

Verbal Protest Does Not Equate to a Demand to Bargain

On February 10, 2017, the Sixth Circuit Court of Appeals held that a union president's protest to an employer's unilateral change is not a formal demand for bargaining. *Ohio Edison Co. v. NLRB*, No. 15-1783, 2017 WL 541007 (6th Cir. Feb. 10, 2017). The NLRB had held that when the union president threatened to file a ULP charge, and informed of his desire to travel to company headquarters to discuss the matter, that the employer then had a duty to bargain with the union, and because it failed to bargain it had committed a ULP. *Ohio Edison Co.*, 362 NLRB No. 88 (May 21, 2015). However, the Sixth Circuit reversed the NLRB because its holding was not supported by substantial evidence.

The Sixth Circuit viewed the union president's statement as disapproval of the company's actions, but that this disapproval did not rise to the level of a formal demand to bargain over the change. *Ohio Edison Co.*, 2017 WL 541007 at 3. The Court focused on the fact that during the telephone call there were several changes to the employee-recognition program that were discussed. So the union president's statement "Oh no you don't! . . . Now you know I will have to file a board charge," did not clearly signal that the union was demanding that the parties bargain, but was a protest to show the union's disapproval. Furthermore, the union and the employer had never previously bargained about the subject of employee service awards, so this only added to support a finding by the court of a lack of substantial evidence.

The Court further noted that the Board previously established that the threat to file or the actual filing of a ULP charge is not a substitute for a union's duty to make a formal demand to bargain. *NLRB v. Okla. Fixture Co.*, 79 F.3d 1030, 1037 (10th Cir. 1996). Therefore, because the union president's threat to file a ULP charge was only a protest to the changes, the union still had a duty to formally demand that the employer bargain over changes it wanted to make to the employee-recognition program.

ASHER, GITTLER & D'ALBA, LTD.
200 West Jackson Boulevard, Suite 1900
Chicago, IL 60606 – 312.263.1500
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