

## Reckless Driving: Employee Discharge For Antics On Public Highway Upheld

October 5, 2018 | [Strikes And Picketing, Unions And Union Membership, Labor Relations](#)



**David J. Pryzbylski**  
Partner

One of the more nuanced issues employers have to navigate in the world of labor relations is evaluating whether discipline can be imposed on an employee engaged in “[protected activity](#).” Under the National Labor Relations Act (NLRA), various employee actions are protected, such as engaging in a strike or speaking out about shared concerns in the workplace. When employees are discharged for misconduct that occurs while they are engaged in protected activity, such decisions routinely are challenged by unions before the National Labor Relations Board (NLRB). The agency has [overturned terminations and reinstated workers](#) in these situations even where egregious misconduct was at issue. A recent case again shows, however, that there are limits on an employee’s ability to engage in misconduct even when activity potentially protected by the NLRA is in the picture. On Oct. 2, the NLRB issued its decision in [Consolidated Communications, 367 NLRB No. 7 \(2018\)](#). In that case, union employees went out on strike in an effort to pressure their employer into accepting the union’s bargaining demands. During the strike, an employee, while driving her personal vehicle on a public highway, spotted one of the company’s trucks occupied by two managers. She proceeded to repeatedly cut off the truck and attempt to block it, creating potential safety hazards. The employer terminated her employment for those actions, and the union filed charges with the labor board, asserting the employee was engaged in strike activity (i.e., protected activity) so was improperly discharged. A majority of board members rejected the union’s arguments and upheld the discharge of the worker because of her “serious misconduct.” This case serves as [another](#) reminder that just because an employee may be engaged in protected activity, that does not necessarily mean he or she has carte blanche to engage in misconduct. A company should, of course, take care to carefully evaluate any violation and ensure it is treated the same as similar offenses, and consider other potential factors – especially when protected activity is involved.

### RELATED PRACTICE AREAS

Collective Bargaining  
Labor and Employment  
Labor Relations  
Union Avoidance

### RELATED TOPICS

Consolidated Communications  
Misconduct  
nlra