BARNES & THORNBURG LLP

Take A Screen Shot Of This: Supervisor Unlawfully Interrogated Employee Through Text, NLRB Says

June 23, 2017 | | National Labor Relations Board, Labor Relations

Texting has become one of the most common ways people communicate. Despite its prevalence, however, texting can raise serious concerns for employers, particularly when such communication takes place between a supervisor and employee in the context of a union election. A recent National Labor Relations Board (NLRB) case makes that point clear. In *RHCG Safety Corp and Construction & General Building Laborers, Local* 79, the Board held that a coercive text message from a supervisor to an employee could serve as evidence that an employer unlawfully interrogated employees concerning their union support. This decision echoes other NLRB decisions holding that an unlawful interrogation does not need to be face-to-face to be in violation of the National Labor Relations Act (NLRA). The Board has held that such unlawful interrogation can occur over a phone call, a written job application form, and now, it seems, via a short text message containing 40 characters. The case arose in the context of a union election. During the union's campaign, an employee texted his supervisor asking if he could return to work after a leave of absence. The supervisor responded, by text message, "U working for Redhook or u working in the union?" (Redhook is how RHCG Safety is known.) The Board found that by juxtaposing working for the employer with working in the union, the supervisor's text strongly suggested that the two were incompatible. The Board accordingly ruled that the text constituted an unlawful interrogation and violated Section 8(a)(1) of the NLRA. Significantly, the NLRB found that for purposes of determining legality, it doesn't matter whether the message *actually* coerced the employee, so long as the interrogation was coercive *in nature.* To this end, the Board found certain facts weighed in favor of making the text coercive in nature. First, the employee was not an open union supporter at the time of the interrogation. Second, the supervisor did not communicate to the employee any legitimate purpose for asking if he was working in the union. Finally, the supervisor didn't provide the employee with any assurances against reprisals. This case suggests that seemingly offhanded communications between supervisors and employees may be determined to be coercive, interrogative, and in violation of the NLRA. Employers should consider their communication policies and train supervisors on methods of communicating with employees, particularly during a union election.

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations
National Labor Relations Board (NLRB)

RELATED TOPICS

nlra
NLRB
Redhook
RHCG Safety
Texting
Union