

NLRB Decides First Facebook Discharge Case; Holds For Employer But Finds "Courtesy" Requirement Unlawful

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The NLRB, in its first decision on a pending Facebook discharge case, has decided to side with the decision of a Board ALJ and find that a car salesman's posting of pictures and comments on Facebook was not protected concerted activity. Specifically, the Board affirmed the ALJ's finding that the salesman was discharged for posting pictures of (and sarcastic comments about) a new Land Rover which had been driven into a pond by a customer's 13-year old son at a sister dealership across the street. The Board agreed that the salesman had not been terminated for Facebook comments critical of the food and drink the dealership had purchased for a promotional event for the new 5 series BMW.

But the Board couldn't just leave it at that. Amazingly, the Board also decided that the car dealership's "courtesy" rule regarding employee communications could reasonably be found to chill employee Section 7 activity. The rule stated: "Courtesy: Courtesy is the responsibility of every employee. Everyone is expected to be courteous, polite and friendly to our customers, vendors and suppliers, as well as to their fellow employees. No one should be disrespectful or use profanity or any other language which injures the image or reputation of the Dealership." The Board concluded that this language was unlawful because "employees would reasonably construe its broad prohibition against "disrespectful" conduct and "language which injures the image or reputation of the Dealership" as encompassing Section 7 activity, such as employees' protected statements—whether to coworkers, supervisors, managers, or third parties who deal with the Respondent— that object to their working conditions and seek the support of others in improving them." The Board ordered the company to remove the unlawful language and re-publish its work policies.

A link to the Board's press release announcing the decision can be [accessed here](#). The release contains a link to the Board's actual decision.

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