

NLRA Protects Employees Who Protest Denial of Contract Benefits

In *Omni Commercial Lighting, Inc.*, 364 NLRB No. 54 (July 19, 2016), the Board held that the Employer committed an unfair labor practice by firing an employee for protesting violations of a collective bargaining agreement he honestly and reasonably believed he was subject to, but in fact was not. The Employer was an electrical lighting services company. It had in place 3 different bargaining agreements for different groups of workers, each covering specific types of work, providing for distinct wage amounts and benefit contributions. One such agreement was called the "MA". Another, lower-paying agreement was known as the "LMA".

Hopkins, an electrical worker, was given repeated assurances by the Employer prior to his hiring that he would be paid the wages and benefits accorded by the higher-paying "MA". Upon hiring and for months thereafter, Hopkins was paid the hourly wage set forth in the "MA", and performed tasks within the scope of the "MA". After noticing he was not being paid the benefits due to him under the "MA", Hopkins inquired with his boss. His boss told him that his employment was governed by the "LMA", not the "MA". Hopkins protested, telling his boss that the work he performed was outside the scope of the "LMA". His boss promptly fired him.

The NLRB found the Employer to have committed an unfair labor practice, and awarded Hopkins reinstatement with backpay. The Board's decision was based upon prior precedent (approved by the U.S. Supreme Court in *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822 (1984)), which held that an employee engages in protected activity when invoking a right he honestly and reasonably believes is contained in the collective bargaining agreement. Here, Hopkins was invoking the contractual right to a fixed benefit amount under the "MA". The Court found that even though Hopkins was not technically covered by this agreement, given the Employer's behavior, he was justified in believing he was. As such, the Employer committed an unfair labor practice by firing him for inquiring about the contractual benefits he honestly and reasonably believed were due to him.

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