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Don’t Pick And Choose: Company’s Inconsistent Rules Enforcement Results In Employee Terminations Being Overturned

May 2, 2018 | National Labor Relations Board,Labor And Employment

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Employee discharge decisions often form the basis for disputes – whether they arise in court or before administrative agencies. Such decisions routinely are challenged by unions before the National Labor Relations Board (NLRB), and the agency has overturned terminations and reinstated workers in situations even where egregious misconduct was at issue.

The board recently issued a decision where it overturned two employee terminations as a result of selective rules enforcement, which demonstrates yet again the importance of consistency by management when administering discipline. In *Advanced Masonry Associates, LLC*, a company discharged two workers who violated the company’s “fall-protection policy.” That policy required employees working at certain heights to wear specified safety equipment to minimize risks from falling. Over the years, employees generally were issued warnings and /or suspensions for violations of the policy.

After a union filed a petition to represent the company’s workforce, however, two know union-supporters were discharged for their first violations of the policy. The NLRB ultimately found the two terminations violated labor law because, among other things, the employer had not consistently discharged employees under the policy on prior occasions (which can give rise to an inference that the true reason for the termination was retaliation for union activities).

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Another recent decision from the agency shows there are limits and that the NLRB will uphold terminations where employers build a solid record – including by showing consistent rules enforcement – but this case serves as yet another reminder that consistency in discipline administration remains key.