

## Ninth Circuit Remands Board Decision Regarding Employee's Profanity-Laced Tirade Against Owner

December 21, 2011 | [Labor And Employment](#)

This week the Ninth Circuit Court of Appeals took a step towards undoing a controversial recent Board decision when it found that the Board erred in analyzing whether an employee lost the protection of the Act during a profanity-laced tirade against the company owner.

This case involves a car salesman who was terminated just months after his hire. During that brief tenure, the employee complained about meal and restroom breaks, commissions, salary, and the owner's refusal to disclose the direct dealer costs of the vehicles. In response, the owner invited the employee to work elsewhere and ultimately called the employee into his office to discuss his attitude. During that meeting, the employee became irate and called the owner several inappropriate names, including an "f---ing crook" and an "a---hole." Just before pushing his chair aside and telling the owner that he would regret firing him, the employee added that no one liked the owner and the employees talked behind his back. Not surprisingly, the employee was terminated.

Following his termination, the employee filed an unfair labor practice with the NLRB. The ALJ found that the employee had engaged in protected activity under the Act through his wage and working condition complaints, however surrendered that protection due to the obscene remarks and personal attacks against the owner. Upon review, the Board disagreed and held that the employee did not forfeit the protections of the Act just because he launched into obscenities (and hinted that threats were needed to lose protection of the Act). On appeal, the Ninth Circuit found that the Board erred in its analysis of the actual outburst. Specifically, the Court indicated a weariness to allow such outlandish insubordination to be protected by the Act and instructed the Board to review the evidence to determine if the employee's behavior was menacing or "at least physically aggressive" when reaching its ultimate decision regarding protection under the Act.

The Ninth Circuit's decision can be [found here](#).

### RELATED PRACTICE AREAS

Labor and Employment  
Labor Relations