

# Yep, That Non-Union Employee's Attitude Is Likely Protected

## Labor & Employment Law Update

By Beverly Alfon on March 14, 2016

Sure, you've heard that non-union employees are protected by the National Labor Relations Act (NLRA), too. But do you realize just how quickly the protections of the Act can come into play? If your front line managers are not properly trained, an employee's attitude could quite literally turn a situation into a federal case.

A federal appeals court recently affirmed the decision of the NLRB against an employer in a case where a non-union employee engaged in conduct that most employers would consider as straight up insubordination, *Staffing Network Holdings, LLC v. NLRB*, 2016 BL 62551, 7<sup>th</sup> Cir. No. 15-1534, 3/2/16. This case involved a staffing agency that provided its own employees, including an onsite supervisor, to stock its products. The supervisor had only been working for the company a few months, when a new employee told him that he would not work faster for \$8.25 an hour. The supervisor directed the employee to go home because of his attitude and inability to keep up with work. This angered other employees, including Griselda Barrera, who briefly stopped working to tell the supervisor that sending the employee home was unfair. The supervisor told them to get back to work or he could also send them home for their attitude. Barrera refused to go back to work.

The supervisor angrily and repeatedly asked Barrera if everything was fine and told her again he could send her home if she had an issue. Barrera asked the supervisor if he was threatening her. Barrera countered by stating that she could send a letter to the IL Department of Human Rights. The supervisor told her to go home. Barrera refused to leave, insisting that she did nothing wrong. Then the supervisor's assistant told Barrera to go home and not return to work.

Barrera filed an unfair labor practice charge with the regional NLRB office. The regional director issued a complaint against the employer alleging that it violated the Act by threatening to discharge employees for engaging in protected, concerted activity and by discharging Barrera. The administrative law judge (ALJ) rejected the employer's assertions of insubordination and awarded back pay and reinstatement to Barrera. The Board affirmed the ALJ findings. The federal appeals court also upheld the decision, noting that "a brief on-the-job work stoppage is a form of economic pressure entitled to protection under the Act."

**Bottom line:** Train your front line managers so that they are prepared and react correctly in these situations. A manager's own behavior (e.g., threatening discharge for the employee's bad attitude) can provoke an employee into protected activity, even if it appears to be insubordination. This does not mean that "anything goes" for an employee who is protesting a work term or condition, but an employee's disrespect, rudeness or defiance toward a supervisor *in that context* will likely be protected under the NLRA.

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