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Even When You Win, You Might Still Lose: NLRB Strikes Back After Employer Prevails In Federal Court

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While we typically defer to the BT Labor Relations Blog when it comes to analysis of "traditional labor" matters, the National Labor Relations Board's (NLRB) decision in *Federal Security, Inc*. is worth mentioning here.

Federal Security provides armed security guards to public housing sites in Chicago. The Company fired 19 of its security guards after they staged a "walk out." The guards subsequently filed an unfair labor practice charge alleging their walk out was "protected concerted activity" under the National Labor Relations Act (NLRA) (i.e., the right for employees to act together to try to improve their pay and working conditions or fix job-related problems). Although the NLRB sided with the employees, the Seventh Circuit Court of Appeals disagreed noting that the activity was unprotected because it compromised the safety of those residing at the public housing sites.

After the Seventh Circuit's ruling, Federal Security filed a complaint in state court against a number of the employees who participated in the Board proceedings. In its complaint, Federal Security sought attorney's fees and costs incurred by the Company for having to defend what it believed was a frivolous action. The state court issued a default judgment against 11 of the former security guards who did not respond to the complaint. Federal Security ultimately dismissed the suit voluntarily with respect to the remaining former security guards who did respond.

But it did not end there: The NLRB General Counsel turned around and filed a complaint on behalf of the former security guards alleging that Federal Security violated the NLRA when it sought to assert its rights in state court to recover attorney's fees and costs in connection with its victory in federal court. According to the NLRB General Counsel, Federal Security's act of filing the lawsuit was motivated by a retaliatory animus. Because the NLRB found that Federal Security had violated the NLRA on procedural grounds, it declined to explicitly examine the Company's motivation for filing suit. Regardless, the outcome was a victory for the NLRB General Counsel. This is just another example of how NLRB is taking steps to solidify its position as the "champion" of employee rights. Many employers do not realize that the NLRA protects the right of all employees – unionized or not – to engage in protected concerted activity. Thus, an equally well-intentioned non-union employer reacting to a disruptive "walk out" might find itself in hot water with the NLRB.

The takeaway: *All employers* should pay close attention to the NLRB and how the NLRA may unexpectedly pop up and interrupt business operations.

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