

PUBLICATION

Sickened By Jimmy John's Ruling? You're Not Alone.

May 16, 2012

Section 7 of the National Labor Relations Act provides both unionized and nonunionized employees the right to, among other things, communicate with one another and the public about ongoing disputes with their employers concerning their terms and conditions of employment. These Section 7 rights are not unlimited, however. Such communications may not be disparaging, reckless or maliciously untrue, or they may lose their protected status. Recent efforts by the International Workers of the World to unionize several Jimmy John's sandwich shops operated by MikLin Enterprises appear to push this standard to the breaking point.

Following an unsuccessful union organizing campaign, the union began a second campaign to secure paid sick days for MikLin employees. During the campaign, the union put up posters questioning the healthfulness of sandwiches prepared in MikLin's shops. The posters falsely alleged that employees were not allowed to call in sick, thus implying that customers who ate MikLin's sandwiches risked illness by doing so. The union also issued a press release entitled "Jimmy John's Workers Blow the Whistle on Unhealthy Working Conditions." MikLin responded by attempting to take down the offending posters and terminate the employees it believed were involved in the union campaign.

Under existing law, MikLin's actions were justified. The union's communications were demonstrably false, and its communications clearly disparaged the employer's product in an effort to harm its business.

Unfortunately, the NLRB's Administrative Law Judge ruled against MikLin, ordering the reinstatement of and restitution to the discharged employees. The judge concluded that the false claims concerning MikLin's lack of sick leave was mere "protected hyperbole," and that there was a real possibility that sick employees might attempt to cover up their illness in order to earn more money, and thus potentially increase the risk of food-borne illness.

While the MikLin case will be closely watched on appeal, the NLRB's ruling signals increasingly questionable tactics by certain unions, as well as NLRB's determination to take aggressive action where it believes employees have been terminated for engaging in protected communications.

Before you take action against an employee for untruthfully disparaging your company, or its products/services, contact a Baker Donelson attorney to review the law and factual circumstances surrounding the decision. Get in touch with any of our nearly 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.