon Nurses Associaton, Inc., is a labor organization within the meaning of Section 2(5) of the Act.[2]

III. THE ALLEGED UNFAIR LABOR PRACTICE

The Facts

All or most relevant and material facts are uncontested and are contained primarily in a "Stipulation of Facts" (G.C. Exh. 1(K)) received into evidence. The evidence recited below is summarized from that stipulation and from the testimony of a few brief witnesses. Thus, beginning in 1975 and continuing without interruption for all times material, the Union has been and is the collective-bargaining representative of an appropriate unit of employees described as:

> All registered nurses and charge nurses employed by the Respondent at its Portland, Oregon facility in the nursing service, surgery and intravenous departments, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

Over the years, the parties have agreed to various collective-bargaining agreements, the most recent of which is

[1] All dates herein refer to 1980 unless otherwise indicated.

[2] Respondent has denied this element of the case in its answer (par. III, G.C. Exh. 1(g)) but admits the allegation in par. 5 of the stipulation of facts (G.C. Exh. 1(K)).

effective by its terms for the period of January 1 to December 31, 1981. This agreenent was not signed by the parties until May 27.

Bargaining on the present agreement began on November 11, 1979. In October or early November 1979, unit employees began wearing a union pin on their uniforms, either on the left or right side, a few inches below the shoulder, or on their collars. This pin is illustrated below. The pin measures approximately 1-3/4 inches in diameter and can be described as having a white background with blue lettering and multicolored hues on the diagonal. (G.C. Exh. 4.)

RN's*/ONA
*REPRESENTED NURSES

These pins were worn without objection by any supervisor during worktime, in both patient and nonpatient areas. The purpose of wearing these buttons was for unit employees to reflect their membership in the Union and to indicate solidarity with each other and with the members of the negotiating committee.

At the time unit members began to wear the ONA pins, there was in existence since February 23, 1978, a dress code. (G.C. Exh. 5.) In part, this document reads:

> 2. Uniform Regulations: All nursing department personnel, meaning RN's, LPN's, NA's and orderlies are to wear uniforms which meet professional standards of acceptability. . . .

In addition, as part of its personnel manual (effective date not indicated, but apparently predating the controversy herein), Respondent published a "Dress Code":

> Each employee is a public relations representative of the Hospital. Therefore, to instill in patients the greatest confidence in the Hospital's ability to provide professional care, attention to personal hygiene and appropriate dress is absolutely required. Department heads will advise employees as to the individual department dress requirements. When considering proper dress, special attention should be given to applicable safety standards or requirements.[3]

During the course of negotiations, members of the bargaining unit became dissatisfied with Respondent's proposals and a perceived lack of progress in resolving the contract dispute. At a bargaining session on February 22, Respondent announced that, at the next scheduled bargaining session set for February 28, it would present to the Union its last and final offer. On February 27, about 1:30 p.m., unit employees met in a conference room made available by Respondent and voted to wear pastel yellow ribbons for the purpose of demonstrating their support for the Union's bargaining position.

Following this meeting, employees who worked on Respondent's 3 to 11 p.m. shift reported to work wearing the yellow ribbons (approximately 6 inches long) illustrated below [illustration omitted from publication]. These ribbons were worn underneath employees' ONA pins or tied around hair pulled back in a "pony tail." Upon receiving information that these ribbons were being worn, Dorothea Richey, assistant administrator of patient care for Respondent, issued an order relayed to supervisors by telephone that all employees wearing the ribbons be directed to remove them or be sent home. This order was sent without notice to nor consultation or bargaining with the Union. Unit employees discussed the matter among themselves for about 5 minutes and one then called union official Connie Weimer by telephone for advice. Weimer advised employees to obey the orders of Respondent's supervisors. This advice was relayed to the various nursing stations in and around the hospital, where it was disseminated to the unit employees. All employees removed the yellow ribbons and no employee was sent home or otherwise disciplined because of wearing a yellow ribbon.[4]

Respondent's order to remove the ribbons was not limited to patient care areas. Respondent's premises are divided into three buildings. Approximately one-quarter of the 199 bed hospital is devoted to psychiatric patients, some of whom are in lockup. (Resp. Exh. 1.) On occasion, these patients and other patients are likely to be in public areas of the hospital.

On February 28, Respondent and the Union held a negotiating session. During this meeting, Richey referred to the yellow ribbons, saying that the reason for the prohibition was to avoid involving Respondent's patients in the labor dispute. At the hearing, Richey testified that, in prohibiting the ribbons, she was also motivated by a desire to avoid involving Respondent's physicians in the labor dispute.

Since at least 1975 and continuing to date, some employees in the unit described above, consisting of approximately 150 employees, have worn various and sundry insignia or pins on their uniforms during worktime in patient care areas. Examples are:

> a. "Holladay Park Hospital on the Move" pin. (These are presently distributed by Respondent for employees to wear and refer to construction of a new wing of the hospital for neuropsychiatrics.)
> b. Smile pins.
> c. Corsages (worn on personal days such as birthdays).
> d. Snowmen or Christmas trees (Christmas season).
> e. Shamrocks, "Think Green" (week of March 17).
> f. Pins with logo such as "Pet me I purr" (worn occasionally).
> g. Green ribbons (Christmas and March 17).
> h. Red ribbons (Christmas).

Richey testified at the hearing that her desire is to maintain an anxiety-free atmosphere at the hospital for patients confined there. In her view, the buttons and in-

[3] My attention is not called to nor do I find in the applicable collective-bargaining agreement (G.C. Exh. 3) any provision which might or could affect the controversy herein.

[4] Apparently, some unit employees on the fifth floor wore the yellow ribbons again on February 28, for a few minutes, on the 3 to 11 p.m. shift. When directed to remove the yellow ribbons, they complied.

signias listed immediately above do not disturb the tranquility of the hospital. Neither does the ONA pin which does not detract from the professional appearance which the hospital desires for its unit employees. However, in Richey's opinion, the yellow ribbon would produce anxiety in patients, particularly on the fifth floor where many union laborers are hospitalized.

Analysis and Conclusions[5]

In the absence of "special circumstances," employees have a right protected under Section 7 of the Act, to wear at work union insignia, including buttons, emblems, and T-shirts displaying slogans.[6] An employer's rule which purports to prohibit or restrict the wearing of such union insignia is presumptively invalid unless or until the requisite "special circumstances" are shown by the evidence.[7] The first issue is whether this case can be analyzed within the framework of the above rules.

Respondent questions (br., p. 16) whether the presumption in—favor of permitting the wearing of union insignia applies where—as here—there is no union organizing campaign in progress. Respondent cites one case in support of his proposition, *Standard Oil Company of California, Western Operation, Inc.*, 168 NLRB 153 (1967). Apparently footnote 1 to that opinion escaped Respondent's attention. It reads in relevant part:

> [w]e do not adopt or rely on his [Trial Examiner's] alternative finding that because no union organizational campaign was in progress at the time the rule was enforced, this in itself is a separate reason for finding that no protected purpose could be served by the employees who wore the union decals.

In a later case, *Fabric Services, Inc.*, 190 NLRB 540 (1971), the Board affirmed the Trial Examiner who held that the wearing of the union insignia is protected if part of a concerted campaign to organize employees or to promote collective bargaining. The employees in the instant case were seeking to promote collective bargaining; accordingly, the lack of a union organizing campaign in progress does not affect the case. However, I will recommend dismissal on other grounds.

To begin, I have serious doubts whether the yellow ribbon at issue in this case is a union insignia at all. There is no indication on the face of the ribbon to connect it to union activities nor the wearer's support for the Union.[8] To permit neutral objects or items of clothing as union insignia merely because of the subjective interpretation of union members wearing these items could lead to widespread abuses and confusion in the minds of the public. I will further discuss the latter point below. In light of the above, I hold Respondent was within its rights to ban the yellow ribbons—without regard to reason or motivation because they were not union insignia and the usual presumptions of invalidity do not apply.

In the alternative, I assume *arguendo* that the yellow ribbons in issue are union insignias. Thus, the rules prohibiting the wearing of yellow ribbons anywhere in the hospital are presumptively invalid. However, I find "special circumstance" sufficient to rebut the presumption and render the Employer's action lawful.

1. Union buttons

Prior to the time union members began to wear yellow ribbons on their uniforms, they had an unrestricted right to wear a union button during working time anywhere in the hospital.[9] The Board and the courts have held that an employer has a stronger case for restrictions on wearing union insignia if the employees are permitted to wear a different union insignia.[10] Moreover, here there was a rational basis to permit the wearing of one insignia and prohibit the wearing of another. The union button was in accord with the dress code described above. That is, in the opinion of Respondent's supervisors, it was professional in appearance and complimentary to the nursing uniform. On the other hand, the yellow ribbon, being essentially neutral in design, was judged by Respondent's supervisors to be nonprofessional and controversial. The record supports these judgments. Further, in order to know the purpose of the yellow ribbon members of the public, including psychiatric and other types of hospital patients, had to ask.[11] It is likely that, in response to

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[5] For a comprehensive review of Board and court decisions relevant to the issues in this case, see Annotation, *Unfair Labor Practice, Union Insignia*, 11 ALR 2d 26.

[6] *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793 (1945); *St. Joseph's Hospital*, 225 NLRB 348 (1976); *The Singer Company, Friden Division*, 199 NLRB 1195 (1972).

[7] *The Ohio Masonic Home*, 205 NLRB 357 (1973), enfd. 511 F.2d 527 (5th Cir. 1975).

[8] My research has failed to find a case dealing with union insignia comparable to that at issue here. All cases involve insignia with some inscription or display explicitly connecting the item to union activity. I have read *Fabri-Tek, Incorporated*, 148 NLRB 1623 (1964), enforcement denied 352 F.2d 577 (8th Cir. 1965), wherein the Trial Examiner stated in a Board-approved decision:

> The nature of the union insignia involved . . . does not affect this right [to wear it during work] and the Board, with Court approval, has sustained it in cases involving unusual emblems as well as articles of clothing.

In fn. 10, the Trial Examiner lists several cases involving the wearing of unusual union insignia, all of which have slogans, inscriptions, or displays connecting them to support for union activities. See also *N.L.R.B.* v. *Mayrath Company*, 319 F.2d 424, 426–427 (7th Cir. 1963), which sanctions the use of insignia dealing with "passive inoffensive advertisement of organizational aims and interests." It is doubtful these cases would apply to the yellow ribbon here in issue.

[9] Because of this unrestricted right to wear union buttons, the General Counsel's evidence regarding the wearing of smile buttons, "Holladay Park Hospital on the Move" pins, etc., has little or no probative value. Thus, it does not follow that permitting the wearing of these miscellaneous buttons and union buttons, while restricting the wearing of yellow ribbons, is discriminatory. Compare *The Ohio Masonic Home, supra.*

[10] *Clover Industries, Division of GTI Corporation*, 188 NLRB 252, 253 (1971). Cf. *Andrews Wire Corporation*, 189 NLRB 108 (1971), petition to vacate denied 67 CCH 12294; but see *Webb Furniture Corporation*, 158 NLRB 1003 (1966); *Davison-Paxtron Company, Division of R. H. Macy and Company* v. *N.L.R.B.*, 462 F.2d 364 (5th Cir. 1972); *Fabri-Tek, Incorporated v. N.L.R.B.*, 352 F.2d 577 (8th Cir. 1965), and cases cited therein.

[11] Of course some persons who merely observed the yellow ribbons undoubtedly interpreted them as a symbol of support for the hostages in Iran. I take administrative notice that during the time the controversy herein occurred, many Americans used yellow ribbons for this purpose. This interpretation, of course, would further undermine and politicize the Respondent's health care facilities as I take further administrative notice

Continued

such inquiries, nurses would attempt to persuade the listener that the hospital was capable of paying higher salaries and benefits to unit members. Indeed, some patients or former patients had written the hospital in support of the nurses' bargaining positions. Attempting to prevent patients from being injected into the bargaining negotiations is a proper and legitimate motive for a hospital under the circumstances present herein. In addition, patients, including psychiatric patients, were likely to be anywhere in the hospital, including public areas. Accordingly, the hospital was justified in banning the yellow ribbons throughout the hospital since controversy over the Union's position could be counterproductive to treatment and recovery of patients.

The hospital's nondiscriminatory enforcement of its dress code must also be noted. Different kinds of buttons, including union buttons, were permitted througout the hospital. Enforcement of a dress code for employees, particularly professional employees in a hospital setting, would seem to be absolutely essential. The Employer decided that wearing yellow ribbons was inappropriate dress and there is no evidence that this nondiscriminatory enforcement of the dress code restrained or restricted employees in the exercise of their rights guaranteed to them by Section 7 of the Act.[12]

2. No other unfair labor practices

There is authority to suggest that the absence of any other unfair labor practice is a factor to be considered in support of a Respondent's position.[13] Here, other than an alleged derivative, 8(a)(5) violation, no other unfair labor practices are alleged nor proven. Indeed, in my opinion, this case tests the cuter limits of the Board's trivia or *de minimis* doctrine.[14] As Respondent points out (br., p. 10), negotiations are now concluded and an agreement has been executed. Presumably the yellow ribbons have disappeared and the employees continue the business at hand.

I conclude with a brief discussion of the General Counsel's primary authority, *George J. London Memorial Hospital*, 238 NLRB 704 (1978), which, I find, does not apply to this case. First, the dress code in issue in the instant case, while similar to that in *London*, was not used to prohibit the wearing of union insignia. As stated above, Respondent permitted the wearing of union buttons anywhere in the hospital, while the hospital in *London* did not. Furthermore, the hospital in *London* termitted the wearing of some miscellaneous-type buttons while restricting the use of union buttons. Not so here. Essentially, I find that Respondent did not promulgate and maintain an overly broad no-solicitation and no-distribution rule. The dress code in issue here could not reasonably be described as overly broad on its face nor as applied. Consequentially, I must find that Respondent did not violate the Act as alleged.[15]

Conclusions of Law

1. Respondent, Holladay Park Hospital, is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, Oregon Nurses Association, Inc., is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not engaged in the unfair labor practices alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]

that the public, including Respondent's patients, was deeply divided over the handling of the events in Iran during this time. Cf. *St. Joseph's Hospital of the Franciscan Sisters of Milwaukee, Inc.*, 247 NLRB 869 (1980); *Davison-Paxton Company, Division of R. H. Macy and Company* v. *N.L.R.B.*, *supra*, at fn. 15.

[12] While I note that Respondent has permitted the wearing of green ribbons and red ribbons on accord with the holiday of the moment, there is no evidence that it permits more than one insignia for a given occasion. Here the hospital permits a union button and refuses to allow a yellow ribbon. Moreover, the record shows that the purpose of wearing the union button and the yellow ribbon were the same: to promote collective bargaining.

[13] Cf. *Retail Store Employees Union Local 954* [*La Salle Division of R. H. Macy & Co.*] v. *Rothman*, 298 F.2d 330, 332 (D.C. Cir. 1962); *Davison-Paxton Company, Division of R. H. Macy and Company*, *supra*, 462 F.2d 371.

[14] See *United States Postal Service*, 253 NLRB 1203 (1981), Member Penello concurring where the two types of trivia cases are delineated. In my opinion, this case arguably falls within the first category—where the very existence of a violation is subject to serious question even when viewed in the light most favorable to the General Counsel.

[15] In light of this holding it is not necessary to discuss the alleged violation of Sec. 8(a)(5) nor to resolve perhaps the sole credibility issue in this case: whether unit members were told to remove the ribbons or go home without pay, or whether they were told to remove the ribbons or go home.