

Advocacy Of Insubordination On Facebook Is Concerted But Not Protected Activity

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Finally, there's a breath of common sense in an NLRB Facebook decision. The board this week upheld the dismissal of a ULP against a neighborhood center which had fired two workers for a profanity-laced discussion on Facebook in which they advocated various acts of insubordination. Richmond District Neighborhood Center, Case 20-CA-091748 (October 28, 2014). It is critical to note that it was not the profanity that directed the board's decision. It was the fact that the content of the discussion advocating acts of insubordination was so "egregious" that it lost the protection of the act for protected concerted activity. Employees at the neighborhood center were asked to write out their "pros" and "cons" about working at the center. Two of the workers felt their largely negative comments were not taken well by their supervisors. So, they took to Facebook to complain about their supervisors and to say things such as: "Let them do the numbers, and we'll take advantage, play music loud, get artists to come in and teach the kids how to graffiti up the walls and make it look cool, get some good food. I don't feel like bein their b___ and making it all happy-friendly-middle school campy. Let's do some cool sh___, and let them figure out the money. No more [former supervisor]. Let's f___ it up."

"Thats why this year all I wanna do is sh___ on my own. have parties all year and not get the office people involved. just do it and pretend they are not there. . . . well make the beacon pop this year with no ones help."

"F___ em. field trips all the time to wherever the f___ we want!"

"[L]et them figure it out and when they start loosn [sic] kids i aint helpn HAHA."

In response, the center rescinded the employees' rehire offers and terminated their employment. The Administrative Law Judge and now the NLRB both concluded that the content of the discussion was clearly "concerted" activity. The discussion dealt with traditional issues of concerted activity – lack of concern or involvement by supervisors, general terms and conditions of employment, lack of employee voice. However, while concerted, the statements were not "protected" and concerted because they advocated conduct so "egregious" that they fell outside the normal protection of the Act. Employers should continue to note however, the board yet again has turned a deaf ear to profanity. Indeed, the board's discussion is limited to the issue of the insubordination advocated in the posts and how employers need not wait until the insubordinate acts actually occur. The only real mention of the profanity comes in a concluding footnote in which the board simply stated: "In

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so finding, we do not rely on the employees' use of profanity or disparaging characterizations of the Respondent's administrative and managerial personnel." A copy of the board's decision is [available here](#).