



AUGUST 27, 2018

NLRB Issues Memorandum Concerning Immigration Protest in the Workplace

On August 15, 2018, the General Counsel of the National Labor Relations Board (“NLRB”) issued a memorandum affirming that Latino workers who participated in a pro-immigrant protest were protected by the National Labor Relations Act (“NLRA”). In its memorandum, the General Counsel recommended that Region 29 (Brooklyn, New York) issue a complaint against New York-based employer, International Warehouse Group Inc. (“Employer”), alleging that the Employer violated workers’ Section 7 rights under the NLRA when it fired the workers who took part in the protest.

The workers – who had previously complained that the Employer underpaid Latinos and made them work more hours than their non-Latino colleagues – were fired for skipping work on February 16, 2017, to take part in “A Day Without Immigrants.” The protest, during which thousands of immigrant workers across the country were absent from work to demonstrate their importance to the economy, was in response to President Donald Trump’s statements and policies concerning the enforcement of immigration laws curtailing illegal immigration.

Section 7 of the NLRA safeguards workers who engage in “concerted” activities for “mutual aid or protection.” Although workers’ Section 7 rights clearly encompass distinct work-related issues such as collective complaints concerning pay, how those rights apply to political activity is sometimes difficult to discern. Indeed, the NLRB has held that workers’ political activities are protected when they are directly tied to their “interests as employees.”

The August 15, 2018, memorandum specifies that the NLRA protected the Latino workers’ protest since they felt the employer mistreated them in their working conditions, which tied the A Day Without Immigrants protest to their specific workplace complaints. The memorandum also states that Latino workers were generally protected because the protest responded to the Trump Administration’s “sudden crackdown on undocumented immigrants” and the threat of workplace raids.

The International Warehouse Group Inc. case also posed the question whether the protest was a protected strike. In response, the Board specifically stated that the workers’ participation in the A Day Without Immigrants protest was protected because their strike was aimed at bringing attention to grievances specific to their workplace. Indeed, the workers’ broader goal of opposing the Trump Administration’s immigration policy made it protected since the Employer could decide not to cooperate with federal immigration agents.

Takeaway for Employers

Employers should exercise caution when taking action against workers whose concerted activities could be construed as a political protest connected to the terms and conditions of their employment. Despite the NLRB's guidance, there is no bright line rule concerning the legality of certain adverse employment actions in response to workers' political protests. In light of the current political climate, this issue is likely to occur in the future. We encourage you to contact us for assistance in complying with this issue and various other management obligations under the NLRA.

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If you have any questions regarding this alert, or any other issue, please do not hesitate to contact us.

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