

NLRB GC: Participating in Nationwide ‘Day Without Immigrants’ Is Protected Concerted Activity

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Participating in the February 2017 “Day Without Immigrants” demonstration was protected concerted activity, according to an August 30, 2017, advice memorandum released on March 13, 2018, by the National Labor Relations Board General Counsel’s Division of Advice.

The memorandum concludes that a group of Mexican-American employees who participated in the nationwide “day of action” (which called for immigrants to not work, shop, and attend school) did so for their own mutual aid and protection, and thus were protected by Section 7 of the National Labor Relations Act. The employees, all of whom worked for EZ Industrial Solutions LLC, were discharged for failing to report to work on the day of the demonstration. The employees later filed an unfair labor practice charge against the company, claiming their discharge violated Section 8(a)(1) of the Act.

As the advice memorandum notes, the Board recognizes that Section 7 protection extends to employee political advocacy when there exists a “direct nexus” between the advocacy and the “employees’ interests as employees.” Here, the Division of Advice ultimately determined that “participation in the ‘Day Without Immigrants’ falls within the scope of the ‘mutual aid or protection’ clause given that the day of action was in response to, inter alia, the sudden crackdown on undocumented immigrants living and working in the United States and the possible revival of immigration raids in the workplace.” According to the memorandum, more vigorous immigration enforcement and increased workplace raids could “likely cause employment standards and working conditions to deteriorate for all workers,” and thus were sufficiently linked to work-related concerns to warrant protection of the Act.

The memorandum advised Region 7 of the Board to issue a complaint against the company for firing the employees who participated in the protest.

Based on a review of the publicly available docket, the matter was resolved with an informal settlement and closed in February 2018. Advice memoranda, which typically are drafted in response to a particular unfair labor practice charge that has been brought to the Division of Advice’s attention by a regional NLRB office, can be released at the discretion of the General Counsel after the proceeding has closed.

Activities such as “Day Without Immigrants” and other, similar nationwide protests (*e.g.*, “Day Without a Woman”) likely will continue to occur. Employers are reminded that employees’ political advocacy may be considered protected concerted activity and they should carefully consider before taking action against employees for engaging in such activities.

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