

Employment Law Notes

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LABOR RIGHTS

COMPLAINTS ABOUT MANAGEMENT STYLE ARE NOT PROTECTED AS "CONCERTED ACTIVITY"

The Washington Court of Appeal rejected claims by former employees that their right to join in "concerted activities" was violated when they were fired in connection with a protest about the management style of their organization's leader. The case is Briggs v. Nova Services, decided November 14, 2006, available on www.dehnlaw.com.

Background

The right of non-management employees, both union and non-union, to engage in concerted activities in order to negotiate the terms and conditions of employment is protected under state law, RCW 49.32.020, and its federal counterpart, the National Labor Relations Act (29 USC §§ 157-58). These laws were passed in the 1930's to protect employees' efforts to unionize.

The Case

The non-profit organization Nova Services has a policy forbidding employees from contacting its board of directors. Despite the policy, six of Nova's managers wrote a letter to the board to complain about the executive director's management style and lack of management skills. The executive director then fired two of those managers for insubordination, and afterward the four remaining managers plus six non-managerial employees sent a "non-negotiable" ultimatum to the board threatening to walk out unless the two fired employees were reinstated and the executive director was fired. Neither demand was granted, and when the employees failed to come to work the following day Nova treated the letter and absences as a mass resignation.

The terminated employees sued Nova and the executive director, claiming their termination violated their right to engage in concerted activities. The trial court dismissed the claims, and the court of appeals affirmed.

The Court of Appeals noted that management employees have no statutorily-protected right to engage in concerted activities.

As for the non-management employees, the court ruled that the "concerted activities" that are protected by statute are only those undertaken in connection with the terms and conditions of employment, such as wages and hours. Personal preferences and professional differences (such as dissatisfaction with management style) are not protected.

One of the Appeals Court judges filed a dissenting opinion. He observed that the ultimatum included a demand for reinstatement of the two fired managers, and that federal cases have held that protesting the termination of fellow employees is concerted activity protected under the National Labor Relations Act.

Lessons of the Case

This case serves as a reminder that even non-union employees have protected rights to act collectively in some cases. Conduct which is unprotected when only one employee engages in it might become protected if multiple employees act together in the same conduct. If the employees in this case had made demands that focused on issues more directly related to the terms and conditions of their employment, or if they had not characterized even the non-protected concerns as being non-negotiable, their protest (especially their protest of the firing of other employees) might have been found to have been protected by RCW 49.32.020. ✍

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