

Employer must reinstate employees who were fired after they walked off the job in protest

The Seventh Circuit Court of Appeals recently agreed with a National Labor Relations Board (NLRB) ruling that six workers who walked off the job in protest of their supervisor's alleged actions must be reinstated to their positions with back pay.

The Facts of the Case

Trompler, Inc. is a non-union machine shop which runs three shifts. The second shift, which operates from 2:00 pm to 10:00 pm, employs eight workers including a supervisor. On July 9, 1998, six of those eight employees walked off the job in protest of their supervisor's actions, causing a work stoppage until the employees for the next shift arrived at 10:00 pm. The six employees returned to work the next day and the company was able to make up the lost production in the subsequent shift.

The next day, the president of the company met with the six workers. The workers explained that they had walked off the job because the supervisor: 1) failed to prevent the sexual-harassment of one of the six employees who walked off the job by the remaining employee who did not walk off the job, 2) failed to deal with the drug problems of another employee, 3) was not familiar with Trompler's machinery and could not help the employees to solve problems related to the machinery. After hearing their complaints, the president fired all six employees.

In response, the six employees filed a complaint with the NLRB. They said that Trompler had violated Section 7 of the National Labor Relations Act (NLRA) which entitles worker to engage in "concerted activities" for the purpose of improving the terms and conditions of their

employment. The NLRB determined that Trompler had committed an unfair labor practice and ordered Trompler to reinstate the six workers with back pay.

Trompler then filed suit against the NLRB in the Seventh Circuit Court of Appeals. Trompler claimed that only "reasonable" concerted activities were protected by the Act (as the court had previously found in the case of *Bob Evans Farms v. the NLRB* where employees had walked off the job to protest the firing of their supervisor).

On August 1, 2003, the Seventh Circuit Court of Appeals agreed with the NLRB that Trompler had violated the NLRA and that the six employees should be reinstated with back pay. The court explained that this case differed from the Bob Evans case because choice of supervisors is a management prerogative. In this case, the former employees were not protesting Trompler's choice of supervisor; instead they were protesting his alleged actions. Furthermore, the U.S. Supreme Court had said that the only unprotected concerted activities are those that are unlawful, violent, in breach of contract, or otherwise indefensible, but that the mere fact that they are not "reasonable" does not forfeit the protection of the Act.

This decision suggests that employers should tread carefully when taking action against their non-union employees who partake in concerted activities designed to improve their working conditions.

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