



Does Labor Law Protect Employees Engaged In Political Or Social Advocacy?

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Over the years, many employers have been tripped up by disciplining or terminating workers who are engaged in “[protected activity](#).” Generally, [for activity to be protected](#) under the National Labor Relations Act (NLRA), an employee must either be expressing group concerns about employees’ terms and conditions of employment or be seeking to induce group action over the same. So, is employee speech over political or social issues protected? As that type of speech becomes more prevalent, a recent [advice memo](#) from the National Labor Relations Board (NLRB) sheds some light on how the NLRA applies in this context.

At issue in the case was a worker who was advocating for police reform before a local county council. The worker was pressing for change given perceived concerns in the community at large but unrelated to any concerns over the employee’s workplace, terms and conditions of employment, or any coworkers’ concerns about working conditions. The employee was terminated and then filed a charge with the NLRB alleging their discharge was unlawful under the NLRA because the reason for the termination was their political advocacy.

The NLRB’s Office of the General Counsel (GC) disagreed, and in the advice memo recommended that the charge be dismissed. In doing so, the GC noted that the “[U.S.] Supreme Court held that the ‘mutual aid or protection’ clause of Section 7 of the [NLRA] protects employees when they act ‘in

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support of employees of employers other than their own,' or to 'improve their lot as employees through channels outside the immediate employee-employer relationship.'”

The GC then went on to note case law supporting the principle that employees raising issues in a political context that directly relate to shared concerns in their workplace are engaged in activity protected by the NLRA. In contrast, however, the GC noted NLRB precedent has held political activity unrelated to an employee’s workplace or terms of employment is not protected by the NLRA. Based on a review of precedent, the GC held in this case: “Because the Act does not protect employee political advocacy that has no nexus to a specifically identified employment concern, the Region should dismiss the charge, absent withdrawal.”

Political dialogue in the workplace is a thorny issue – legally and practically. To be protected by the NLRA, though, it generally must be related to group concerns about a workforce’s terms and conditions of employment, as demonstrated by this recent memo.