

**CONSTANGY**  
 FARREL A. DAVIS, LLP  
 The Employer's Law Firm, Since 1946

## Attorney/Client Privilege

### Labor Relations Update Kansas City and Beyond

February January 9, 2011

Presented by Timothy A. Davis  
 Constangy, Brooks & Smith  
 The Employer's Law Firm, Since 1946  
 913.205.8647; tadavis@constangy.com

---

---

---

---

---

---

---

---

---

---

**CONSTANGY**  
 FARREL A. DAVIS, LLP  
 The Employer's Law Firm, Since 1946

## Pre-Program Quiz

**YES!** I want the National Nurses Organizing Committee-Missouri/National Nurses United (NNOCMissouri/NNU) to represent me in collective bargaining with my employer and to assist this hospital to advocate for our patients and our profession.

Name: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PHONE ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_ PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_ SHIFT/FLOOR: \_\_\_\_\_

FACILITY: \_\_\_\_\_ UNIT: \_\_\_\_\_ YEAR JOINED: \_\_\_\_\_

FOR TITLE:  STAFF  NURSE  FULL TIME  PART TIME  PER DIEM

I understand that by signing this card, I agree with the NNOCMissouri/NNU that the hospital should not pay for my dues. I have read and understand the terms of this card and agree to the terms. I have read and understand the rights and responsibilities of the union and agree to the terms. I have read and understand the rights and responsibilities of the union and agree to the terms. I understand the above card and the card will be 100% confidential at all times.

National Nurses Organizing Committee-Missouri  
 NATIONAL NURSES UNITED

---

---

---

---

---

---

---

---

---

---

**CONSTANGY**  
 FARREL A. DAVIS, LLP  
 The Employer's Law Firm, Since 1946

## Program Goals

- Labor Relations Legal Update
- Our Opponents & Issues
- Our Responsibilities & Assignments

---

---

---

---

---

---

---

---

---

---

**CONSTANGY**  
ENGEL & TRITTA, LLP  
The Employment Law Firm, Made Plain

## 2010 Flashback

- Legal Playing Field
  - EFCA card check very possible
  - Two-Member NLRB with No Power
- Healthcare Union Activity
  - CNA - Two-state (California/Nevada) with 90,000 RN members
  - SEIU – Only minor activity in Missouri/ primarily in skilled nursing

---

---

---

---

---

---

---

---

**CONSTANGY**  
ENGEL & TRITTA, LLP  
The Employment Law Firm, Made Plain

## The Present - Legal

- EFCA Dead
- Full Labor Board in Place and Busy

---

---

---

---

---

---


---

---


**CONSTANGY**  
ENGEL & TRITTA, LLP  
The Employment Law Firm, Made Plain

## The NLRB Today


Wilma Liebman




Craig Becker




Mark Pearce



Brian Hays



Terrence Flynn



New NLRB General Counsel: Lafe Solomon

---

---

---

---

---

---

---

---

**CONSTANGY**  
ENGEL & ENDRIS LLP  
The Employment Law Firm, Since 1988

## What are They Doing?

The goal of new Board is to ease the path to unionization and give unions more bargaining strength!

- NLRB has the authority through rules or decisions to:
  - require “advertising” for unions
  - decide access rules (physical and electronic)
  - determine violations and ULP penalties
  - determine (i.e. shorten) election procedures and time periods (70 - 42 - 14 - Canada?)
  - determine method of voting (mail/electronic)

---

---

---

---

---

---

---

---

**CONSTANGY**  
ENGEL & ENDRIS LLP  
The Employment Law Firm, Since 1988

## What this means for Us - Elections Today...

**“INFORMED” Voters**

1<sup>ST</sup> Campaign                      2<sup>ND</sup> Campaign

PETITION                      42 DAYS                      ELECTION

\_\_\_\_\_ /                      /                      / \_\_\_\_\_

R HEARING                      Present Facts to EEs                      REASONED VOTE

---

---

---

---

---

---

---

---

**CONSTANGY**  
ENGEL & ENDRIS LLP  
The Employment Law Firm, Since 1988

## Elections Tomorrow...

**“EMOTIONAL” Voters**

1<sup>ST</sup> Campaign    2<sup>ND</sup> Campaign

PETITION    14-21 DAYS    ELECTION

\_\_\_\_\_ /                      /                      / \_\_\_\_\_

R HEARING                      EMOTION/UNINFORMED VOTE

---

---

---

---

---

---

---

---

**CONSTANGY**  
FARBER & LITVIN, LLP  
The Employment Law Firm, Since 1988

## NLRB Election Process

**Step One:** Unhappy employees reach out to a union because of issues at work or in response to union e-blasts, home mailings, newsletters or publicity

**Step Two:** Union organizers evaluate targets

**Step Three:** Organizers develop organizing plan based on hospital issues

**Step Four:** Organizers solicit signatures on cards

**Step Five:** If sufficient cards signed – file NLRB petition for appropriate unit

**Step Six:** Campaign Period (14-42 days)

**Step Seven:** Secret Ballot Election

---

---

---

---

---

---

---

---

---

---

**CONSTANGY**  
FARBER & LITVIN, LLP  
The Employment Law Firm, Since 1988

## What does this mean?

**Truth:** The most important word in labor relations is trust.

**Myth:** Most organizing is initiated by unions.

**Fact:** Elections in the future will be fast and furious and closely watched for ULPs.

**Reality:** The best campaign is the one you never have but management must be prepared to recognize, report, and **legally** respond to discontent/activity.

---

---

---

---

---

---

---

---

---

---

**CONSTANGY**  
FARBER & LITVIN, LLP  
The Employment Law Firm, Since 1988

## Our Opponents & Issues

- CNA now NNU
  - Membership in 23 states with merger with Massachusetts Nurses Association and United American Nurses and organizing “wins” in Texas/Missouri/Florida
  - RN Membership at 150,000 – up 60k in one year
- SEIU
  - SEIU Membership 2.2 million members with more than 1.1 million in healthcare (acute care and skilled nursing)
  - More RN members than NNU

---

---

---

---

---

---

---

---

---

---

**CONSTANGY**  
FARBER & ELLIOTT, LLP  
The Hospital Law Firm, Since 1988

## The NNU Organizing Message

We are a growing national organization (the raindrop story)

Its all about the ratios - Study "proves" it and bargaining strength will get it

- We will also get you more money – it will cost you nothing
- We will also get you better benefits
- We will also get you a pension
- We will get you a seat at the table
- But really its about patient care

---

---

---

---

---

---

---

---


**CONSTANGY**  
FARBER & ELLIOTT, LLP  
The Hospital Law Firm, Since 1988

## Organizing Issues

### Prestigious New Study Affirms; RN-to-Patient Ratio Law Saves Lives!

NNOC has proposed legislation in many states similar to the CA law initiated by CNA/NNOC

**Safe Ratios Sharply Cut Post-Surgical Mortality Rates, Boost RN Retention, Increase Time for Patient Care — Finds Study of New Jersey and Pennsylvania Hospitals**



There's proof.

A new study by Linda Aiken, RN, PhD, the nation's most eminent nurse researcher, documents that RN-to-patient ratios such as those proposed by NNOC/Texas in the Texas Patient Protection Act:

- ➔ reduce patient mortality rates,
- ➔ assure nurses more time to spend with patients.

---

---

---

---

---

---

---

---

**CONSTANGY**  
FARBER & ELLIOTT, LLP  
The Hospital Law Firm, Since 1988


## Ratios

**Remember like Nevada has NO RN-to-Patient Ratio Law?**

**...But we got them in our RN Contracts in Vegas & Reno!**

**GW Nurses Union for Patients' Safety**

**Sign up in Reno to continue our fight for ratios**




---

---

---

---

---

---

---

---

**CONSTANGY**  
 FARRER & LITTLE, LLP  
 The Rightmost Law Firm, Most People

## The SEIU Organizing Message

We are the largest union in healthcare and know how to take care of all employees at all levels

- We will get you more money - it will cost you nothing
- We will also get you better benefits
- We will also get you a seat at the table
- We will get you respect and fair treatment from management
- But really its about patient care

---

---

---

---

---

---

---

---

---

---

**CONSTANGY**  
 FARRER & LITTLE, LLP  
 The Rightmost Law Firm, Most People

## Wages

### How Much Are Dues?

"My dues are basically one hour of my \$24.50 base rate for every 2 week pay period. That is only about two hours per month - with nothing taken out for sicklevents and incentive pay. I paid no initiation or other fees, and dues are clearly tax deductible. The guarantee benefits along with an average shift of about 20% over next 3 years, and security of our union members is far greater than the cost of my dues."

**Lakshmi Curran, RN (10 years as an RN)**  
 ICU, Regional Medical Center San Jose, CA (MCA)

Premium pay 40 hrs pay 100%		
36 hrs. worked (30.15/hr. shift)	3-71.08	
PRC shift diff. (\$3.25/hr.)	4-74.00	Phone: 0491-541
Weekend shift diff. (\$1.50/hr.)	5-18.00	
Overtime pay	212.87 & 515.09	
Thursday Savings	25-852.16	

**Paid On Behalf Of** **SEIU Local 10** **San Jose, CA 95128**

MEMBER INFORMATION	STATEMENTS	CONTRIBUTIONS AND DEDUCTIONS
NAME: LAKSHMI CURRAN	STATEMENT NO: 10000000000000000000	CONTRIBUTION NO: 10000000000000000000
ADDRESS: 10000000000000000000	STATEMENT DATE: 10/01/2010	CONTRIBUTION DATE: 10/01/2010
CITY: SAN JOSE, CA	STATEMENT PERIOD: 09/01/2010 - 09/30/2010	CONTRIBUTION PERIOD: 09/01/2010 - 09/30/2010
EMPLOYER: REGIONAL MEDICAL CENTER	STATEMENT TYPE: MONTHLY STATEMENT	CONTRIBUTION TYPE: MONTHLY CONTRIBUTION

---

---

---

---

---

---

---

---

---

---

**CONSTANGY**  
 FARRER & LITTLE, LLP  
 The Rightmost Law Firm, Most People

## So...What Do We Do?




---

---

---

---

---

---

---

---

---

---

**CONSTANGY**  
ENGEL & TRITTA, LLP  
The Employment Law Firm, Since 1988

## Don't Panic – Prepare!

- **Recognize your biggest challenges**
  - Causes of union activity: (e.g. untrained or poorly trained supervisors or managers, failure to benchmark, inadequate communications)
  - Know your issues (everyone is unique) and prepare to respond
  - Failure to Train your team (causes and responses)
  - Failure to recognize signs and respond quickly (win first campaign)
  - Failure to have your initial response ready

---

---

---

---

---

---

---

---

**CONSTANGY**  
ENGEL & TRITTA, LLP  
The Employment Law Firm, Since 1988

## The Truth and The Myth

**The Truth: It all about building trust.** An employer that has appropriate policies, ensures that employees are treated fairly, benchmarks wage/benefits programs and frequently and effectively engages in bilateral communications with employees is much less likely to have discontent that can lead to unionization. In addition, this kind of culture is much more likely to lead to early reports of union activity that can be responded to in a quick and effective manner.

**The Myth: Most Campaigns begin with union organizers reaching out to employees.** In reality unhappy, unengaged and disgruntled employees initiate most organizing efforts.

---

---

---

---

---

---

---

---

**CONSTANGY**  
ENGEL & TRITTA, LLP  
The Employment Law Firm, Since 1988

## Step One: Policy Review

- Peer Review
- Work Rules
- Electronic Communications/Data Security Policy
- Complaint Hotline
- Off-Duty Employee Access Policy
- Harassment/Discrimination Policy
- Moonlighting Policy

---

---

---

---

---

---

---

---

**CONSTANGY**  
ENGEL & TRITTA, LLP  
The Employment Law Firm, Since 1988

**Step One: Practices/Procedures**

- Interviewing/Hiring Practices
  - Applications
  - Interview Process and Questions
- Employee Orientation/Onboarding
  - Position on Unions
  - Open Door
  - Complaint Procedure
  - Union Education/Union Cards/Legal Process Discussion
  - Employee Orientation Materials re Labor (Video Consideration)
  - Employee Ambassador Program
  - Economic identification programs (video consideration)

---

---

---

---

---

---

---

---

**CONSTANGY**  
ENGEL & TRITTA, LLP  
The Employment Law Firm, Since 1988

**Step One: Practices/Procedures**

- Employer Communication Programs/Methods/Templates/Guidelines
  - Newsletters
  - Daily Supervisor Meetings (Including Guides and How-To Training)
  - Birthday/Monthly Meetings
  - Human Resources Small Group Sessions
  - Regular Town hall/State of the Business Meetings

---

---

---

---

---

---

---

---

**CONSTANGY**  
ENGEL & TRITTA, LLP  
The Employment Law Firm, Since 1988

**Step One: Practices/Procedures**

- Employee Involvement Initiatives/Committees
  - Safety Committee
  - Holiday/Event Planning Committee
  - Peer Review
  - Shared Governance (Healthcare)
  - Communications Task Force
- Employee Opinion Surveys
- Benchmarking Programs
  - Wage/Benefit Surveys (Area/Industry)
  - Internal and External Union Contract Comparisons
  - Key "Industry Standards" Comparisons

---

---

---

---

---

---

---

---

**CONSTANGY**  
James A. Estlin, LLP  
 The Employment Law Firm, Since 1988

## Step Two: Education/Training

- Goals
  - Ensure that the management team understands the importance of good management practices and the impact their day-to-day interactions with employees have on employee satisfaction or discontent that can lead to unionization
  - Ensure management recognizes and immediately reports/responds to the signs of discontent that often leads to union activity

---

---

---

---

---

---

---

---

**CONSTANGY**  
James A. Estlin, LLP  
 The Employment Law Firm, Since 1988

## Step Two: Education/Training

- Goals
  - Make sure management understands the unionization process, recognizes the signs of actual union activity, reports and monitors, and legally responds to this activity so that additional resources can be brought to bear
  - Final goal applies to those employers who are comfortable talking to directly to employees about unions.

---

---

---

---

---

---

---

---

**CONSTANGY**  
James A. Estlin, LLP  
 The Employment Law Firm, Since 1988

## Step Two: Education/Training

- Labor Relations Training (Supervisors)
  - Modern Unions Defined
  - Causes of Union Activity
  - Signs of Union Activity
  - Unionization Process
  - Responding to Union Activity

---

---

---

---

---

---

---

---

**CONSTANGY**  
 FANDEL & LITVIN, LLP  
 The Employment Law Firm, Since 1988

### Step Two: Education/Training

- **Materials for Training**
  - PowerPoint Presentation
  - Video
  - Supervisor Workbook
    - Supervisor Role In Remaining Union Free
    - Union Activity Checklist
    - TIPS/FOE Reference Guide
    - Supervisor Card Signing Q&A
    - Problem Solving/Role Play Materials

---

---

---

---

---

---

---

---

**CONSTANGY**  
 FANDEL & LITVIN, LLP  
 The Employment Law Firm, Since 1988

### Step Two: Education/Training

- **Other Considerations**
  - Performance Management Training for Supervisors
  - §2(11) Supervisor Evaluation
  - Employee Perception Surveys (Supervisors)
  - Employee Ambassador Programs
  - Employment Audit-Past Practices
  - Mock Campaign

---

---

---

---

---

---

---

---

**CONSTANGY**  
 FANDEL & LITVIN, LLP  
 The Employment Law Firm, Since 1988

### Step Two: Education/Training

- **Labor Relations Training (Employees)**
  - Modern Unions Defined
  - Unionization Process
  - Meaning of Union Cards
  - Reasons to Remain Union Free
  - Key Policies/Practices Discussion
    - Open Door
    - Dispute Resolution
    - Wage/Benefits Programs
    - Communication Programs

---

---

---

---

---

---

---

---

**CONSTANGY**  
Handel & Latta, LLP  
The Employment Law Firm, Since 1988

**Step Three: Response Team/Material Preparation**

- Internal SWAT Team Assignments
- Internal Communication Tree
- Advance Discussion/Preparation On Issues Likely to be Campaign Flashpoints (benchmarking; industry issues; corporate campaign issues)
- Identify Campaign Leaders/Primary Spokesperson
- Supervisor Guide Sheets (see Training above)

---

---

---

---

---

---

---

---

**CONSTANGY**  
Handel & Latta, LLP  
The Employment Law Firm, Since 1988

**Step Three: Response Team/Material Preparation**

- Model Card Signing Q&A Posters
- Model Card-Signing Letter to Employees
- Model Card-Signing Speech
- Model Card-Revocation Handout
- Model Card-Revocation Notice
- Video Utilization
- Web-Site Utilization
- E-blast Utilization

---

---

---

---

---

---

---

---

**CONSTANGY**  
Handel & Latta, LLP  
The Employment Law Firm, Since 1988

**Step Four: Union Activity Response**

- Unit Evaluation Consultation
- Unit Hearing Representation
- Unfair Labor Practices Defense
- Management Refresher Training

---

---

---

---

---

---

---

---

**CONSTANGY**  
Edgell & Edgell, LLP  
 The Employment Law Firm, Since 1988

## Step Four: Union Activity Response

- Campaign Database Resources
  - Organizing Issue Assessments
  - Management Meeting Presentations
  - Employee Letters
  - Posters
  - Videos
  - Supervisor Fact Sheets/Communication Guidelines
  - E-blasts
  - Web-site Templates
  - Videos

---

---

---

---

---

---

---

---

**CONSTANGY**  
Edgell & Edgell, LLP  
 The Employment Law Firm, Since 1988

## Risk/Response Chart

Code Red	→	Active Organizing
Code Orange	→	Significant issues and some union talk/activity
Code Yellow	→	Significant issues but no union activity
Code Green	→	No issues or activity

---

---

---

---

---

---

---

---

**CONSTANGY**  
Edgell & Edgell, LLP  
 The Employment Law Firm, Since 1988

## Color Codes

- **Code Red:** Take Immediate Action and Implement Card Plan to buy time while assessing issues (win first campaign)
- **Code Orange:** Take aggressive action to raise awareness of management team while addressing issues and publicizing recognition and plan to employees.
- **Code Yellow:** Take action to address issues appropriate for level of challenge.
- **Code Green:** Take precautionary measures to harden the target by building good management awareness, assessing and improving employee relations and ensuring effective communication.

---

---

---

---

---

---

---

---

CONSTANGY  
FARGAL & ENLICH, LLP  
The Employment Law Firm Since 1988

One thing we can agree with the unions about!



---

---

---

---

---

---

---

---

CONSTANGY  
FARGAL & ENLICH, LLP  
The Employment Law Firm Since 1988

Wrapping Up...

Questions?

---

---

---

---

---

---

---

---