

El Paso Times

Judge sides with guard in right-to-work case

By Vic Kolenc/El Paso Times

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A federal administrative law judge has ordered a company to reinstate an El Paso security guard removed from his job last year because he refused to join a union or pay union fees.

Lawyers for the National Right to Work Legal Defense Foundation expect the union involved to appeal the decision and prolong the legal battle.

The foundation also chastised the Texas attorney general for not prosecuting what it called "violations of the state's right-to-work law, a criminal statute."

Tom Kelley, an attorney general spokesman, said in a written statement, "The Office of the Attorney General is committed to strictly enforcing Texas' right-to-work laws and will take all necessary steps to aggressively pursue any allegations of wrongdoing." He said the office is aware of the judge's ruling.

Juan Vielma, 58, who has been out of work since June 2006, said in a statement released through his daughter that he was still struggling financially and emotionally.

"We consider this a great victory, but unfortunately it's not over, we understand that," Vielma said in the statement. "The appeals process can take a long time, and we're prepared for them to do so."

The case, which the El Paso Times first wrote about in February, revolves around whether Vielma's work site -- a U.S. Immigration and Customs Enforcement facility at 8915 Montana -- is exempt from state law because it is a federal facility.

The International Union, Security, Police and Fire Professionals of America and a joint venture of New Mexico-based Akal Security and Minnesota-based Deco Security argued that Vielma works in a federal enclave with exclusive federal law jurisdiction.

Gregory Meyerson, an administrative law judge for the National Labor Relations Board, in a ruling issued last week, concluded that the federal government does not have "exclusive jurisdiction" on the property because no proof was submitted that such jurisdiction was ever conveyed by the state or accepted by the federal government.

The federal government's ownership of a property does not automatically mean only federal jurisdiction applies, he wrote.

That means the state's right-to-work law applies in the case, and the union and company violated

a federal law that prohibits enforcing compulsory union dues in right-to-work states, the judge ruled.

The judge ordered the Deco-Akal Joint Venture to reimburse Vielma for his lost wages and benefits and also ordered the union to stop threatening employees at the El Paso facility with discharge for failing to join the union or pay union dues.

Mark Heinen, a Detroit lawyer representing the union, said he did not yet know whether the union would appeal.

Officials with the union and Akal Security and a lawyer for the Deco-Akal Joint Venture could not be reached Wednesday for comments.

More information: www.nrtw.org