

Employers may not Engage in Coercive Surveillance of Unions

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An employer risks violating federal labor laws by monitoring employees' union activities, or even creating an impression of surveillance.

Whether an employer's union monitoring is considered coercive, and therefore illegal, depends on several factors, including the duration of the observation, the employer's distance from employees while observing them and whether the employer engaged in other coercive behavior during the observation. See *Aladdin Gaming LLC*, 345 NLRB 585, 586 (2005).

A National Labor Relations Board (NLRB) judge held that an employer had violated the prohibition against coercive surveillance in the recent case *Allied Medical Transport, Inc. and Transport Workers Union of America, AFL-CIO*. Allied Medical Transport, Inc. ("AMT") provides transportation services to disabled Florida residents who are unable to use public transportation.

The surveillance allegedly occurred in November of 2011 when the Transport Workers Union of America, AFL-CIO ("the Union") held an organizing meeting at a Comfort Inn near AMT's Lauderdale Lake's facilities. According to Administrative Law Judge Robert A. Ringler's findings, company CEO Wayne Rowe parked 10 feet from the hotel's entrance for 30 minutes and watched as employees entered the meeting.

One employee testified that Rowe called him over and said "[t]he union is not going to be able to do anything for you guys." In addition, company officials allegedly phoned employees and told them that the Union's organizing campaign would be futile. Other employees stated that they were offered benefits if they voted against the Union.

Rowe maintained that he never engaged in improper surveillance. Because the Comfort Inn is close to AMT's facilities, Rowe testified, he erroneously thought that the meeting was on company property and he wanted to confirm that his fleet was secure.

Judge Ringler ruled against AMT, holding that Rowe's presence in the parking lot, coupled with his allegedly coercive statements, constituted an illegal labor practice. These activities left employees "to reasonably assume

that management was monitoring . . . union activities.” Judge Ringler also held that AMT had engaged in improper disciplinary procedures.

The court ordered AMT to cease its anti-union actions and to appoint an official to read a notice to employees that outlined their rights with respect to union activities. The court also ordered reinstatement of employees who had been improperly fired as a result of the disciplinary procedures.

Understanding exactly when union monitoring crosses the line into coercive surveillance is not always easy.

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