Case In Point

Can Hospitals Impose a Dress Code that Prohibits Large Tattoos and Excessive Body Piercings in a Unionized Environment?

Date: January 28, 2013

Apparently not, according to Arbitrator Slotnick's recent award in *Ottawa Hospital v CUPE*. This award concluded that a hospital's dress code policy was unenforceable as it required employees to cover up large tattoos and prohibited "visible, excessive body piercings."

The hospital argued that the dress code was minimally intrusive and its goal was to improve health care outcomes for patients and increase the professional image of its employees, thereby improving patients' confidence. The union grieved on the basis that the hospital was attempting to "impose its own view of a professional image on all its employees."

The arbitrator based his award on the long-standing *KVP Co. Ltd. and Lumber and Sawmill Workers Union* case, which states that a rule unilaterally introduced by an employer and not subsequently agreed to by the union must satisfy certain elements, including that it must be clear, must not be unreasonable and must be consistently enforced by the company. While the hospital argued that the *KVP* principles needed to be modernized and adapted, the arbitrator refused to modify the traditional test, stating that the *KVP* criteria are the "bedrock of the current understanding by unions and employers of the limits of management rights."

When applying the *KVP* criteria, the arbitrator found no evidence for the employer's argument that there was a link between health care outcomes and the new dress code rules. The arbitrator stated that tattoos and piercings are often an important part of an individual's identity. The dress code, therefore, was not reasonable nor did it meet the test of clarity, which could lead to inconsistent enforcement.