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NLRB Hooks Alaska Hotel Anti-Union Efforts

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A recent decision from the Federal District Court in Alaska dealing with the Sheraton Anchorage highlights the necessity of periodically reviewing handbooks and making frontline supervisors and other managers aware of employee rights under the National Labor Relations Act (Act). In *Ahearn v. Remington Lodging and Hospitality, d/b/a The Sheraton Anchorage*, the NLRB objected to a number of anti-organizing approaches taken by the hotel management company. The court sustained most of the objections.

The starting point under the Act is Section 7, which gives the NLRB the authority to enforce employees' rights to seek union representation or otherwise engage in concerted activity or to refrain from seeking union recognition or other concerted activity. In this case, the Regional Director for the NLRB's Seattle office, Richard Ahearn, was seeking to enjoin the Sheraton from engaging in certain conduct dealing with work rules and other union activity. Although the court decision also dealt with issues surrounding bargaining and the hotel's involvement with a decertification petition (the Sheraton was organized by UNITE HERE Local 878), for the sake of brevity this article will deal with those issues which impact both union and non-union employers.

Work Rules

An NLRB administrative law judge (ALJ) found the following rules in the Sheraton handbook to be unlawful:

1. Employees agree not to return to the hotel before or after their working hours without authorization from their manager.
2. Distribution of any literature, pamphlets or other material in a guest or work area is prohibited. Solicitation of guests by associates at any time for any purpose is also inappropriate.
3. Insubordination or failure to carry out a job assignment or job request of management is prohibited.
4. Employees must confine their presence in the hotel to the area of their job assignment and work duties. It is not permissible to roam the property at will or visit other parts of the hotel, parking lots or outside facilities without the permission of the immediate department head.
5. Conflict of interest with the hotel or [management] company is not permitted.
6. Behavior which violates common decency or morality or publicly embarrasses the hotel or company is prohibited.
7. Employees are prohibited from disclosing confidential information, including "personnel file information" and "labor relations" information; when disclosure is required by judicial or administrative process or order or by other requirements of law, employees must give 10 days' written notice to the hotel's legal department prior to disclosure.
8. Employees may not give any information to the news media regarding the hotel, its guests or associates without authorization from the general manager and must direct such inquiries to his attention.

Additionally, one of the hotel's managers demanded that an employee remove a pro-union button and confiscated the button as well as several others the employee had in her possession.

The administrative law judge found all of the above rules and actions taken by the hotel management to be a violation of the employees' Section 7 rights. NLRB Regional Director Ahearn then sought the injunction to

restrain the enforcement of the above work rules and to restrain the confiscation of pro-union buttons being worn and carried by employees, pending review of the ALJ's decision by the NLRB itself. In a lengthy decision by the judge, the federal court granted the injunction.

Lessons for Employers

It is imperative that employers take preventive action before union problems begin. Much of current labor law is in a state of transition because of the current proemployee leaning of the NLRB, which currently has four members, three Democrats and one Republican.

9. Handbooks should be reviewed periodically. In addition to the rules cited above, the NLRB has a whole series of decisions dealing with issues arising out of employees using social media to discuss workplace issues and using company computers to do so. Language like the Alaska hotel handbook language at issue here clearly has another, more benign intent and focus, but the context of Section 7 makes for a totally negative connotation for NLRB review purposes.
10. Train your department managers and supervisors on the boundaries the NLRB has drawn between permissible employee conduct protected by Section 7 and the employer's right to run its business efficiently and without interruption.