

Non-Union Employers Beware: The NLRB Outlaws Employer's Questions Regarding Supervisor's Performance

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Keith J. Brodie
Partner

Most employers probably believe it is acceptable to ask questions of employees about their and other employee's views of their supervisor's performance. The proposition seems common-sense and straight forward enough. However, the NLRB apparently disagrees. The case of *Grand Canyon Education, Inc.*, [362 NLRB No. 13](#) (Feb. 2, 2015) proves, once again, a disconnect between rather common employer practices and the NLRB efforts to zealously protect Section 7 rights. In this case, the Board "rubberstamped" its earlier decision vacated by the United States Supreme Court's decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). In doing so, the Board held that the non-union employer's general questioning of an employee about how her supervisor was doing as a manager, and specifically, then following up with the employee who volunteered information that others had complained about the supervisor, by asking "whom" had done so, was a violation of Section 8(a)(1). This was despite the fact that the Administrative Law Judge, who heard all the evidence, had specifically found that the evidence showed "there was no reason to believe that [the Employer] wanted the names for any nefarious purpose." Notwithstanding a total lack of such evidence, the Board found the questioning tended to restrain, coerce or interfere with employee's Section 7 rights. The Board majority found a "nefarious purpose" was immaterial. Dissenting Member Miscimarra vigorously disagreed. Of course, in the wake of the Board majority's decision, employers (union and non-union alike) are left to wonder how on earth they can legally follow up on apparent concerns about supervisory performance without knowing whom to talk to. This case represents one more example of an expansive interpretation of Section 7 rights that seems to odds with many employer (and probably employee) expectations about how to better and improve the workplace.

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