



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

THE AMERICAN CORPORATE COUNSEL ASSOCIATION

OCTOBER 3, 2000

"Students at the Bargaining Table - Unionization in the Nonprofit Sector"

A Management Perspective Presented by:

Thomas Royall Smith
Jackson Lewis Schnitzler & Krupman
One Beacon Street
Boston, MA 02108
(617)367-0025
smitht@jacksonlewis.com

I. FOUR CATEGORIES OF STUDENTS DISCUSSED IN ST. CLARE'S HOSPITAL & HEALTH CENTER, 229 NLRB 1000-1002 (1979)

Students Employed in a Capacity Unrelated to Their Education Program

Students Employed by Their Own Educational Institutions in a Capacity Unrelated to Their Course of Study

Students Employed in a Capacity Related to the Student's Course of Study

Students Who Perform Services at Their Educational Institutions Directly Related to Their Educational Programs

II. FACTORS RELIED ON BY THE LABOR BOARD IN BOSTON MEDICAL CENTER TO SUPPORT A FINDING THAT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTED BETWEEN BMC AND ITS INTERNS AND RESIDENTS

The Interns and Residents "Work For" the Employer

Lack of supervision

Employee replacement would be required if interns and residents not there

The Interns and Residents Are "Compensated"

No IRS exemption

State and federal withholdings are made

Social Security withheld

* Interns and Residents Receive Fringe Benefits

Paid vacations

Sick leave

Parental leave and bereavement

Health, dental and life insurance

Bereavement leave

Medical, dental and live insurance

Malpractice Provide Direct Patient Care

80% of time

Advanced training not inconsistent with and compliments service provided

Student status not inconsistent with employee status

III. STRATEGIES WHICH NON-PROFIT EDUCATIONAL INSTITUTIONS SHOULD CONSIDER IMPLEMENTING IF THEY WANT THEIR STUDENTS TO BE STUDENTS ONLY

Non-taxable Stipends for Independent Research or Teaching

Non-taxable Scholarship Aid And/or Tuition Remission

Academic Consequences Rather than Discipline for Misconduct

Require Service as a Graduate Assistant or Teaching Assistant as a Requirement for Graduation or as Part of the Graduate Curriculum

Do Not Tie Stipend into Hours Worked

Designate Funding for Teaching and/or Graduate Assistants from Outside Sources

Charge Tuition

Insist on Close Supervision of Graduate Assistants and Teaching Assistants

Require Exams and Classroom Courses

Do Not Provide Benefits to Graduate Assistants or Teaching Assistants

This material is protected by copyright. Copyright © 2000 various authors and the American Corporate Counsel Association (ACCA).