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NLRB Orders Hospital to Reinstate Former Employee Who Shared Staffing Concerns With Media

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A recent decision by a National Labor Relations Board (NLRB) administrative law judge (ALJ) serves as a good reminder that even nonunion employees in healthcare settings are protected by Section 7 of the National Labor Relations Act (NLRA). On November 2, 2018, ALJ Paul Bogas held that a former nonunion employee of Maine Coast Memorial Hospital had engaged in protected activity when she sent a letter to a local newspaper.

Background

Karen-Jo Young, who was the hospital's activities coordinator, sent a letter to a Hancock County, Maine newspaper, *the Ellsworth American*, raising concerns on behalf of fellow employees regarding employee dissatisfaction and nurse staffing levels at the hospital. The same day that her letter to the editor was printed in the

newspaper, the hospital discharged Young for violating its media policy, which barred workers from speaking to the press without permission.

Young subsequently filed an unfair labor practice charge with the NLRB on October 31, 2017, alleging that the hospital terminated her employment for engaging in protected concerted activity under Section 7 of the NLRA. Section 7 of the NLRA guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities."

The case was tried on July 17 and 18, 2018 before ALJ Paul Bogas.

The ALJ's Decision

Judge Bogas ruled in favor of Young, finding that, because her letter to the editor complaining about staffing levels constituted protected concerted activity, the hospital had improperly discharged her in violation of Section 7. In his opinion, Judge Bogas wrote that "the board has repeatedly held that health care facility employees engage in concerted activity protected by Section 7 of the NLRA when, like Young did here, they use a letter to the editor or another 3rd-party channel to protest deficiencies in staffing levels or other working conditions that have an effect on patient care."

Bogas thus ordered the hospital to fully and immediately reinstate Young and "make her whole for any loss of earnings and other benefits."

Key Takeaways

The ALJ's opinion reinforces that staffing levels and overall employee satisfaction are considered terms and conditions of employment, about which an employee's public dissemination of concerns would fall within the protections of Section 7.

Because staffing complaints are common in healthcare, particularly in busy hospital settings, the ruling is an important reminder that employees may not be disciplined or discharged for expressing these types of concerns, whether they are discussing staffing internally or sharing their views with a third party. Third parties include the public domain, which encompasses not only printed newspaper editorials, as in this case, but also online blogs and social media.

As a result, healthcare employers may want to use caution when investigating and taking potential employment actions where an employee has spoken out on behalf of coworkers regarding the terms and conditions of their employment, whatever the medium. In addition, healthcare employers may want to revisit and consider modifying their social media, Internet use, and public relations policies; codes of conduct; and any other policy that could potentially discourage or chill this type of protected activity.

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