

Collective Refusal Without Prior Notice Runs Afoul of Federal Law

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A healthcare workers union has been ordered to cease and desist any strike, picketing, or refusal to work by its workers against their California hospital employer unless the hospital is given ten days advance notice by the union of such activity.

On August 3, 2009, the U.S. Court of Appeals for the Ninth Circuit upheld a cease and desist order issued by the National Labor Relations Board (NLRB) against the Service Employees International Union, United Healthcare Workers-West. The union was found in violation of the National Labor Relations Act (NLRA) when it gave only four days notice to the California Pacific Medical Center before it called for an overtime boycott at its Davies and Pacific campuses.

The NLRA provides special protections for health care institutions. Among other provisions, it requires unions representing health care employees to give at least ten days' notice before striking, picketing, or refusing to work.

The union's call for boycott arose from a dispute over a change in how linens were processed by the hospital. The union alleged that the proposed changes by the hospital violated their collective bargaining agreement prohibitions against subcontracting. In retaliation, the union circulated a petition calling upon the employees to engage in a week-long refusal to work overtime. The petition was received by hospital management four days before employees refused requests by the hospital for them to work overtime.

Although overtime work was often needed to meet staffing requirements, the hospital's labor contract prohibited it from assigning overtime except in cases of declared emergencies. It was forced to regularly rely on volunteers whenever overtime needs arose. Prior to circulation of the union's petition, the hospital did not have problems obtaining employees to volunteer for overtime.

The union's petition, signed by employees, authorized the union shop stewards to call for a rolling one week overtime boycott. Four days after the hospital received a copy of the petition, managers began calling employees asking for them to volunteer for overtime. Thereafter for seven days, despite several requests from managers for

employees to volunteer overtime, no employees volunteered. During that week, the union supported and publicized the overtime boycott.

The hospital filed unfair labor practice charges against the union, alleging that the union had violated Section 8(g) of the NLRA by not giving at least ten days' notice of its intention to engage in a concerted refusal to work. Section 8(g) was enacted to prevent disruption of patient care by giving hospitals time to plan ahead for strikes, pickets, or other work stoppages.

The union's primary argument was that because the labor contract provided that each employee can individually decline to perform overtime work, the union can direct the employees to collectively engage their individual right to not work overtime without engaging in a "refusal to work" within the meaning of Section 8(g). The NLRB and Court of Appeals rejected this argument.

Here, however, the employees did not act on an individual basis, but refused to work as a direct result of union action. Their action was "concerted" because it was orchestrated by the union. Therefore, although the individual decision to refuse to perform work or, as in this case, to refuse to work overtime, does not require notice because of the absence of union action, Section 8(g) 10-day notice is required when a refusal to work is the direct result of union action against a healthcare institution. Because the union had organized the overtime boycott and failed to give ten days' notice of a work stoppage, it violated Section 8(g) of the NLRA.

Unionized healthcare institutions should be aware that a union must give ten days' notice before any work action is taken by the union. Incidents where employees truly act independently in refusing to work may not run afoul of Section 8(g), but a union may not lawfully orchestrate those refusals without complying with the 10-day notice provision.

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