

Unionization: Nursing Home Administrator Who Refused To Fire Workers Cannot Sue, Must Complain To NLRB.

According to the Court of Appeals of Michigan, a nursing home administrator was herself fired when she refused to fire nineteen named individual nursing home employees whom a corporate representative wanted fired for their unionization activities at the nursing home.

The administrator sued the nursing home's parent corporation for damages for wrongful discharge.

The court agreed she was wrongfully discharged from her employment, but denied her right to sue. The court ruled her only legal recourse was to file an unfair-labor-practices complaint with the National Labor Relations Board (NLRB).

If a nursing home is operated for a profit and has \$100,000+ in annual revenues, the US National Labor Relations Board has jurisdiction over labor unionization issues.

Unfair Labor Practice

It is an unfair labor practice to interfere with, restrain or coerce rank-and-file employees in the exercise of the right to form, join or assist a labor union and to engage in collective bargaining.

It is an unfair labor practice to retaliate against a supervisory employee as a means toward interfering with, restraining or coercing rank-and-file employees in the exercise of their legal rights.

No Wrongful-Discharge Lawsuit

The other side of the coin is that there is no right to sue for damages in state court for issues that are within the ambit of the National Labor Relations Board's jurisdiction.

Even though she is a supervisor and as a supervisor cannot join the union and even though she probably can establish her employer's illegal motive in firing her, the administrator in this case was allowed to pursue her rights only by filing a complaint with the NLRB, the court ruled. **Calabrese v. Tendercare of Michigan, Inc.**, ___ N.W. 2d ___, 2004 WL 1219655 (Mich. App., June 3, 2004).

A nursing home's owners have no right to fire employees who are attempting to get union representation.

A nursing home's owners have no right to fire an administrator or other supervisory employee who refuses to fire employees who are attempting to get union representation.

However, a supervisory employee wrongfully fired for refusing to interfere with rank-and-file employees' right to seek union representation cannot sue his or her employer for commonlaw wrongful discharge.

Under these circumstances a wrongfully-fired supervisory employee must file a complaint with the National Labor Relations Board and allow the Board to take it under consideration as an unfair labor practice.

The employer can be guilty of an unfair labor practice even though the supervisor, as a supervisor, would not have the legal right to join in with the rank-and-file employees' unionization efforts.

COURT OF APPEALS OF MICHIGAN
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Abuse, Neglect: Punitive Damages Allowed.

The California Court of Appeal, in an unpublished opinion, has upheld the right of nursing home residents and their families who sue for abuse and neglect to ask for punitive damages.

As a general rule, punitive damages cannot be awarded for ordinary negligence that causes harm to another person. Punitive damages are only for cases of intentional, wanton or reckless misconduct. Punitive damages are a civil penalty intended to punish wrongful conduct and can be calculated far out of proportion to fair compensation for the harm done.

In this case the allegations, if they can be proven against the skilled nursing facility, were fairly outrageous.

The facility allegedly failed to administer pain medications, failed to notify the physician the patient was complaining of pain and failed to implement the necessary protocol to prevent pressure ulcers, which led to necrotic decubiti, then to gangrene requiring below the knee amputation of one leg. **Country Villa v. Superior Court**, 2004 WL 1240421 (Cal. App., June 7, 2004).