

7th Circuit: Union Employers' Access to Federal Courts Limited

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By William D. Deveney

Union employers in Illinois, Indiana and Wisconsin may be required to defend against state-law retaliatory-discharge claims in state court rather than federal court as a result of a recent decision by the 7th U.S. Circuit Court of Appeals.

Constance Hughes was employed by United Air Lines as a flight attendant, but went on an extended medical furlough pursuant to the union contract under which she was employed. Hughes subsequently reported to undergo requalification training after United informed her that her available medical leave was set to expire. During her training, however, Hughes claimed to have injured herself again, preventing her from flying. She also filed a workers' compensation claim under the Illinois Workers' Compensation Act. United then fired Hughes.

Hughes filed suit in Illinois state court claiming that her employment had been terminated in retaliation for filing her workers' compensation claim. United removed the case to federal court, asserting that a federal question was presented because Hughes had been terminated based on the collective bargaining agreement's limit on how long active employees could retain seniority. United also filed a motion to dismiss Hughes' case, arguing that the suit was governed by the federal Railway Labor Act (RLA)—which applies to the labor relations of airlines as well—and thus her claim was required to be submitted to arbitration.

Hughes filed a motion to remand her case to state court, but the district court denied her motion. The district court followed the 7th Circuit's 1986 decision in *Graf v. Elgin, Joliet & E. Ry. Co.* holding that the RLA "completely preempts" retaliatory-discharge claims such as Hughes'. The district court therefore held that United's removal of the case to federal court was proper, and furthermore, that her case should be dismissed.

Hughes appealed the order to the 7th Circuit, which then overruled *Graf* and reversed the district court. The 7th Circuit explained that although pre-emption normally is a defense that must be asserted in the court where the litigation began, "complete" pre-emption means that the claim itself arises under federal law. Therefore, if complete pre-emption applied to Hughes' retaliatory-discharge suit, United was entitled to remove it to federal court; but if ordinary pre-emption applied, the case would have to be remanded to state court. The 7th Circuit held that retaliatory-discharge claims under Illinois law involved rights and obligations that exist independent of a collective bargaining agreement, preventing United's reliance upon the complete pre-emption doctrine.

The 7th Circuit observed that it had previously extended the *Graf* holding to labor-relations law generally in *Lingle v. Norge Division of Magic Chef, Inc.*, concluding that the Labor Management Relations Act completely pre-empted retaliatory-discharge claims of any kind based on state law. The U.S. Supreme Court subsequently reversed that decision, however, holding that although a retaliatory-discharge claim is pre-empted when it cannot be resolved without construing a collective bargaining agreement, such a claim presents a case of ordinary pre-emption rather than complete pre-emption. The 7th

Circuit further observed that another subsequent Supreme Court decision, *Hawaiian Airlines, Inc. v. Norris*, had applied *Lingle* to the RLA, effectively leaving *Graf* without any remaining support. Finally, the 7th Circuit observed that the 2nd, 9th and 11th circuits had similarly concluded that the RLA does not completely pre-empt retaliatory-discharge claims under state law.

The 7th Circuit observed that it was easy to see how a retaliatory-discharge claim could be resolved without reference to a labor agreement. The 7th Circuit therefore directed that the district court remand Hughes' workers' compensation retaliatory-discharge suit to state court.

Hughes v. United Air Lines Inc., 7th Cir. No. 10-1129 (Feb. 8, 2011).

Professional Pointer: United will now have to defend against Hughes' claim in state court, which is generally viewed as a less favorable venue than federal court. Unfortunately, the 7th Circuit's decision in *Hughes* limits a union employer's previous ability to remove many state-law cases to federal court. Therefore, it is more important than ever that employers have a solid underlying basis for their termination decision.

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Editor's Note: This article should not be construed as legal advice.

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