

2nd draft

To: Dr. Lora Clark

From: Bette Porter

Date: 30 June 2010

Re: Dismissal Validation

Facts: Erwick was dismissed from her job at C & T Steel Company because she was “an unsatisfactory employee”. At the time; Erwick was active in an effort to organize a union at C&T. Is the dismissal valid?

Issue: Can an employer dismiss an employee for organizing a union?

Brief Answer: Not for organizing a union but if employee is an unsatisfactory employee they can dismiss her even though she is involved in union activities.

Rule of Law: According to 29 U.S.C.A. §158(a) (3) (WESTLAW, Westlaw current through 6-15-10)

“(a) Unfair labor practices by employer

It shall be an unfair labor practice for an employer

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization”

According to N.L.R.B. v. Wright Line, a Div. of Wright Line, Inc. 662 F.2d 899 (1st Cir. 1981)

National Labor Relations Board petitioned for enforcement of its order requiring employer to reinstate discharged employee, a union activist, with back pay. The Court of Appeals, Levin H. Campbell, Circuit Judge, held that: (1) once general

counsel has made a prima facie showing that protected conduct was a motivating or substantial factor in an employer's discharge decision, employer has burden of production of coming forward with credible evidence to rebut or meet general counsel's prima facie case, and (2) the evidence was sufficient to sustain Board's findings that employee was discharged due to his union activity, and that employee's submission of an inaccurate record of the times at which he performed inspections, the purported reason for his discharge, was a trivial offense seized on by employer to effectuate its true purpose of discharging a union activist

Under section of National Labor Relations Act which makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization," employers may not discharge an employee due to his union activity, but they may and should apply their usual rules and disciplinary standards to a union activist just as they would to any other employee. National Labor Relations Act, §§ 8(a)(3), 10(c) as amended 29 U.S.C.A. §§ 158(a)(3), 160(c).

Application: In our case our client was dismissed from her job for being an "unsatisfactory employee." At the time she was active in organizing a union. The employer will have to show that the motive for firing her unsatisfactory performance and that those allegation are not a mere pretext for firing a union activist.

2nd draft

Conclusion: The courts will find in favor of our client if she can show that she is a good employee and the company has no reason to fire her.

While the National Labor Relations Act and similar state acts make it an unfair labor practice for an employer to discharge an employee in retaliation or reprisal for union activities that have been legitimately engaged in, they do not otherwise limit or interfere with the employer's right to hire and fire employees at his discretion.

Since the prohibition against discharge is limited by the labor relations acts to firing which is done with the specific purpose and intent proscribed, it follows that no unfair labor practice on this ground may be found to exist unless there is evidence from which it may reasonably be inferred that the employer was aware of the union activities among his employees.

In some instances there may be a valid cause which would justify the employer's act in discharging an employee if the discharge took place because of such cause. If, however, it is shown that the existing cause was only incidental and that the actual reason for the discharge was the employee's union activities, an unfair labor practice on this ground may be found, although in one state case there is an intimation that the employer's motive should not be inquired into if valid cause exists for the discharge, and that a discharge under such circumstances should not constitute an unfair labor practice.