

318140 JWS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



04-CV-02071-CMP

FILED ENTERED  
LODGED RECEIVED  
OCT - 1 2004 DJ  
AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Washington State Nurses Association,

Plaintiff,

v.

Virginia Mason Medical Center,

Defendant.

NO. CV4 2071M

PLAINTIFF'S COMPLAINT FOR  
INJUNCTIVE RELIEF PENDING  
ARBITRATION

Plaintiff, by way of Complaint, alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1.1 Plaintiff Washington State Nurses Association ("WSNA") is a labor organization as defined by 29 USC § 152(5), with its principal office located in King County Washington.

1.2 Defendant Virginia Mason Medical Center ("Employer") is an employer as defined by 29 USC §152(2), and is a private not-for-profit corporation doing business in King County, Washington.

PLAINTIFF'S COMPLAINT FOR  
INJUNCTIVE RELIEF PENDING ARBITRATION - 1  
G:\GeneralFiles\Client Files\2831695\Complaint VM.doc

LAW OFFICES OF  
SCHWERTZ CAMPBELL BARNARD LLP  
18 WEST MICHIGAN STREET  
SUITE 400  
SEATTLE, WASHINGTON 98119-3971  
(206) 385-2828



1           2.6    The Employer announced it would terminate any nurse who was not  
2 vaccinated or taking the prophylaxis medication by January 1, 2005.

3           2.7    The following day, September 21, 2004, a representative of the WSNA  
4 demanded the Hospital cease and desist from implementing this policy and called for a  
5 meeting to address the issue. Although a meeting was arranged, the Employer did not  
6 back off on its announced implementation.

7           2.8    On September 29, 2004, the WSNA filed a grievance under the collective  
8 bargaining agreement alleging that the implementation of the mandatory vaccination  
9 policy violated numerous provisions, including the Agreement's Preamble, Article 1,  
10 Article 3.3, Article 5.1, Article 5.8, and Article 12.2. The grievance requests that the  
11 Employer cease and desist from its mandatory vaccination directive.

12           2.9    Article I of the Agreement provides in part that the "Hospital recognizes  
13 the Association as the sole and exclusive bargaining representative for all full-time, part-  
14 time and per diem nurses employed as registered nurses by the Hospital." As the  
15 exclusive representative the WSNA is entitled as a matter of law and the Agreement to  
16 bargain, be consulted and be heard before the Employer implements a policy forcing  
17 health risks on those they represent.

18           2.10 This obligation is reinforced by the Preamble which provides the parties  
19 "share the common purpose of providing quality health care services to the general public  
20 in an atmosphere of cooperation and mutual respect." Article 5.8, entitled  
21 "Communications" expressly provides that "[t]he Hospital recognizes and values input  
22 from its nurses on the many aspects of providing quality patient care." The Employer's  
23  
24  
25  
26

1 unilateral implementation of forced medical treatment without consultation or input is  
2 inconsistent with the above contract provisions and numerous other provisions of the  
3 Agreement.

4           2.11 Nor is the Agreement silent on this issue of medical procedures for nurses.  
5 Article 12.2 entitled, "Health Tests," provides that at "the time of employment, the  
6 Hospital shall provide a Tuberculin skin test at no cost to the nurse." Vaccinations are  
7 nowhere listed as a permitted medical procedure. Having negotiated and memorialized a  
8 specific medical procedure, the Employer is barred from unilaterally imposing new non-  
9 negotiated procedures.  
10

11           2.12 The Employer's action is likewise in violation of its obligation to maintain  
12 a safe and healthy workplace.

13           2.13 Although the grievance-arbitration procedure will eventually culminate in  
14 a final and binding arbitration decision, it will take from six months to a year to obtain  
15 the decision.  
16

17           2.14 Since by the time an arbitration decision could be rendered, nurses will  
18 already have been forced to submit to vaccinations or antiviral medication, a cease and  
19 desist order by the arbitrator will be a futile act rather than a meaningful remedy. The  
20 arbitrator will no longer be able to issue a remedy which protects the substantial privacy,  
21 health and economic interests of the impacted nurses.  
22

23           2.15 Registered nurses are medical experts who work tirelessly to protect the  
24 health of their patients and are well aware of the risks and benefits of vaccinations and  
25 prophylaxis medication. Denying them the right to make a personal decision about  
26

**PLAINTIFF'S COMPLAINT FOR  
INJUNCTIVE RELIEF PENDING ARBITRATION - 4**

*G:\General\Files\Clerk Files\2831695\Complaint FM.doc*

LAW OFFICES OF  
SCHWERN CAMPBELL BARNARD LLP  
18 WEST MERCER STREET  
SUITE 400  
SEATTLE, WASHINGTON 98119-3471  
(206) 285-2928

1 whether to undergo medical treatment in light of their own private medical considerations  
2 and work experience constitutes a substantial invasion of their privacy.

3 2.16 Forced vaccinations or prophylaxis medication may also pose health risks  
4 which could not be remedied by a later arbitration decision. Flu vaccinations pose health  
5 risks to those who are allergic to one or more of the vaccination's components. Those  
6 with allergic reactions to eggs or chemical preservatives used in the vaccine may face life  
7 threatening allergic reactions.  
8

9 2.17 The prophylaxis medication offered as an alternative carries some medical  
10 risk and significant negative side effects. The Center for Disease Control ("CDC")  
11 recommends individual patient analysis for age, medical conditions and drug interactions  
12 before any such medication is taken. Depending on which prophylaxis drug is chosen,  
13 side effects may include (1) nervousness, anxiety, insomnia, difficulty concentrating,  
14 lightheadedness, nausea and gastronomical problems, or (2) respiratory function  
15 deterioration particularly damaging to those with respiratory or cardiac disease.  
16

17 2.18 There is no justification for proceeding with mandatory vaccinations with  
18 little or no warning and without first engaging in reasonable communications with  
19 impacted nurses. Such vaccinations are not a condition of becoming a registered nurse in  
20 Washington. The CDC recommends voluntary vaccination programs and education  
21 efforts, not forced vaccinations.  
22

23 2.19 Although the WSNA supports and promotes voluntary vaccination  
24 programs, forcing medical treatment on pain of loss of employment impermissibly  
25 intrudes on private and personal medical decisions and may force some nurses to choose  
26

1 between their health and their ability to support their families. As explained in the cover  
2 letter for the grievance:

3 While the Association believes receiving influenza vaccine is a  
4 *good choice for most nurses, it is just that – a choice. The Association*  
5 *believes that the receipt of any medical treatment is up to the individual*  
6 *patient and that education – not brute force – is the best way to encourage*  
7 *any person to receive medical care. In addition, the Association is very*  
8 *concerned about the adverse consequences not only to the privacy of*  
9 *Virginia Mason nurses but the possibility of adverse medical consequence*  
10 *to nurses allergic to vaccine.*

11 The Association is willing and eager to work with VM to develop  
12 an educational program for employees related to influenza prevention and  
13 treatment. However, the Association believes that Virginia Mason's  
14 unilaterally implemented policy violates the terms and the very purpose of  
15 our collective bargaining agreement.

16 2.20 To protect the jurisdiction of the arbitrator and the substantial interests of  
17 represented Nurses, the WSNA proposed to the Employer that rather than forcing nurses  
18 to receive medical treatment against their wishes, the Employer withdraw its vaccination  
19 directive pending a hearing and decision before an arbitrator. The WSNA also proposed  
20 expedited arbitration. At an October 1, 2004 meeting the Employer's representatives  
21 made vague and inconsistent statements regarding their directive, but refused to provide  
22 assurance that it would agree to delay implementation or agree to expedited arbitration.

### 23 III. CLAIMS FOR RELIEF

24 3.1 Plaintiff realleges and incorporates by reference the allegations made in  
25 paragraphs 2.1 through 2.20 above.

26 3.2 The Employer's refusal to halt implementation of its mandatory  
vaccination program violates Section 301 of the LMRA, 29 U.S.C. § 185, and  
Employer's obligations under the parties' collective bargaining agreement. WSNA has

1 properly challenged Employer's actions by filing a grievance and demanding arbitration  
2 under the collective bargaining agreement. As a result, this dispute must properly be  
3 resolved in arbitration.

4 3.3. The foregoing actions by the Employer will, unless promptly enjoined,  
5 cause the WSNA and the nurses it represents irreparable harm and will frustrate the  
6 arbitral process initiated by the Association to protect its members from forced medical  
7 treatment. Immediate injunctive relief is appropriate and necessary to maintain the status  
8 quo to permit the arbitrator to consider and act upon the dispute.

9 3.4. Unless promptly enjoined, the Employer will not cease and desist from its  
10 unlawful course of action.

11 3.5. An injunction maintaining the status quo will not cause measurable harm  
12 to the Employer as it will not disturb its present industry standard voluntary vaccination  
13 program. Indeed the Employer has acknowledged (1) that a majority of its employees are  
14 voluntarily vaccinated in numbers far above the national average, (2) it knows of no  
15 instance of a patient being infected by a staff member.

16 3.6. The Union has complied with all obligations imposed by law in  
17 connection with this dispute including making reasonable efforts to settle this dispute  
18 without first seeking judicial intervention.

19  
20  
21  
22  
23 **IV. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays that this Court award it the following relief:  
25  
26

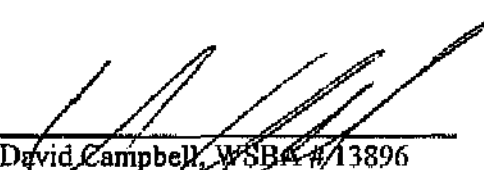
1           4.1 Preliminary and permanent injunctive relief preserving the status quo that  
2 preceded the present controversy (*status quo ante litem*) pending the resolution of the  
3 parties' dispute under their collective bargaining agreement through a final and binding  
4 arbitration award.

5           4.2 An order directing the parties to submit this dispute to expedited  
6 arbitration.

7           4.3 The costs of the suit herein, including reasonable attorney's fees, and

8           4.4 Such other and further relief as the Court deems proper.  
9  
10

11 DATED this 1<sup>st</sup> day of October, 2004.

12  
13  
14   
15 David Campbell, WSBA #13896  
16 SCHWERIN CAMPBELL BARNARD, LLP  
17 18 West Mercer Street, Suite 400  
18 Seattle, WA 98119-3971  
19 (206) 285-2828  
20 (206) 378-4132  
21 E-mail: [Campbell@workerlaw.com](mailto:Campbell@workerlaw.com)  
22 *Attorneys for Plaintiff*

23  
24 Elizabeth Ford, WSBA #22044  
25 Washington State Nurses Association  
26 575 Andover Park West, Suite 101  
Seattle, WA 98188  
*Co-Counsel for Plaintiff*