HE NATIONAL LABOR RELATIONS BOARD (NLRB) has dealt a severe blow to nurses’ and other workers’ rights to join unions and bargain collectively. By a straight party line vote of 3 to 2, the Republican-appointed majority on the board ruled that many charge nurses were supervisors, and therefore excluded from the protections under the National Labor Relations Act. The board’s decision is likely to have a chilling effect on new nurse organizing.

The NLRB essentially gave employers an instruction manual on how to reclassify workers as “supervisors” and thereby strip away their rights to a voice on the job. “The NLRB ignored what common sense tells us: Nurses use independent judgment and direct the flow of work during their shifts,” says Kathy Sackman, RN, UNAC/UHCP president. “That makes nurses responsible caregivers and patient advocates, not supervisors.”

The three decisions (Oakwood Healthcare, Inc., Golden Crest Healthcare Center and Croft Metals) are commonly called the Kentucky River cases, getting their name from a previous case that was heard by the Supreme Court in 2001. The NLRB decisions address four issues: (1) the meaning of “assign,” (2) the meaning of “responsibly to direct,” (3) the meaning of “independent judgment,” and (4) the status of employees who hold supervisory duties only some of the time. On the whole, the board defines these terms in a manner that is likely to place many nurses, as well as other employees with only minor authority to direct the work of others, into the category of supervisors.

Oakwood Healthcare Inc. was used as the lead case and involved charge nurses in an acute care hospital. The board ruled that many of the charge nurses were supervisors, even if they do not act as such on an everyday basis. The board decided that employees can be excluded from bargaining units.

Sonia Moseley Retires

AFTER MORE THAN 30 YEARS of fighting for the rights of nurses, Sonia Moseley, RNP, has announced her retirement. Many of us cannot imagine a UNAC negotiation, a nurse organizing effort or an UNA Nurse Congress without Sonia being there. She has been at the forefront of every battle and campaign to improve working conditions for nurses since the inception of the United Nurses Associations of California/Union of Health Care Professionals (UNAC/UHCP) in the early 1970s. She has been the face of, and voice for, unionized nurses in the halls of Congress, at the Joint Commission on Accreditation of Healthcare

(continued on Page 5)
Delegates to AFSCME’s 37th International Convention in Chicago were treated to inspiring speeches, riveting debates and a multitude of challenges.

And then they could get their blood pressure checked.

As at past Conventions, UNA-AFSCME sponsored a Wellness Booth at which delegates could get screened for high blood pressure, high blood sugar or just get some TLC from the nurses staffing the booth.

Although the booth operated on an abbreviated schedule this year, 1464 delegates were screened for high blood pressures, 253 of whom had elevated readings, and 172 delegates for high blood sugar, 35 of whom had high readings.

The booth was staffed by members of the UNA-AFSCME Nurse Advisory Committee and volunteers from Resurrection Health Care.

UNA’s Wellness Booth a Huge Success

AFSCME Commissions Study on the Value of LPNs

Alarmed by the growing trend in acute care to reduce or eliminate LPNs from hospital settings, AFSCME has contracted with the University of Oregon to conduct a study on the role of LPNs in hospitals. The goal is to identify and emphasize the critical role of LPNs as valued members of the health care delivery team.

To date, almost all studies on health care workers have focused on registered nurses, with little data on what LPNs do and the contributions they make to improving the quality of patient care. Without supporting research, it can be difficult to prove that replacing LPNs with a RN-CNA mix would be detrimental to patient care.

The research team is led by Dr. Gordon Lafer, who authored “Solving the Nursing Shortage: Best and Worst Practices for Recruiting, Retaining and Recouping of Hospital Nurses.” That study, which focused on RNs, was commissioned by AFSCME in 2003.

The report will be released at the 11th UNA-AFSCME National Nurse Congress this May.

Sonia Moseley (continued from page 1)

Organizations (JCAHO), and at the bargaining table. Her influence has been felt in state politics, federal policy debates and national nurse regulatory agendas.

Moseley’s expertise is widely sought. Moseley has testified before The Institute of Medicine on nurse workforce issues. She sits on the Nurse Advisory Committee of JCAHO. And, most important to us (!) she is a founding member of UNA’s Nurse Advisory Committee.

Moseley’s most visible role is that of executive vice president and organizing director of UNAC/UHCP. She is also vice president for nursing for the National Union of Hospital and Health Care Employees. But while many of her activities have taken place in the public eye, she is also a trusted advisor in behind-the-scenes consultations with union leaders. AFSCME International President Gerald W. McEntee summed it up when he said, “Sonia is a leader and somebody I rely on. I know when she offers advice, or suggests a course of action, I can follow her without a second thought. I have unquestioning confidence in her judgment and have frequently benefited from her wise counsel. I will miss her insights, her intellect and her friendship. I wish her the best.”

And so do we, Sonia. On behalf of all the UNA nurses, we thank you for your unwavering commitment and dedication to nurses in California and across the country. Good luck with the next chapter of your life!
RN Working Together Welcomes New Director

RN Working Together, the nurse Industry Coordinating Committee established by the AFL-CIO, has hired Steve Francy to be its executive director. Francy comes to RNs Working Together with impressive experience in health care. For more than five years he was the national coordinator for the Coalition of Kaiser Permanente Unions. He was responsible for working with coalition unions to develop consensus on goals and program approaches, used his leadership skills for problem solving and conflict resolution, and participated in two successful national collective bargaining efforts for the 11-union, 80,000-worker group.

At RNs Working Together, Francy will coordinate all aspects of its programs and activities, work with nurse leaders to set priorities, and institute strategic planning initiatives that will strengthen the influence of nurses.

In addition to AFSCME, the other unions belonging to RNs Working Together are the American Federation of Teachers, American Federation of Government Employees, Communications Workers of America, International Association of Machinists and Aerospace Workers, International Federation of Professional and Technical Employees, International Union of Operating Engineers, Office and Professional Employees International Union, United American Nurses, United Auto Workers, and United Steelworkers.

Welcome, Steve.

Improving Systems for Medical Error Reporting

One-day training sessions are already offered by the Maryland Patient Safety Center (http://mhcc.maryland.gov).

Beginning in 2007, Indiana will become the second state in the country to publish hospital-specific data on medical errors. The state will track 27 types of medical errors, including wrong-site and wrong-patient surgeries, adverse events from contaminated drugs, patient suicides and infant discharges to the wrong person.

Hospitals in Indiana have been required to report medical error data to the state since the beginning of 2006. A preliminary report on 2006 data will be posted on the state’s website in February; a final report is due in July.

Minnesota is the only other state to publicly release hospital-specific medical error data.

In July, Maryland joined Florida, Illinois, Missouri, New York, Pennsylvania and Virginia in requiring hospitals to report nosocomial infections. Maryland will post its data on the website of the Maryland Health Care Commission.

Work/Family Conflicts Linked to Nursing Shortage

Researchers at Wake Forest University in North Carolina have shown what many suspected: There is a clear link between work and family conflicts among nurses. Schedule juggling and work intensity have made it increasingly difficult for nurses to keep a healthy balance in their lives.

According to the report’s author, Joseph Grzywacz, work/family conflicts can persuade nurses to abandon the job for another career or make them less willing to enter the profession to begin with. The study surveyed nearly 2,000 nurses and asked them questions such as how frequently job duties kept them from spending enough time with their families, or conflicted with home responsibilities like yard work, cooking and child care.

The study also found that work/family conflicts are associated with lower job satisfaction, fatigue, burnout and emotional distress or depressive symptoms.

The findings come at a time when some facilities are experimenting with creative ways to attract and retain their nurse workforce. For example, some Maryland hospitals now offer concierge-type services to their employees.
**Drug Resistant Bacteria a Risk for Health Workers**

**While there has been an increasing number of reports on the dangers of patients acquiring drug-resistant infections, little attention has been paid to the risk these infections pose to health care workers. But now a recent report in the journal Infection Control and Hospital Epidemiology (September 2006) shines a light on the threat of these bugs to doctors and nurses.**

In 2004, two health care workers at an outpatient clinic for people with HIV at Johns Hopkins Hospital in Baltimore became infected with an aggressive form of community-acquired methicillin-resistant staphylococcus aureus (MRSA).

Infection control experts investigated the outbreak. They swabbed 36 surfaces in the clinic and tested all other clinic staff for infection. Although no other workers were colonized or infected with MRSA, seven surfaces tested positive for contamination, including examination tables, pulse oximeters, countertops, computer keyboards and patient chairs.

Health experts fear that the rising trend of MRSA infections in hospitals could render useless many of the most widely available and effective antibiotics.

According to Dr. Trish Perl, a professor at Johns Hopkins University School of Medicine, the report highlights the fact that “health care workers need to be aware of the risk, alert infection control staff immediately after an infection is suspected, and understand that tighter infection control procedures can guard against subsequent exposure.”

The study is believed to be the first to evaluate just how widespread community-acquired MRSA is during an outbreak in an outpatient setting. Previous research focused on hospital wards and inpatient settings.

**Small Steps in Pandemic Preparedness**

AFSCME’s steady criticism of the Bush administration’s national preparedness plan for pandemic influenza is beginning to have an impact. The administration had turned a deaf ear on our demands for effective science-based guidance and requirements. Recently, however, the U.S. Department of Health and Human Services (HHS) issued new interim guidance on the use of respirators in health care settings. While still far from adequate, HHS has made some improvements in its recommendations to prevent infection in health care settings.

HHS published its Pandemic Influenza Plan in November 2005. Among its many shortcomings, HHS recommended the use of surgical masks in most situations to prevent infection among health care workers. Unlike respirators, surgical masks are not designed to prevent wearers from inhaling very small infectious particles. HHS only recommended the use of respirators during certain high risk procedures (e.g., bronchoscopy, endotracheal intubation, nebulizer treatment) that may produce a fine mist of infectious particles. In response, AFSCME led an effort with other unions and allies to include comprehensive and effective infection control measures in the plan.

HHS now states that, instead of surgical masks, use of N-95 respirators is “prudent” for direct care activities for patients with confirmed or suspected pandemic influenza. It recommends N-95 respirators or higher levels of protection for high risk situations, and that these procedures be performed in isolation rooms. HHS also clarified methods to minimize the number of people coming into contact with suspected or confirmed cases. The document, Interim Guidance on Planning for the Use of Surgical Masks and Respirators in Health Care Settings during an Influenza Pandemic, October 2006, can be found at: www.pandemicflu.gov/plan/maskguidancehc.html.

These are modest changes that still fall considerably short of what is needed. The plan only contains recommendations, not requirements. AFSCME will continue to strenuously push for stronger measures to protect workers from emerging as well as existing infectious diseases.

![N-95 (or higher) respirators provide protection against large droplet exposure. From www.pandemicflu.gov](image)
if they exercise the authority to “assign” and/or “responsibility to direct” the work of other employees on a “regular and substantial” basis. The board defined “regular” to mean according to a set schedule or pattern and “substantial” to mean at least 10–15 percent of the employee’s work time. For nurses, this new standard could result in many otherwise eligible nurses being excluded simply because they are designated by the employer as being the charge or lead nurse on a single evening or weekend shift.

The board defined “independent judgment” as: …any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

An employee needs only to engage in ONE of these activities to be classified as a supervisor.

The Board did not clearly define the term “independent judgment.” However, according to the board in the nursing context, the assignment of patients to nurses requires “independent judgment” if the charge nurse making the assignments considers the qualification and experience of the available nurses and the needs of the patients.

On the surface, the decisions in Golden Crest Healthcare Center and Croft Metals do not seem as damaging as Oakwood. In Golden Crest, the board ruled that charge nurses — both RNs and LPNs — working in a nursing home were employees, not supervisors. Similarly, in the Croft Metals case, the employer failed to prove that the degree of discretion by lead-persons involved in responsible direction was anything more than routine or clerical in nature rather than independent judgment, and therefore they were not supervisors. However, it is critical to note that the favorable decisions were reached largely because the employers did not present evidence using the standards laid out in Oakwood. It is likely that if these employers refiled their petitions using Oakwood standards, the decisions would be reversed.

In anticipation of an adverse ruling, United Nurses Associations of America/Union of Healthcare Professionals (UNAC/UHCP) negotiated contract language with Kaiser Permanente that will protect its members from exclusion from the bargaining unit based on the NLRB decision. That language reads:

The Employer agrees that during the term of this Agreement it will not challenge the bargaining unit status of any nurse or job classification covered by this Agreement. The Employer further agrees that during the term of this Agreement it will neither claim that any nurse or job classification covered by this Agreement exercises supervisory authority within the meaning of Section 2(1) of the NLRA, nor assign any nurse such duties for the purpose of removing that nurse from the bargaining unit. Finally, the Employer also agrees that during the term of this Agreement it will not challenge the Union’s right to represent any nurse in any job classification covered by this Agreement based on a claim that such nurse is a supervisor within the meaning of the NLRA.

This and other sample contract language is available from AFSCME’s Department of Research and Collective Bargaining Services at una@afscme.org.

Supervisors (continued from page 1)
What is UNA-AFSCME?

The United Nurses of America-AFSCME is more than 60,000 nurses working in unity to advance quality and accountability in the health care setting through organizing, political action and nursing practice. Across the country, we are reaching out to other nurses who want to join UNA-AFSCME. As our numbers grow, so does our power to improve our jobs, the care we deliver and the quality of our lives.

Yes! I’d like to get a free subscription to the UNA Action newsletter.

Please return to: AFSCME Department of Research and Collective Bargaining Services
1625 L St., N.W., Washington, D.C. 20036-5687.

To learn more about United Nurses of America, visit the AFSCME website at www.afscme.org/una or contact the AFSCME Department of Research and Collective Bargaining Services at (202) 429-1215 or by e-mail at una@afscme.org.