

## Labor Law: Nurse Fired For Criticizing Staffing, Court Sees Unfair Labor Practice By Hospital.

An RN who was a union steward at the hospital was fired shortly after making public statements criticizing nursing workloads at the hospital.

At the time the nurses' union was involved with the hospital in what the US Court of Appeals for the Ninth Circuit described as an "ongoing labor dispute" over working conditions.

The nurse filed a complaint with the National Labor Relations Board (NLRB) that her firing was an unfair labor practice, that is, that the hospital violated rights guaranteed to her as a private-sector employee under the US National Labor Relations Act (NLRA).

The NLRA says that it is an unfair labor practice for an employer to interfere with, restrain, coerce or discriminate against an employee to discourage union membership or participation.

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***During a labor dispute an employee associated with the union is allowed to make disparaging public statements about working conditions, so long as the statements are not disloyal, reckless or maliciously untrue.***

***It is an unfair labor practice for an employer to take action against an employee for exercising his or her rights under the NLRA.***

UNITED STATES COURT OF APPEALS  
NINTH CIRCUIT  
November 17, 2009

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An employee, on the other hand, has no right to make statements, even if they are true, which are intended to interfere with the employer's ability to conduct legitimate business operations, statements which are known to be false or statements which reveal confidential information.

In this case the evidence was clear, the Court of Appeals said, that the timing of the nurse's firing was intended as an anti-union intimidation tactic.

However, at the same time the NLRB did not believe it was necessary or appropriate to force the hospital to have to email each and every employee to notify them that the hospital had been found guilty by the NLRB of an unfair labor practice for the way the nurse was treated. Nevada Service Employees Union v. NLRB, 2009 WL 4894275 (9th Cir., November 17, 2009).