

NLRB Again Overturns Discharge Of Employee Who Engaged In A Profanity-Laced Argument With A Manager In Front Of Customers

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This week the NLRB again overturned the discharge of an employee who engaged in a profanity-laced argument with a manager in the presence of customers. At issue in the case was an employee of Starbucks who was a known union supporter during a union campaign. The employee engaged in several acts of egregious misconduct in the span of just several months. The first incident occurred when the employee asked a manager for assistance during a busy time at the café. When the manager came to help slower than the employee would have liked, the employee exclaimed “about damn time”; this is bulls**t”; and to “do everything your damn self.” The employee was suspended for several days after this incident, but Starbucks brought him back to work. About six months after those events and still in the midst of a union campaign, a Starbucks manager ordered some employees to remove union pins from their uniforms that they were wearing. The union supporter who had engaged in the misconduct toward a supervisor earlier that year subsequently came to the café with other union supporters while off-shift. The union supporter and his co-workers all wore union pins to protest the company’s stated prohibition on the paraphernalia. The union supporter got into an argument with a manager over the union – in front of customers – and proceeded to tell the manager that “You can go fu*k yourself, if you want to fu*k me up, go ahead, I’m here.” The manager also used profanity during the incident but was not disciplined, and there was evidence that the company had been lenient with other employees who engaged in similar misconduct in the past. The Board initially held that the discharge violated the NLRA in 2010 due to the fact the employee at issue was a known union-supporter. That decision was appealed, however, and in 2012 the 2nd Circuit Court of Appeals ordered to Board to reconsider its position and to specifically account for the fact that the employee’s outburst occurred in front of customers (*i.e.*, consider whether that made his conduct so outrageous that it lost any protections under the NLRA). Earlier this week on June 16, 2014 the NLRB again evaluated the facts of the case and again found that the discharge violated the NLRA. The Board held that the discharge violated the NLRA because there was evidence that the decision was based on the employee’s union affiliation, at least in part. The Board specifically noted the evidence that other employees had been treated more leniently in the past for similar misconduct and that the manager involved in the incident was not discharged. This decision highlights the fact that misconduct by employees during a union campaign must be evaluated very carefully. The Board’s view

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of how far an employee can go to protest certain employer actions currently is very liberal, so evidence of how a company has handled similar events in the past will be key. A copy of the decision can be found [here](#).