

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: October 17, 2006

TO : Irving E. Gottschalk, Regional Director
Region 30

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Applebee's Neighborhood Bar & Grill 506-4033-
0300

Case 30-CA-17444

506-4033-0300
506-0170
506-4033-1700
506-4033-5500
506-6090-1900
512-7550-0133
512-7550-6000

The Region submitted this case for advice as to whether the Employer lawfully terminated employees who left work without permission to attend a "Day Without Latinos" demonstration called to protest, inter alia, legislation that would impose greater requirements on immigrant employees and the employers who would hire them, as well as increase penalties for violating the requirements.

We conclude that the Employer lawfully terminated the employees. Even assuming, without deciding, that the employees' attendance at, or support for, the demonstration would have been conduct protected by the "mutual aid or protection" clause of Section 7, walking off the job without permission simply to participate in Section 7 activity is not protected. Thus, we conclude that the Employer lawfully terminated the employees, and the Region should dismiss the charge, absent withdrawal.

We assume, without deciding, that the employee's attendance at, or support of, the demonstration was activity protected by the "mutual aid or protection" clause of Section 7. However, the Employer did not terminate the employees for attending the demonstration; the Employer explicitly terminated the employees only because they walked off the job without permission. "Leaving work early is not protected activity even when the object of leaving is to engage in protected activity."¹ As the ALJ noted in

¹ Quantum Electric, 341 NLRB 1270, 1279 (2004) (citations omitted).

Quantum Electric, the employees' walkout in that case to attend a union meeting was not itself a strike, work stoppage or other protest to demonstrate their disagreement with their employer regarding their working conditions.² Rather, in that and analogous cases, the employees merely disregarded their employer's rules, or abandoned their workstations, to engage in protected concerted activity elsewhere.³ Simply walking off the job, unlike a protected protest, is not protected activity.

We also note that this case does not present any other basis to issue complaint. There is no evidence that the Employer harbored any animus towards the employees' attendance at the demonstration generally, or was hostile to the demonstration's subject matter. To the contrary, the Employer allowed a fourth employee to attend the demonstration without incident.⁴ There is also no evidence that the employees were accorded disparate treatment, or punished more severely than similarly situated employees. The Employer has presented evidence that it has terminated other employees for similar infractions.

The Region should dismiss the charge, absent withdrawal.

B.J.K.

² Id.

³ Id. (while "there is no question that attending a union meeting is protected activity under the Act," employer lawfully disciplined employees who left work early to attend such a meeting); Specialized Distribution Management, Inc., 318 NLRB 158 (1995) (employer lawfully disciplined employees who left their building without permission to attend a union meeting while on the clock); Crown Coach Corp., 155 NLRB 625 (1965) (employer lawfully terminated employees who did not show up to work to attend union "demonstration meeting" to discuss employees' dispute with employer over terms governing seniority where employees did not give notice to employer that they would not show for work, and absence was otherwise open-ended). See also, Bird Engineering, 270 NLRB 1415 (1984) (employees may not pick and choose which rules they will follow and unilaterally determine their own terms and conditions of employment).

⁴ Subsequently, the Employer gave other employees permission to attend similar later events protesting immigration legislation and policies.