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UNION'S "ORCHESTRATED" REFUSAL TO WORK OVERTIME FOUND UNLAWFUL

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A federal appeals court recently ruled that United Healthcare Workers – West, an affiliate of the Service Employees International Union (SEIU), violated federal law by telling housekeepers and linen aides at a San Francisco hospital to refuse to perform overtime work without giving the hospital ten-days prior notice. *SEIU, United Healthcare Workers – West vs. NLRB.*

BACKGROUND OF THE DISPUTE

In May, 2006, California Pacific Medical Center proposed a change in linen processing that the union contended violated a provision in the parties' collective bargaining agreement prohibiting the subcontracting of unit work. In opposing the hospital's proposed change, the union had a majority of its members sign a petition protesting the linen processing proposal and authorizing shop stewards to call rolling, one-week, stoppages in which union members would refuse to work overtime or extra shifts. This petition was submitted to hospital management on June 1 and 2, 2006.

On the following Monday, June 5, 2006, every housekeeper and linen aid who was asked to volunteer for overtime declined to do so. The employees continued these refusals for seven days. In conjunction with the refusals to work overtime, the union distributed a newsletter explaining that the workers' action was intended to protest the proposed subcontracting and a management-created manpower shortage.

In response, California Pacific filed an unfair labor practice charge against the union claiming that the refusal to work

Related People

Michael D. Carrouth
Partner
803.255.0000

overtime violated the National Labor Relations Act (NLRA), which requires a union to provide timely notice of a concerted refusal to work. Section 8(g) of the NLRA requires unions to give any healthcare institution ten days written notice of any strike, picketing, or other concerted refusal to work, and to state the date and time such action will begin. In this case, the hospital received only four days notice.

At a hearing, an NLRB administrative law judge found that the union's actions violated Section 8(g). On appeal, the Board in Washington upheld the administrative law judge's decision in a 2-1 decision, and ordered the union to cease and desist from engaging in any concerted refusal to work at the hospitals without providing at least ten-days notice.

THE COURT'S DECISION

The union appealed the NLRB's decision to the U.S. Court of Appeals for the 9th Circuit, raising two arguments. First, the union argued that the ten-day notice required by Section 8(g) was not applicable because the parties' collective bargaining agreement did not allow the hospital to impose mandatory overtime except in an emergency. The union contended that this meant that the hospital agreed that each employee could decline to perform overtime on an individual basis and that the union could direct its members to decline overtime on a collective basis without engaging in the type of refusal to work covered by Section 8(g).

Second, the union argued that the notice requirement in Section 8(g) was inapplicable because the union could not give effective notice of a concerted refusal to work overtime because it did not know the time and place the hospital would need overtime ten days in advance.

In rejecting these arguments, the appeals court agreed with the union that the notice requirements of Section 8(g) would not be triggered "in the event all employees, *acting independently,* were unwilling to volunteer for overtime." [emphasis added]. But the court found that the union members in this case "did not act on an individual basis," and that the refusal to work overtime was "orchestrated by the union."

Similarly, the court rejected the union's argument that it could not give effective notice of a refusal to work overtime by finding that the union could have provided the ten-days

notice required by Section 8(g) if it had simply given proper notice of the date when employees would start declining overtime and had followed through with that plan. The court concluded that a notice of this type would have been sufficient even if the hospital had decided not to offer overtime on the dates specified.

THE FALLOUT

For those managing healthcare facilities, the 9th Circuit decision provides positive support for the protections to the public interest intended when Section 8(g) was created in 1974. But the court's acknowledgement that the notice requirement of Section 8(g) would not have been applicable if all employees, "acting independently," were unwilling to volunteer for overtime, opens the door for labor organizations to accomplish indirectly what the law precludes them from accomplishing directly.

For more information, contact the author at MCarrouth@fisherphillips.com or 803.255.0000.