

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: February 27, 1997

TO : Mary Zelma Asseo, Regional Director
Region 24

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Unidad Laboral de Enfermeras(os) y Empleados de la Salud
(Fundación Hospital Metropolitano) 548-2035
Case 24-CB-1795 548-6001-1250

This Section 8(b)(2) case was submitted for advice as to whether the Employer's discharge of an employee upon receiving a Union leaflet was a foreseeable consequence of the Union's preparation and distribution of the leaflet at the Employer's hospital.

The Region is authorized to issue complaint, absent settlement. While the Union was processing a grievance protesting FOIA EXEMPTIONS 6 and 7(c) discharge by an unrelated hospital, 6+7(c) began working for the Employer against the Union's wishes. The Union planned to commence an economic strike against the Employer. On the day 6+7(c) started working there, Employer managers received a Union leaflet containing pictures of (FOIA EXEMPTIONS 6 and 7(c)) had been fired by another hospital and hired by the Employer as a strikebreaker. Another Union bulletin distributed that day stated a nurse had been fired by another hospital for negligence and insubordination and was one of the nurses hired by the Employer as strikebreakers. Three days later, after a meeting of high level Employer officials, the Employer discharged the (EXS. 6 and 7(c)) for alleged safety concerns, i.e. avoiding friction between her and the Union and/or employees resulting from her presence in light of the leaflets.

A union is accountable "for results triggered by what on the surface appears an innocent act which the union well knew would produce a desired result." Teamsters Local 331 (Statewide), 315 NLRB 10 n.2, 11 (1994) (noting non-union member was hired and questioning whether employer planned to keep promise of filling vacancies from union hiring hall had foreseeable consequence of employee's discharge), quoting Quality Mechanical, 307 NLRB 64, 66 (1992) (union reasonably knew employee would be suspended when it informed employer that employee was not current in union security dues obligation). The leaflets here, read together, clearly

indicated FOIA EXEMPTIONS 6 and 7(c) alleged incompetence working for another hospital without mentioning that the Union was processing a grievance contesting the validity of 6 + 7(c) discharge, and identified FOIA EXEMPTIONS 6 and 7(c)

The Union thus sought to discourage the Employer from hiring (EXS. 6 and 7(c)) [] reasonably expected the Employer to receive a copy of the leaflet, and in fact caused the Employer, based on the leaflets' contents, to discharge 6+7(c) because of the possible ramifications from 6+7(c) refusal to support a planned Union strike. Accordingly, the Union violated Section 8(b)(2). Moreover, since the Employer's stated reason for the discharge was FOIA EXEMPTIONS 6 and 7(c) [] decision not to engage in that Union activity, the Region should solicit a Section 8(a)(3) charge to obtain a reinstatement remedy.


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