

Too Little Too Late: NLRB Rejects Employer's Attempt To Repudiate

Labor & Employment Law Update

By Beverly Alfon on May 7, 2015

In a 2-1 decision, the National Labor Relations Board (NLRB) issued a decision against an auto dealer, finding that the company violated the National Labor Relations Act (act) by implementing and maintaining: (1) a 2010 social media policy that required employees to identify themselves when posting comments about the company, its business, or a policy issue and prohibited employees from using the company's logo in any manner; and (2) a 2010 dress code policy that prohibited employees from wearing pins, insignia or other message clothing. *Boch Imports, Inc.*, 362 NLRB No. 83, 4/30/2015. In light of the NLRB's aimed campaign to attack what it characterizes as "overly broad" work rules, these findings are not all that surprising. What makes this decision a brow-raiser is the fact that the NLRB rejected the company's attempts to correct these policies – even though the company did so with the assistance and approval of the NLRB regional office that investigated the unfair labor practice charge.

In 2013, the company replaced the 2010 policies with lawful language (except for the dress code provision) and distributed a new employee handbook to every employee. The purpose was clearly to achieve compliance with Section 7 of the act. Nonetheless, the board found violations by the company for its 2010 policies – regardless of the company's rescission of those policies. The board found the revised policies to be an inadequate remedy and ordered the company to post a notice to employees that enumerated the various overbroad policies and rules that were contained in the 2010 handbook.

This decision is troublesome for employers because although the board acknowledged that an employer may repudiate its unfair labor practices, it would have required the company to provide notice of the unfair labor practices to the employees, an admission of wrongdoing, even before an administrative law judge ruled on the merits of the charge.

Bottom line: The region's informal blessing of your attempts to correct the conduct at issue in an unfair labor practice charge, does not amount to an effective repudiation. Before you decide to correct a policy or procedure that is the subject of an unfair labor practice charge, explore the possibility of a non-board settlement with the charging party – one that would not require a notice posting or admission of fault.