

Federal Court Extends Union-Organizing Rights to Off-Duty Employees

Court Ruling Leaves Open Possibility for Employers to Bar Certain Activities for Valid Business or Security Reasons

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As any employer who has considered or faced the prospect of a union-organizing campaign knows well, the National Labor Relations Act ("NLRA") guarantees employees various rights to form and join labor unions and also prohibits employers from taking any actions that interfere with the exercise of those rights. Recently, the Sixth Circuit Court of Appeals, which covers Michigan, extended the NLRA's protection to off-site employees who seek access to non-working areas of their employer's property during a union campaign.

In *First Healthcare Corp. v. NLRB*, employees from one of First Healthcare's union represented facilities began an organizing campaign at one of the employer's non-represented facilities by distributing union literature in non-working areas during their off-duty time. The employer banned the organizers from the premises based, in part, on its policy prohibiting off-duty employees from coming back to the facility except to pick up paychecks or for an "authorized" visit.

Determining that the employer violated the employees' NLRA rights when it banned them from the premises of its non-union facility, the National Labor Relations Board found that the employer's policy inhibited the exercise of NLRA rights. Accordingly, it issued an order for the employer to rescind the policy.

On appeal, the employer argued that it had inherent property rights and business and security reasons to bar people from its premises, and that off-duty, off-site employees should be treated as non-employees without NLRA protection. Rejecting this argument, the Sixth Circuit concluded that the off-site and on-site employees shared sufficiently common interests regarding wages, benefits, and other workplace issues and, thus, had the same NLRA rights. The Court also balanced the employer's property interests against the off-duty, off-site employees' NLRA rights and found that the employer failed to show a legitimate security or business concern significant enough to outweigh the employees' rights to access. Finally, the Court agreed with the NLRB that the employer's policy was over broad and inhibited the exercise of protected rights.

What Does the Court's Ruling Mean for Employers?

The Court's ruling means that employers run the risk of violating the NLRA if they attempt to bar off-duty employees from engaging in protected activities in non-work areas. Absent a valid business or security reason for doing so, such actions may violate federal labor law.

If you have concerns regarding important business justifications that might warrant limiting off-site employees access to your facilities or branches, you may wish to seek input from counsel to avoid infringing your employees' NLRA rights. Finally, you should review your employee handbook, policies and rules to make certain that you do not have over broad access rules for off-duty employees that tend to directly or indirectly inhibit the exercise of any NLRA rights.

For more information on this alert or your labor relations policies in general, please contact Len Givens at (313) 496-7505 or givens@millercanfield.com.