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A Rare Facebook “Like” For Employers: NLRB Overturns ALJ, Finds Lack Of Evidence To Support Facebook Post As Protected Activity

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The NLRB granted an unusual win for the employer last week in a case involving Facebook posts and potential protected activity. In *World Color (USA) Corp.,* 360 NLRB No. 37 (Feb. 12, 2014) , the Board found that there was not enough evidence in the record to determine whether an employee's Facebook posts, allegedly critical of the employer and containing comments about the union, were protected activity. Accordingly, an allegedly interfering/coercive comment made by a supervisor asking the employee "if he did not think that management knew about his Facebook posts" did not violate the NLRA. The Board overturned the ALJ, who had found the supervisor's comments to violate Section 8(a)(1).

In determining that there was not enough evidence to conclude that the Facebook posts were protected activity, the Board noted that the evidence "reveals neither that the posts concerned terms and conditions of employment, nor that the posts were intended for, or in response to, [the employee's] coworkers." This seems to be the standard that the Board is taking when determining if a social media post could be considered protected activity.

The World Color decision is somewhat surprising given the Board's aggressive stance on Facebook and social media posts in the last few years. However, despite the Board's favorable ruling in this case, social media remains a hot topic and employers should continue to be cautious when dealing with discipline or terminations that involve social media posts or comments.

See all of our posts on social media issues here .

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