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Nev. Serv. Employees Union v. Orr, 121 Nev. Adv. Op. 68,
(Sept. 29, 2005)¹

ADMINISTRATIVE LAW - LABOR

Summary

This case is an appeal and cross-appeal from a judgment of the Eighth Judicial District Court, Clark County, granting in part and denying in part petitions for judicial review of an administrative decision by the Employee-Management Relations Board.

Disposition/Outcome

In a per curiam opinion, the Nevada Supreme Court affirmed the district court's order.

Factual and Procedural History

Orr was a nonunion employee of University Medical Center (UMC) whose position was covered by a collective bargaining agreement (CBA) between UMC and the Nevada Service Employees Union (the Union). Orr was suspended pending termination from UMC on July 27, 2000, for allegedly releasing patient information without authorization, leaving the hospital without authorization, and insubordination.

Orr's attorney requested a pre-termination hearing via a letter signed by Orr that was addressed to UMC's Director of Human Resources. A copy of the letter was forwarded to the Union. Under the CBA, an employee's grievance process begins when the Union's steward signs the letter and returns a copy to UMC. However, the Union never returned a signed copy to UMC, so UMC assumed Orr waived her right to a pre-termination hearing and terminated her employment.

Orr then filed a complaint with the Employee-Management Relations Board. The Board found that: 1) Orr was an employee covered under the CBA; 2) she requested a pre-termination hearing within the 10-day period specified; 3) the Union made a conscious decision not to sign the letter contrary to the CBA; 4) UMC was aware of Orr's request; 5) UMC considered the hearing waived only because of the Union's failure to return a signed letter; and 6) UMC terminated Orr without conducting the required pre-termination hearing. The Board further determined that UMC and the Union willfully interfered with and restrained Orr's rights under the CBA. The Board ordered UMC to restore Orr's benefits, provide back pay from the date of termination, and reimburse Orr the cost of medical insurance incurred as a result of termination. The Board also ordered UMC and the Union to comply with the arbitration provisions of the CBA and to do so in

¹ By Patty L. Roberts

an expedited manner. Finally, the Board ordered the Union and UMC to reimburse Orr for attorney fees and costs related to this matter.

The Board denied petitions for rehearing filed by both UMC and the Union. UMC then filed a petition for judicial review in which the Union, Orr, and the Board participated. The district court affirmed the Board's findings of fact and conclusions of law, its award of attorney fees and costs, and its decision to allow Orr to proceed directly to arbitration. However, the district court reversed the Board's awards of back pay and insurance premium reimbursement as being outside the Board's authority. The Union appealed, and Orr cross-appealed.

Discussion

The Nevada Supreme Court considered whether an employer and a union can be held liable for willful interference with an employee's rights under a collective bargaining agreement by failing to provide the employee with a pre-termination hearing at the employee's request.

In reviewing an administrative decision, the Court must determine whether the agency's decision was: in excess of its authority, affected by errors of law, arbitrary or capricious, or otherwise characterized by an abuse of discretion.²

Nevada law prohibits a government employer, such as UMC, or an employee organization, such as the Union, from willfully interfering with, restraining or coercing any employee in the exercise of any right to which they are lawfully entitled.³ The CBA between UMC and the Union gave employees the right to file a formal written grievance within ten days of an adverse employment action. Receipt of a letter signed by the Union's Chief Steward starts the process. Without the signature, no further action occurs. The CBA expressly requires the Union sign the letter to start the process and requires UMC to provide a pre-termination hearing upon employee request after receiving a signature from the Union.

The Board did not err in finding both UMC and the Union failed to act pursuant to the terms of the CBA. The Union's failure to sign was not an exercise of judgment, as signing is a ministerial act only. Willful action does not require bad faith or malice but only that the action be voluntary and intentional.⁴ The record adequately supports the Board's decision that UMC and the Union willfully interfered or restrained Orr's attempt to exercise her rights under the CBA.

As to the Board's authority, Nevada law provides the Board with the authority to "order any person to refrain from the action complained of or to restore the party aggrieved any benefit of which he has been deprived."⁵ The CBA provides that to terminate an

² NEV. REV. STAT. § 233B.135(3) (2005).

³ NEV. REV. STAT. § 288.270 (2005).

⁴ BLACK'S LAW DICTIONARY 1593 (7th ed. 1999).

⁵ NEV. REV. STAT. § 288.110(2) (2005).

employee covered by the agreement, the employee is placed on suspension without pay pending the outcome of a pre-termination hearing. The Board, therefore, only had authority to restore Orr to her previous status of being suspended without pay. The outcome of any subsequent hearing or arbitration will determine Orr's further rights and remedies.

The decision of the district court to affirm the Board's findings is affirmed.

Conclusion

A union's failure to acknowledge or sign an employee's letter requesting a pre-termination hearing constitutes willful interference with or restraint of an employee's attempt to exercise rights under a collective bargaining agreement.