



“Bad Haircut” and Unequal Policy Enforcement Lead to Trouble for Employer

November 7, 2011

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In *NLRB v. White Oak Manor*, the Fourth Circuit Court of Appeals enforced a decision by the National Labor Relations Board finding that an employer violated the National Labor Relations Act when it discharged an employee allegedly for photographing employees at work without permission. The Court agreed with the Board’s findings that the employee was actually discharged because of protected concerted activity and that the employer had not consistently enforced its photography and dress code policies.

Nichole Wright-Gore worked as a supply clerk for White Oak Manor. White Oak’s policies prohibited employees from wearing hats and taking photographs inside the long-term care facility. Wright-Gore was embarrassed about a bad haircut and started to wear a hat to work without comment from any supervisor. After a week, however, supervisors told her to remove the hat but she refused and was sent home. The next day, White Oak employees dressed up and wore costumes for Halloween. Wright-Gore’s costume included a hat, but her supervisor made her remove the hat pursuant to company policy. Wright-Gore complained that White Oak was enforcing the hat policy unequally, but her supervisor told her to worry only about herself and gave her a written warning for insubordination because she refused to remove her hat the day before.

Over the next few weeks, Wright-Gore photographed several employees wearing hats to work and violating other White Oak dress policies, such as failing to cover up their tattoos. She photographed some of the employees with their consent, but also took photographs of employees without their consent. She also shared the photographs with other employees and discussed the unequal treatment with them in an attempt to build support for her argument. White Oak eventually discharged Wright-Gore for violating the photography policy. Wright-Gore then filed an unfair labor practice charge alleging that White Oak interfered with her right to engage in protective concerted activity.

The Administrative Law Judge (ALJ) found that Wright-Gore’s complaints became protected concerted activity when they evolved into an effort to have White Oak fairly enforce its dress code policies. Another important issue was whether she lost protection of the Act by taking pictures of other employees without permission, in violation of White Oak policy. The ALJ held that she did not, in part, because there was evidence that other employees took pictures of each other without permission and even displayed the pictures around the facility, without repercussion. The Board affirmed the ALJ’s findings.

On appeal, White Oak argued that Wright-Gore could not have engaged in protected concerted activity because she initially acted out of pure self-interest, and did not intend to act on behalf of a broader group. The Fourth Circuit rejected the argument and enforced the Board’s decision. As the Court noted, “[t]hat an employee’s self-interest catalyzed her decision to complain about working conditions does not inexorably bar a determination that her actions were protected and concerted.” Thus, the mere fact that Wright initially acted out of her own self-interest did not remove her actions from the protections of the Act. Moreover, the Court emphasized in support of its decision that White Oak had not consistently enforced its photography or dress code policies.

This case highlights (again) how important it is for employers to consistently enforce workplace policies and that seemingly individualized complaints can lead to employer decisions that run afoul of the National Labor Relations Act.



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