

## NLRB Continues to Actively Challenge Employee Terminations

### The NLRB's June 6, 2013 Press Release

The National Labor Relations Board ("NLRB") announced last week that a plastic surgery center in Dallas, Texas agreed to pay more than \$300,000 to settle charges that it unlawfully fired two employees and then sued one of them in state court after she sought help from the NLRB's Fort Worth office. The center, Advanced Facial Plastic Surgery Center, PA, also agreed to drop the state lawsuit, to rescind a rule prohibiting wage discussions by employees, and to cease paying its attorney to "unlawfully and coercively" represent its employees. For non-unionized employers, this case is an important reminder that most employers are under the NLRB's jurisdiction and are subject to the laws it enforces.

As described in the press release, a medical technologist at the center was fired in December, 2010 for discussing bonuses with other employees. Under the National Labor Relations Act (NLRA), employees are guaranteed the right to discuss wages and other terms and conditions of employment with co-workers. The technologist filed a charge with the Fort Worth NLRB office and, following an investigation, the Regional Director issued a complaint and scheduled a trial before an Administrative Law Judge.

The plastic surgery center then fired another employee, a surgical consultant, after she defended her co-workers in a meeting and engaged in other protected concerted activity. That employee also filed a charge, a second complaint was issued, and the two cases were consolidated.

After the surgical consultant filed NLRB charges, the company attorney filed a lawsuit in state court against her. This lawsuit alleged that the surgical consultant had been negligent and breached certain fiduciary duties. The NLRB investigated and concluded that the lawsuit was baseless in fact, unsupported in the law, and retaliatory.

The parties presented their cases to the Administrative Law Judge during a three-day trial in late October 2012. Before a decision was issued, the parties entered into a settlement agreement. The \$315,000 settlement covers lost wages and benefits for the employees, who waived their right to reinstatement to their former positions, as well as attorneys' fees incurred in defending the retaliatory lawsuit in state court. The Company also agreed to withdraw the state court lawsuit, terminate the undesired representation of the aggrieved employees by the Company attorney, and post, read, and mail a notice informing current and former employees of their rights.

### Practice Tip

Before proceeding with any termination, employers should carefully analyze whether the employee conduct at issue is protected by Section 7 (which allows protected, concerted activity) or Section 8 (which prohibits retaliation for protected conduct) of the NLRA. Whether the conduct occurs in the workplace or in social media forums such as Facebook, Twitter, or Tumbler, the NLRB, together with other government agencies, may actively review and challenge employer decisions that appear to violate the NLRA rights of both union and non-union employees.

If you have questions about terminations or other employment law issues, please contact Kimberly Daniel ([kdaniel@hdjn.com](mailto:kdaniel@hdjn.com)) at (804) 967-9604. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at [www.hdjn.com](http://www.hdjn.com).

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