

National Labor Relations Board (NLRB) Judge Gives a “Like” to Facebook-Related Termination



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National Labor Relations Board (NLRB) Administrative Law Judge Jay R. Pollack recommended the dismissal of a complaint involving the termination of two former employees of the Richmond District Neighborhood Center, a non-profit organization in the San Francisco Bay Area that runs community programs including after-school and summer programs for youth.

The decision is all the more surprising because Judge Pollack agreed with the General Counsel that the employees at issue were engaged in protected concerted activity in complaining about their employer on Facebook; yet he found that some of the actions described by the employees (including having “crazy events [without] permission,” “do[ing] cool [expletive] and let[ting] [the employer] figure it out,” “playing loud music and get[ting] graffiti artists to place graffiti on the walls,” and hav[ing] clubs and tak[ing] the kids”) in their Facebook conversations were not protected. Accordingly, the Judge found that the employer could lawfully find that the employees conduct was not protected and that they were unfit for further service.

While this decision shows that not all social-media misconduct must be tolerated by employers, it is important for employers dealing with these types of issues to contact competent labor and employment counsel prior to making any termination decisions involving social media, as defending against an action of this nature before the NLRB can be costly.

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