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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

LEGACY HEALTH; LEGACY GOOD
SAMARITAN HOSPITAL AND MEDICAL
CENTER; LEGACY MOUNT HOOD
MEDICAL CENTER; LEGACY MERIDIAN
PARK HOSPITAL dba LEGACY MERIDIAN
PARK MEDICAL CENTER; and LEGACY
EMANUEL HOSPITAL & HEALTH CENTER
dba LEGACY EMANUEL MEDICAL
CENTER,

Case No.

COMPLAINT

(Declaratory judgment re state action
including preemption; deprivation of civil
rights in violation of 43 USC § 1983)

Plaintiffs,

v.

STATE OF OREGON; OREGON BUREAU
OF LABOR AND INDUSTRIES; VAL
HOYLE, in her official capacity as
Commissioner of the Oregon Bureau of Labor
and Industries; and DUKE SHEPARD, in his
official capacity as Deputy Commissioner of the
Oregon Bureau of Labor and Industries,

Defendants.

Plaintiffs Legacy Health; Legacy Good Samaritan Hospital and Medical Center; Legacy
Mount Hood Medical Center; Legacy Meridian Park Hospital dba Legacy Meridian Park Medical

Center; and Legacy Emanuel Hospital & Health Center dba Legacy Emanuel Medical Center (collectively “Plaintiffs”), by and through the undersigned counsel, bring this action against the State of Oregon; the Oregon Bureau of Labor and Industries (“BOLI”), Labor Commissioner Val Hoyle, and Deputy Labor Commissioner Duke Shepard (collectively “Defendants”) and allege as follows.

I. NATURE OF ACTION

1. Plaintiffs’ first claim for relief (count one), seeks a declaratory judgment declaring that OAR 839-020-0050¹ is invalid because the regulation is subject to the jurisdiction of the National Labor Relations Act (“NLRA”), as amended, 29 USC §§ 151-169, and therefore preempted by the NLRA. OAR 839-020-0050(2)(d) imposes onerous and restrictive provisions requiring that meal periods be taken during a narrow two-hour period. However, OAR 839-020-0050(7) provides that rules regarding meal periods and rest periods may be avoided by unionized employers and their union employees by the terms of a collective bargaining agreement (“CBA”).

2. Plaintiffs’ count two of their first claim for relief, seeks a declaratory judgment that OAR 839-020-0050 requiring that meals be taken at specific times is invalid for failure to follow applicable rule making requirements.

3. Plaintiffs’ count three of their first claim seeks a declaratory judgment that OAR 839-020-0050 requiring timing of meals exceeds the relevant statutory authority.

4. Plaintiffs’ count four of their first claim seeks a declaratory judgment that OAR 839-020-0050 is invalid because it conflicts with clearly stated rules governing the practice of nursing.

5. Plaintiffs also bring a second claim for violation of 43 U.S.C. § 1983.

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¹ Plaintiffs have filed a related Petition for Judicial Review of Agency Rule OAR 839-020-0050 with the Oregon Court of Appeals.

6. Count one of Plaintiffs' Section 1983 claim asserts that Deputy Commissioner Duke Shepard and Commissioner Val Hoyle violated Section 1983 because Shepard, while acting under color of state law, retaliated against Plaintiffs and their employees when the employees sought to exercise of their First Amendment rights when they petitioned Hoyle and Shepard regarding their concerns over meal time rules and how they might go about seeking a change of those rules and Shepard provided incomplete or erroneous information which caused employees to understand that they needed to unionize in order to be allowed to avoid the rule which they considered impractical, onerous, contrary to their health, and contrary to proper nursing practices.

7. Count two of Plaintiffs' Section 1983 claim asserts that OAR 839-020-0050 violates the Equal Protection Clause of the United States Constitution.

II. JURISDICTION

8. This Court has jurisdiction under 28 U.S.C. § 1331, as this matter arises under the constitution and laws of the United States, including the First and Fourteenth Amendments to the U.S. Constitution and the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-169 and 42 U.S.C. § 1983. This action arises under the supremacy clause of the United States Constitution (Article VI, Clause 2) and the NLRA. This Court has authority under 28 U.S.C. §§ 2201 and 2202 to grant declaratory relief and other relief, including injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure.

9. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 because those claims form part of the same case or controversy.

III. VENUE

10. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred in this judicial district.

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IV. PARTIES

11. Plaintiff Legacy Good Samaritan Hospital and Medical Center (“Good Samaritan Hospital”) is an active domestic nonprofit corporation with its principal place of business at 1015 NW 22nd Avenue, Portland, Oregon 97210.

12. Plaintiff Legacy Mount Hood Medical Center (“Mount Hood Medical Center”) is an active domestic nonprofit corporation with its principal place of business at 24800 SE Stark, Gresham, Oregon 97030.

13. Plaintiff Legacy Meridian Park Hospital dba Meridian Park Medical Center (“Meridian Park Hospital”) is an active domestic nonprofit corporation with its principal place of business at 19300 SW 65th, Tualatin, Oregon 97062.

14. Plaintiff Legacy Emanuel Hospital & Health Center dba Legacy Emanuel Medical Center (“Emanuel Hospital”) is an active domestic nonprofit corporation with its principal place of business at 2801 N. Gantenbein Avenue, Portland, Oregon 97227.

15. Defendant State of Oregon is one of 50 states of the United States.

16. Defendant Oregon Bureau of Labor and Industries (“BOLI” or “Agency”) is an agency of the State of Oregon.

17. Defendant Val Hoyle (“BOLI Commissioner Hoyle”), who is sued in her official capacity as Commissioner of the Oregon Bureau of Labor and Industries, is an individual residing in Oregon.

18. Defendant Duke Shepard (“BOLI Deputy Commissioner Shepard”), who is sued in his official capacity as Deputy Commissioner of the Oregon Bureau of Labor and Industries, is an individual residing in Oregon.

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V. GENERAL FACTUAL ALLEGATIONS

Oregon statute and BOLI regulations governing meal periods and breaks and civil penalties.

ORS 653.261

19. ORS 653.261(1)(a)(3) provides that the BOLI Commissioner may adopt rules prescribing minimum conditions of employment, including minimum meal periods and rest periods “in any occupation as may be necessary for the preservation of the health of employees.” But the rules adopted by the Commissioner regarding meal periods and breaks do not apply to “nurses who provide acute care in hospital settings if the provisions of collective bargaining agreements entered into by the nurses prescribe rules concerning meal periods and rest periods.” And ORS 653.261(4)(a)(b) provides that employees who serve food or beverages may, subject to conditions, agree to waive taking a meal period. ORS 653.261(1)(a), (3), (4)(a), (b), and (d) provide in relevant part:

(1)(a) The Commissioner of the Bureau of Labor and Industries may adopt rules prescribing such minimum conditions of employment, excluding minimum wages, in any occupation as may be necessary for the preservation of the health of employees. The rules may include, but are not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less than eight hours per day or 40 hours per workweek; * * *

(3) Rules adopted by the commissioner pursuant to subsection (1) of this section regarding meal periods and rest periods do not apply to nurses who provide acute care in hospital settings if provisions of collective bargaining agreements entered into by the nurses prescribe rules concerning meal periods and rest periods.

(4)(a) The commissioner shall adopt rules regarding meal periods for employees who serve food or beverages, receive tips and report the tips to the employer.

(b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commissioner shall permit an employee to waive a meal period. * * *

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(d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS 183.745. All sums collected as penalties under this subsection shall be applied and paid over as provided in ORS 653.256 (4).

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