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Don't Take The Bait! Termination Of Employee Provoked By Employer's Negative Review Unlawful

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Performance reviews – especially ones with tough feedback for an employee – can be some of the more difficult conversations in the workplace. This especially is true when the employee receiving the review becomes incensed with the results. A recent case from the National Labor Relations Board (NLRB) illustrates the importance of making sure reviews are done objectively and fairly.

The board [evaluated the case](#) of an employee who was terminated for acting in a disrespectful and obstructive manner during a performance review. The employee at issue had recently been reinstated with the company pursuant to an arbitration award. Shortly after his return to work, the employee was called into an office to receive a performance review. During this meeting, he had several outbursts while objecting to the feedback, which prompted the meeting to end. He was then terminated for his conduct during the review meeting.

An administrative law judge for the NLRB – whose decision was affirmed by the board – found that the performance review of the employee very close in time to his reinstatement was thus effectively a “set-up.” There had been no instances of any other employees at the site having similar reviews imposed on them. Accordingly, it was determined the review was motivated by the adverse arbitration decision suffered by the company related to the employee – which is unlawful retaliation under the National Labor Relations Act.

Because the evaluation was initiated with an unlawful motive, the employee's reaction – even if improper – could not serve as valid grounds for his termination. The NLRB specifically noted that the employee “would not have been at that meeting but for [the employers'] unlawful actions.” In other words, the board held that the employer could not unlawfully bait the employee into having an outburst and then discharge him on that basis. The termination decision was thus invalidated.

This case serves as another important reminder that [consistency with respect to rules and procedures](#) in the workplace is key. The employer's inability to show that performance reviews of the kind at issue here had been done in the past doomed its case. Performance reviews are great tools for the workplace, but, like everything else, must be done properly or they can result in problems down the road.