

UTILITIES

Court hears case over worker fired for smart-meter testimony

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A Texas utility is hoping to overturn a labor board ruling that it unlawfully fired an employee for raising safety concerns about smart meters.

Oncor Electric Delivery Co. discharged 34-year employee Bobby Reed in 2013 after he testified to Texas lawmakers that smart meters led to fires in consumers' homes. The National Labor Relations Board ruled that the testimony should have been protected under the National Labor Relations Act.

But an attorney for Oncor today argued to a three-judge panel of the U.S. Court of Appeals of the District of Columbia Circuit that the fired employee's testimony didn't fall under those protections.

"The board failed to apply the law," David Lonergan, the attorney, argued today in court. "He didn't bring up any employee concern. ... We don't think it was protected."

At issue is testimony that Reed gave at a hearing that the Texas Senate Business and Commerce Committee convened in October 2012 to weigh consumer complaints about smart meters.

Oncor began deploying smart meters, electronic devices that record electricity consumption, in homes in 2008. By the end of 2012, it had installed 3.26 million smart meters. Oncor has since gone bankrupt, and Sempra Energy has bid for a stake in the company.

Reed was a longtime Oncor employee who worked as a "trouble man" responding to power outages. He was also the full-time business manager and financial secretary of International Brotherhood of Electrical Workers Local 69.

"I don't know much about frequency, but I do know a little bit about fire and heat, and these things [smart meters] are causing damage to people's homes," he said at the October 2012 hearing.

Reed also told state senators that he was there in a dual capacity, representing both himself and the union. He recounted stories based on his personal experience — including going to an elderly woman's house whose meter had a burned base — and his conversations with other union members and a fire marshal.

An Oncor official at the hearing reported Reed's remarks to company executives, who fired Reed after they said an investigation showed his testimony to be untrue. NLRB ruled in August 2013 that the termination was unlawful.

The legal questions in the case revolve around the rights of employees and union members, and the protections in the National Labor Relations Act.

The case tees up "a labor right versus an employer's asserted prerogative to fire for cause," Judge Nina Pillard, an Obama appointee, said during today's hourlong oral arguments.

Judges today grappled with whether Reed's statement at the hearing noting his union membership was enough to afford him protection under the labor law. Under a standard set by the Supreme Court in 1953, an employee's action is protected if it relates to an ongoing labor dispute and isn't maliciously untrue.

David Casserly, an attorney for the labor relations board, argued that it was "clear" the union and Oncor had a dispute about smart meters, noting that the union had previously lobbied on the issue.

"There's no malicious act in presenting something that he thinks is true," Casserly said.

But judges took issue with the fact that the union did not lobby on smart meters in the year leading up to the 2012 hearing in front of the Texas Senate committee.

The dispute was "so under the radar" that it was hardly a dispute at all, said Senior Judge Stephen Williams, a Reagan appointee.

Whether there was collective bargaining related to smart meters going on at the time of the hearing will also factor into judges' decision on whether Reed's testimony was protected.

Hal Gillespie, an attorney representing the union, today said that Reed had engaged in collective bargaining conversations in the months leading up to the October 2012 hearing.

NLRB has also pointed to Oncor's decision to allow for a one-year extension of the prior collective bargaining agreement while the Texas Legislature grappled with whether to pass legislation to allow consumers to opt out of smart meters.

But Pillard called the link between the testimony and collective bargaining "somewhat opaque."

And judges questioned whether the focus of the hearing — consumer concerns — sufficiently overlapped with the worker safety concerns raised by the union.

The Texas Senate "wasn't looking into this employment matter at all," said Judge Patricia Millett, an Obama appointee. "Where does he talk about employee safety in his testimony?"

The court will likely issue an opinion in the coming months.

Gillespie, the union attorney, pointed out Reed in the courtroom audience and said that the case has already been a five-year ordeal for the former Oncor employee.

Worker rights "shouldn't be fragile," he said.

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