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LABOR & EMPLOYMENT ISSUES
IN FOCUS

FOR CLIENTS & FRIENDS OCTOBER 17, 2024 EDITION

LEGAL AID SOCIETY'S STATEN ISLAND OFFICE ALLOWED RACIST CULTURE TO FESTER, COMPLAINT ALLEGES

According to a complaint filed in the United States District Court for the Eastern District of New York ("Complaint"), the Legal Aid Society allowed Black attorneys at its Staten Island office to be subjected to a "racist culture" in violation of federal and state laws and retaliated against those who complained. The Complaint also alleges violations of the collective bargaining agreement between the employer and the employees' collective bargaining representative, the Association of Legal Aid Attorneys, Local 2325 of the United Auto Workers. The case is *Ronan v. Legal Aid Society*, Docket No. 1:24-cv-07201 (E.D.N.Y. filed Oct 14, 2024).

According to the Complaint, the Legal Aid Society allowed a hostile work environment; disparate treatment regarding terms and conditions of employment, including professional advancement opportunities; and retaliation for complaining about the same. Examples of behavior contributing to the alleged hostile work environment include racist comments and frequent microaggressions. For example, according to Roxanne Ronan, who filed the Complaint, she shared an office with a white colleague who refused to acknowledge her or any other Black individuals who came into the office. The Complaint also alleges that a white attorney claimed it was his first amendment right to use racial slurs.

To further illustrate the alleged hostile work environment, the Complaint describes how, in or around fall of 2020, the Legal Aid Society hired a Diversity, Equity & Inclusion consultant to address discrimination in the office. The consultant resigned in May 2021 after concluding that the Legal Aid Society would continue to refuse to comply with her directives and that the project was largely performative and "set up for failure."

Eventually, Ronan took medical leave due to the stress and anxiety caused by working at the Legal Aid Society; however, her employer accused her of "client abandonment," so she continued working. She was then placed on a performance improvement plan and ultimately terminated after she replied all to an email exchange with "offensive language." The Complaint alleges that the Legal Aid Society violated the collective bargaining agreement by terminating her without following the proper process outlined in the agreement. Ronan seeks damages for lost wages, benefits, and emotional distress, as well as harm to her career and reputation.

AMAZON LOSES BID TO HAVE THE NATIONAL LABOR REATIONS BOARD DEEMED UNCONSTITUTIONAL

In its seemingly endless battles against Unions and with the National Labor Relations Board ("NLRB"), online retail giant Amazon has hit upon a new tactic, one recently endorsed by numerous other large companies, having the NLRB, the federal government agency charged, since 1935, with enforcing most of the nation's labor laws and monitoring Union elections, declared unconstitutional. Amazon has used this quixotic defense in both NLRB cases and in the Federal Courts, thus far to no avail.

Most recently, last week the NLRB denied Amazon's motion to dismiss an Administrative Law Judge's ruling that Amazon illegally fired a worker who was trying to improve COVID-19 safety protocols at Amazon's Staten Island warehouse. Aside from arguing on the merits that it did not break the law in firing the worker, a claim which was denied, Amazon added the additional argument that the agency, in existence for ninety (90) years, was unconstitutional because its members and judges were protected under civil service laws from being fired by the President and the fact that the NLRB performs both investigative and adjudicative functions in administering federal labor law, thus violating the company's due process rights.

In response, the NLRB brushed aside the argument, first writing that the company waived its constitutional arguments because it failed to raise them at the trial of the case. In any event, even if it had followed proper procedure, the claim would fail on the merits, writing that clear United States Supreme Court and Circuit Court of Appeals precedent support the constitutionality of the agency. "As to its claim that the board unconstitutionally exercises both prosecutorial and adjudicative authority, the respondent failed to raise it in its exceptions to the administrative law judge's original and supplemental decisions," the panel said. The Board added, in reference to U.S. Supreme Court precedent, that "the combination of investigative and adjudicative functions does not, without more, constitute a due process violation" and that "there is no evidence that the respondent suffered any harm from the board members' and administrative law judge's removal protections," Amazon can renew the argument if it, as expected, appeals the ruling.

Meanwhile, Amazon has had more success on this issue in the Court, previously succeeding in convincing the United States Court of Appeals for the Fifth Circuit to stop an NLRB unfair labor practice matter at least in part based on this theory.

Other companies pursuing this seemingly hopeless argument include Starbucks, SpaceX, and Trader Joe's. Amazon is unique, however, in bringing the argument both in Court and in the Agency itself. The case is *Amazon.com Services LLC and Gerald Bryson*, case number 29-CA-261755, before the National Labor Relations Board.

DEPARTMENT OF LABOR TAKES AIM AT THE FINE PRINT

On Tuesday, October 15, 2024, the Department of Labor ("DOL") Office of the Solicitor issued a special enforcement report ("Report") and the Solicitor of Labor Seema Nanda ("SOL") wrote a blog outlining the SOL's actions against a number of contract provisions that are coercive of employees rights. These "fine print" provisions in employment contracts can discourage workers from exercising their rights under federal worker protection law. The SOL has filed actions to fight these "fine print" contract provisions that require:

- workers to waive statutory protections such as statutes of limitations on wage and hour claims;
- workers to agree they are independent contractors which can waive minimum wage, overtime pay and health and safety protections;
- indemnification agreements whereby the worker must reimburse the employer for any costs and expenses spent defending a lawsuit by the worker;
- "loser pays" agreements requiring the worker to pay attorneys' fees and costs if the employer prevails in an employment dispute;
- "stay or pay" clauses which make the worker who leaves the employer liable for the employer's costs to replace the worker, lost profits, and certain training costs;
- Overly broad confidentiality, non-disclosure and non-disparagement agreements that can ban a worker from discussing issues with others and government investigators;
- Policies that require workers to report safety issues to the employer before a government agency; and
- mandatory arbitration agreements.

The SOL reasoned that "workers should not be required to pay their employers huge sums simply because they left their jobs for safer ones, sought to report violations to the government or sought to exercise their rights under the law in some other way." Based on the report, the DOL will continue attacking these coercive contract provisions.

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