

FORD & HARRISON^{LLP}
THE RIGHT RESPONSE AT THE RIGHT TIME

LEGAL ALERT



Legal Alert: California Court of Appeal Finds Employee's Claims Preempted by National Labor Relations Act

2/19/2008

In *Luke v. Collotype Labels USA, Inc.* (2/14/08), the California Court of Appeal held that an ex-employee's claims for wrongful termination in violation of public policy were preempted by the National Labor Relations Act (NLRA). Accordingly, the Court affirmed the trial court's order granting judgment in favor of the employer.

In this case, Collotype suspended Luke from work because it believed he had lied about having his position covered during a planned absence. While on suspension, Luke sent an e-mail to a senior manager within Collotype, claiming that there was "trouble brewing." Collotype discharged Luke the following day for "blatant insubordination and conduct detrimental to the team." Collotype gave Luke a termination memorandum stating that Luke was making his peers uncomfortable and was being insubordinate by soliciting signatures for a letter denouncing the management of the company.

Luke sued Collotype, claiming he was wrongfully terminated in violation of public policy because he was discharged for participating in discussions with other employees about concerns they had about unfavorable working conditions. The trial court granted summary judgment in favor of Collotype, holding that Luke's cause of action was preempted by the NLRA and was "nothing more than an unfair labor practice" charge.

The Court of Appeal affirmed. In so holding, the Court found that Luke's discussions with other employees about the "unfavorable working conditions" constituted concerted activity, addressed in Sections 7 and 8 of the NLRA.

Luke argued that his cause of action for wrongful termination in violation of public policy under these circumstances falls within an exception to the general rule of NLRA preemption. The Court disagreed. The Court acknowledged that two exceptions to the broad preemptive effect of the NLRA exist. First, NLRA preemption does not apply where the activity regulated is merely of peripheral concern to the Act. Additionally, where the "regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction" the Court could not infer that the states would be deprived of the power to act, NLRA preemption does not apply. However, the Court of Appeal found that neither circumstance existed in this case.

Further, in cases such as this, where there is no collective bargaining agreement in effect, it is for the Court to decide whether the nature of the

activity arguably would be protected by the NLRA.

Luke attempted to bring his claim within the exception to preemption by arguing that he was terminated for complaints involving unsafe working conditions. In so arguing, Luke raised authority that stands for the proposition that certain types of public policy wrongful termination claims are not preempted by the NLRA. The Court disagreed with Luke, because neither his complaint nor his testimony made any reference to his newfound belief that his termination was related to complaints regarding health and safety.

Employers' Bottom Line:

Many employers think that if they are not covered by a collective bargaining agreement and their employees are not unionized, they don't have to worry about labor laws such as the NLRA. Not true! Non-union employees have the same rights to engage in "protected concerted activity" as those who are covered by a union contract. Thus, employers who violate those rights may be subject to unfair labor practice charges.

If you have any questions about how the NLRA may impact your workforce, whether it is unionized or not, please contact the author of this Legal Alert, Helene Wasserman in the Los Angeles Office of Ford & Harrison LLP at hwasserman@fordharrison.com or (213) 237-2403 or the Ford & Harrison attorney with whom you usually work.

Helene is the host of the Employer Helpcast, which is a "one stop website" for both "nuts and bolts" employment law advice and insight into new legal developments affecting employers. The Employer Helpcast can be found at <http://employerhelpcast.blip.tv/>