

Labor Relations: Nursing Employee Falsely Disparaged Quality Of Care, Not Protected By National Labor Relations Act, Court Says.

A registered nurse first assistant and a contract physician went on the local television ten o'clock news with a story that the health and safety of expectant mothers were being threatened by changes in staffing practices at the hospital.

Immediately there was a strong negative reaction to the broadcast among physicians holding staff privileges at the hospital in and out of the labor and delivery unit. Top management at the hospital responded to the physicians' concerns by firing the registered nurse first assistant four days after the broadcast.

She filed a charge of an unfair labor practice with the National Labor Relations Board (NLRB). The Board's administrative law judge ruled the hospital by firing her committed an unfair labor practice and he ordered her reinstated.

The hospital filed an appeal. The US Circuit Court of Appeals for the Eighth Circuit upheld the hospital's decision to fire this employee. The court ruled there was no unfair labor practice and refused to enforce the Board's order.

Staffing Changes

The hospital had decided to have nursing staff in labor and delivery work four twelve hour shifts each week instead of two twenty-fours. Staff affected by the changes were offered twenty-four hour shifts elsewhere in the hospital. Only this one nurse elected to stay in labor and delivery and she did so under protest.

The court did not attempt to second-guess the wisdom or the motivation of the hospital in making these changes. The only relevant issue was whether the hospital's reaction to the nurse's TV appearance was an unfair labor practice.

Unfair Labor Practice

Employers are not permitted to interfere with union activities by threats, intimidation, retaliation, etc. An employee victimized by an unfair labor practice has the right to seek restitution through a grievance filed with the NLRB.

If an employer fires an employee for engaging in union activities, and there is no legitimate basis for the firing, the employer commits an unfair labor practice.

The National Labor Relations Board can order an employee reinstated with back pay who has been the victim of an unfair labor practice.

An employee's public statements to the news media are considered a protected union activity if the statements relate to an ongoing labor/management dispute and are not a disparagement of the company's reputation or the quality of the company's products and are not maliciously motivated.

This employee's statements related to an ongoing labor/management dispute over staffing practices in the hospital's labor and delivery unit.

However, the statements were not a protected union activity because they were basically false and were calculated to affect the hospital's reputation adversely with the public.

UNITED STATES COURT OF APPEALS,
EIGHTH CIRCUIT, 2001.

Nurses going through their unions to resolve staffing issues through collective bargaining and grievance procedures are protected by from unfair labor practices by Federal labor law. The court ruled the nurse's TV appearance did pertain to an ongoing labor dispute with the hospital.

Falsely Disparaging the Company's Reputation or Products

However, as a general rule employees are not permitted as a union tactic falsely to disparage their employer's reputation or the quality of their employer's products. In this case the nurse stepped over the line using as a tactic in her and the union's dispute with the hospital sensational allegations that the safety of vulnerable patients and the quality of their care were being threatened.

Anti-Union Sentiment

In general in the labor law arena the employee or the NLRB has to prove that an employer's act alleged to be an unfair labor practice was motivated by anti-union sentiment.

In this case the nurse in question had been interviewed on TV during the months before this incident about ongoing labor/management issues at the hospital and had been identified by the news media as the top union supporter among the hospital's nurses.

The court pointed out that nothing happened as a result, which strongly led to the conclusion that the hospital had no generalized anti-union bias, but was motivated strictly by the strong negative reaction among staff physicians to her most recent false and disparaging remarks about patient safety and the quality of care.

Finally, the court editorialized that patients' lives are at stake in hospital surgical departments. Common sense, the court said, teaches that patient care is directly affected by the ability of a team of physicians and nurses to work together. St. Luke's Episcopal-Presbyterian Hospitals, Inc. v. National Labor Relations Board, 268 F. 3d 575 (8th Cir., 2001).