

**Federal Appellate Court Sets Aside Union Election Victory, Overrules NLRB,  
Citing Statements as Threats –**

In *ManorCare of Kingston PA v. NLRB*, the D.C. Circuit held that certain pre-election statements made by co-workers constituted serious threats sufficient to warrant the nullification of the election outcome.

The Union won a representative election among a group of certified nurses' aides at a Pennsylvania nursing home by a narrow margin of 34-32. The employer refused to recognize the result, contesting the election as tainted. Two employees were alleged to have made statements to co-workers implying that "if the Union didn't get in . . . [they were] going to start beating people up and destroying their cars." Other co-workers learned of these statements through secondhand means.

Reaffirming the principle that laboratory conditions are essential to ensure statutorily-protected employee free choice in representation elections, the appellate court set aside the election results. The D.C. Circuit based its decision on its reading of NLRB precedent, applying *Westwood Hotel's* 6-factor test for determining when third-party comments are threatening enough to void the election. Here, the court determined that the statements were serious threats directed broadly at all voting employees, threats which were capable of being carried out. The court noted that less-than-serious comments or comments "uttered in jest" can nonetheless convey a risk of serious harm to others, even if heard indirectly from co-workers who did not make the original comments.

During an organizing campaign, if a Union becomes aware of threatening comments made by any employee who is sympathetic to the Union, it must disavow those comments to the employees in the proposed bargaining unit. Failure to do so could result in the Union won election being set aside.

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