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Case 15**Discharge for Disruptive Conduct,
or for Protected Union Activity?**

Company Cincinnati Suburban Press, Inc., a Subsidiary of Suburban Communications Corporation, Cincinnati, Ohio

Union The Newspaper Guild

Individual George Fuller¹

BACKGROUND

The company published and distributed a chain of weekly newspapers in the Cincinnati metropolitan area. The individual who filed charges in this case, George Fuller, was employed as a reporter in the editorial department from November 1984 until his discharge on February 2, 1987.

In October 1985, Fuller helped to initiate a union organizing campaign among employees in the editorial department. The Newspaper Guild union organizing campaign culminated in an NLRB election in April 1986, in which the editorial department employees voted against union representation by a vote of 24 to 19. Efforts to organize the editorial department employees, however, did not end with the April 1986 election. Fuller and other employees formed a committee called "The April 87 Committee," which immediately began efforts to organize the employees, with a view to an April 1987 election. In June 1986 Fuller and others mailed an "opinion survey" to the employees. In July 1986 the results of this survey were mailed to employees and certain members of management. Fuller also passed out pronoun "business cards" at the July company picnic, which was attended by both employees and management personnel.

Management was aware of Fuller's continuing efforts to organize its employees. In August 1986, when some literature that had been posted on the employee bulletin board was taken down, Derrick Collins, the company's vice president, spoke with Fuller and asked him how long the union "agitating" was going to continue. Fuller responded that it would continue until April 1987, when another election could be held.²

In October 1986, Fuller posted on the employee bulletin board a handwritten "Six Month Update," which urged employees to vote for union representation in April 1987. On October 16, 1986, Duane Silverman, the company's executive editor, asked Fuller if he had posted the document. Fuller admitted to Silverman that he had. In December 1986, an article that Fuller wrote entitled, "Dirty Tricks in the Newsroom," was published in *The Cincinnati Review of Politics and the Arts*. This publication was available for purchase at bookstores throughout the metropolitan area, as well as being a subscription publication that was mailed to regular subscribers. Fuller's article reviewed the

April 1986 union campaign and the opposition encountered during the drive. As an analytical and historical review of the union's organizing efforts, the article discussed the antiunion acts of certain of the company's managers, supervisors, and employees. Fuller gave copies of the published article to fellow employees, and he talked about using the article as part of the continuing union campaign.

Management first became aware of the article in January 1987. Managing Editor Oscar Willow telephoned Silverman on January 9, 1987, and told him about the article. Although he personally had not yet read the article, Willow told Silverman that he considered it libelous. Willow later obtained a copy of the article and gave it to Silverman. In turn, Silverman contacted Mildred Hawthorne, the vice president of personnel for Suburban Communications Corporation. On January 12, 1987, Hawthorne began an investigation into the circumstances surrounding the article; on January 22, 1987, she suspended Fuller without pay pending completion of the investigation. Although Hawthorne interviewed some of the employees named in the article and others during her investigation, neither she nor Silverman interviewed or questioned Fuller about the article. Acting on Hawthorne's recommendation, management decided to discharge Fuller. On February 2, 1987, Fuller was given a discharge letter signed by Hawthorne, the relevant portions of which follow:

The Company has completed its investigation of your violation of Company Rules 18 and 29:

18. Making false, vicious, or malicious statements concerning any employee, supervisor, the Company, or its product.

29. Unlawful, improper, or unseemly conduct on or off the Company premises or during nonworking hours which affects the employee's relationship to his/her job, to his/her fellow employees, or to his/her supervisors, or affecting the Company's product, reputation, or goodwill in the community.

Our investigation has revealed that you did, indeed, violate these rules. The seriousness of these violations warrants your immediate discharge. Your suspension of January 22, 1987, is converted to an immediate discharge. Your discharge under Rules 18 and 29 is based on the following: Your conduct and the article you authored in the *Cincinnati Review* injured the reputation, image, integrity, and truthfulness of Cincinnati Suburban Press newspapers and its management, and has embarrassed, humiliated, and ridiculed your fellow employees.

Your disruptive conduct has impaired employee relationships with fellow employees and our supervisors.

Shortly thereafter, George Fuller filed unfair labor practice charges with the NLRB claiming that he had been discriminatorily interfered with, suspended, and discharged in violation of Sections 7, 8(a) (1), and 8(a) (3) of the LMRA.³

POSITION OF THE INDIVIDUAL

Counsel for George Fuller claimed, first of all, that the two company rules Fuller was accused of violating were themselves in violation of Section 8(a) (1) of LMRA. These

¹ The names of all individuals are disguised.

² This response was consistent with Section 9(e) (2) of LMRA.

³ Fuller's unfair labor practice charges were filed on an individual basis. Fuller received financial support from the union in retaining legal counsel to assist him in pursuing these charges.

company rules had been included in Mildred Hawthorne's termination letter to Fuller, and were Company Rules 18 and 29, respectively.

Counsel for Fuller argued that these rules were so overly broad and coercive that, in and of themselves, they would restrict almost any activity or statements by an employee the company considered offensive. The company used these rules as pretext for discharging Fuller, who had been suspended and terminated because of his continual efforts to organize the editorial department employees. Company management was well aware of Fuller's prouion sympathies and efforts. The article Fuller wrote for another publication contained facts and opinions about what had occurred at the company during the union organizing campaign. Even though management found it to be offensive, this does not mean that the article was slanderous or libelous.

Finally, counsel for Fuller claimed that even though Fuller had acted alone when he wrote the article in question, the writing and publication of the article were "inextricably intertwined" with his ongoing union organizing efforts. Such activity is protected by Section 7 of LMRA, and thus the company violated Sections 8(a) (3) and 8(a) (1) by suspending and discharging him. The company should be ordered to reinstate Fuller to his former position and to make him whole for all lost earnings and benefits to which he would be entitled. Further, the company should be directed to cease and desist in its unlawful maintenance of those rules that violated employees' protected rights under the LMRA.

POSITION OF THE COMPANY

The company claimed that its rules No. 18 and 29 were both proper and lawful. These rules were absolutely necessary for maintenance of internal discipline, and were applicable to all company personnel, including certain managers and supervisors. It was essential for the company to have public confidence in its integrity, and these company rules had nothing to do with external employment laws, such as the LMRA.

George Fuller, acting on his own, had chosen to violate these company rules when he wrote the article, which was published in another journal. Fuller's article contained exaggerations, misrepresentations, insults, and distortions of facts. For example, Fuller had reported inaccurately the number and purpose of "merit pay increases" that were granted to company employees during 1985. Most serious, however, was that Fuller had publicly damaged the integrity of Executive Editor Duane Silverman by writing, "One effort at persuasion by executive editor Duane Silverman would have been laughable had it not indicated an insidious disregard for the truth." This sentence alone showed that Fuller had publicly damaged the integrity of Silverman and the truthfulness of the newspapers Silverman published.

The company claimed that Fuller's behavior was not "protected concerted activity" under Section 7 of LMRA. Rather, Fuller had acted on his own in violation of long-standing and appropriate company rules. As an "at-will" employee, Fuller was properly discharged by the company. All the unfair labor practice charges should be dismissed.

QUESTIONS

1. Were company rules No. 18 and 29 in violation of LMRA? Explain.
 2. Employees at times write articles or letters for newspapers openly critical of their employers. Should it make any difference in this case that Fuller himself was an editorial employee of a newspaper? Discuss.
 3. Although Fuller wrote and published the "offensive" article on his own volition, was his conduct protected under Section 7 of LMRA? Discuss.
 4. Was Fuller's discharge for rules' violations a pretext for terminating him because of his prouion activities? Discuss.
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