

Aides Resist Colostomy Care: Facility's Reactions Ruled Unfair Labor Practices.

The new executive director at a long-term care facility announced in a meeting with the aides that a former resident was to be readmitted who would need assistance with her colostomy care. The aides' supervisor responded that the aides would object to being assigned to the colostomy bag emptying routine.

Nine days later three lead aides met with the executive director to present a petition signed by twenty four aides stating they would not take responsibility for any colostomy care.

The petition went on to state that the aides already had a long list of regular responsibilities and complained about verbal abuse from family members and general disrespect by facility management.

The director asked them to identify the author of the petition, but she got no response. Within earshot of the director the aides began discussing a work stoppage to occur two days later.

The director discussed the situation with corporate management. They decided to meet with the aides in small groups to investigate who was responsible for instigating the petition.

The day after the meeting, the day before the threatened work stoppage, the director and two persons from corporate headquarters began calling groups of three to five aides into her office to try to find out who was behind the petition.

There was no work stoppage.

A few days later the director fired the aide who drafted the petition, who was one of the aides who had brought the petition to her office, and demoted a second of the three from her position as lead, although she continued to receive a lead aide's pay.

The union representing the aides filed charges of unfair labor practices with the US National Labor Relations Board.

After a full hearing the Board ruled the facility had committed unfair labor practices and ordered the two aides restored to their previous positions. The US Court of Appeals for the Fourth Circuit agreed with the Board.

The US National Labor Relations Act (NLRA) gives employees in the private sector the right to self-organization and the right to engage in other concerted activities for the purpose of mutual aid or protection.

It is an unfair labor practice for a private-sector employer to interfere with, restrain or coerce employees in the exercise of rights guaranteed by the NLRA.

When an employer disciplines an employee by changing the terms or conditions of the employee's employment in response to the employee's protected activities the employer is coercing the employee from engaging in activities protected by the Act.

An employer can question employees about labor-relations issues. However, such questioning must be done in an atmosphere where employees are assured there is to be no retaliation against the interviewee or others based on the information gathered in the interview. Otherwise it is considered a coercive interview, a form of unfair labor practice.

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
May 31, 2006

Concerted Activities

The aides were participating in concerted activities for the purpose of mutual aid and protection, the court said, paraphrasing the express language of the US National Labor Relations Act. They had the right not to be subjected to employer coercion or reprisals over the petition.

Management Prerogatives

The court noted that whom the company hires for management is not a subject for employee concerted action and employee protests are not protected by law.

Coercive Interviews Are Illegal

The court upheld the Board's ruling that management did conduct illegal coercive interviews in this case.

Management can question employees about labor-management issues only if it is done in a non-threatening way. Management has the responsibility to reassure employees and thereby create a non-threatening atmosphere for such interviews. In this case some of the aides testified they felt threatened they could lose their jobs or face demotion or other consequences if they did not betray the author of the petition to the director.

Employer Reprisals

Firing or demoting an employee as done in this case was ruled an unquestioned unfair labor practice.

Illegal Strike / Labor Coercion

The work stoppage allegedly threatened in this case, if it had occurred, would have been illegal. Every private-sector healthcare employer, among other things, is entitled to at least ten days advance notice of any work stoppage or strike.

It would have been a labor unfair labor practice for the union or activist employees to call an illegal work stoppage or strike and/or to coerce or attempt to coerce employees to engage in an illegal strike. The Board determined that there was no such coercion. Every aide scheduled to work showed up that day even as aides called in from other company facilities were standing by in case they did not. **Sunrise Senior Living, Inc. v. NLRB, 2006 WL 1526122 (4th Cir., May 31, 2006).**