

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

Advice Memorandum

DATE: June 29, 2011

TO: Rik Lineback, Regional Director
Region 25

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

SUBJECT: Rural Metro 506-0170
Case 25-CA-31802 506-2001-5000

The Region submitted this Section 8(a)(1) case for advice as to whether the Employer unlawfully discharged the Charging Party for posting messages on a U.S. Senator's Facebook page that allegedly violated the Employer's Code of Ethics and Business Conduct policy. We conclude that the Employer did not unlawfully discharge the Charging Party because she was not engaged in concerted activity.

FACTS

Rural/Metro of Indiana, L.P. provides emergency and non-emergency medical transportation and fire protection services to municipal, residential, commercial, and industrial customers. The Charging Party began working as a dispatcher for Rural/Metro in August 2010.

On January 14, 2011,¹ the Charging Party posted the following comments on Senator Richard Lugar's Facebook "wall," in response to a posting by the Senator announcing that four Indiana fire departments had received federal grants:

My husband and I work for Rural Metro, me as a [REDACTED] and he as an [REDACTED]. Rural Metro has contracts w/several fire departments to provide EMS. The reason they contract out to us? BECAUSE WE'RE THE CHEAPEST SERVICE IN TOWN! How do we manage that? BY PAYING OUR EMPLOYEES \$2 LESS THAN THE NATIONAL AVERAGE! We both make less than \$10 an hr. And he's worked for them 3.5 yrs! ...the fact that we're employees of a cheap contract company instead of government employees hurts us. Maybe some of that grant money could be used toward hiring personnel to run the new equipment

¹ All dates are in 2011 unless otherwise noted.

too. Unfortunately the state is going the other way and looking for more cheap companies to farm the jobs out to. Privatization hard at work ... And the 20 year old that died in █████ township, he was a friend of mines family member. Rural Metro provides coverage for that area, but we only have 2 trucks for all of █████ county and they're stationed near █████ Hospital nearly 15-20 minutes from █████ township driving emergent. Furthermore one of our crews in █████ showed up on a scene of a cardiac arrest where the volunteer fire fighters/first responders didn't even know how to perform CPR! I get that it only saves 1-2% of people, but we'll never know in this case if it would have helped. It's going to take a lot more grant money to fix all of the problems w/IN's EMS!

The Charging Party did not discuss her Facebook comments with other employees prior to or immediately after posting them. She claims that she wanted to make Senator Lugar aware that she disagreed with how emergency medical services were handled in Indiana and that her kind of company was not helping the current situation. She did not think that Senator Lugar could help with her employment situation in any way. Although the Charging Party had discussed wages with other employees in response to Rural/Metro's announcement of a wage cap, there is no evidence that employees had met or organized any group action or desired to raise wage issues with the Employer as a group.

On January 24, Rural/Metro terminated the Charging Party for publicly posting disparaging remarks about the Employer and confidential information about its response to a service call. Her termination form also states that her Facebook comments violated Rural/Metro's Code of Ethics and Business Conduct policy that is incorporated in the Employee Handbook.

ACTION

We conclude that the Employer did not violate Section 8(a)(1) because the Charging Party had not engaged in any concerted activity. We therefore find it unnecessary to resolve whether her comments were for the purpose of "mutual aid and protection" under the Act.

The Board's test for concerted activity is whether activity is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee

himself.'"² The question is a factual one and the Board will find concert "[w]hen the record evidence demonstrates group activities, whether 'specifically authorized' in a formal agency sense, or otherwise[.]"³ Thus, individual activities that are the "logical outgrowth of concerns expressed by the employees collectively" are considered concerted.⁴ Concerted activity also includes "circumstances where individual employees seek to initiate or to induce or to prepare for group action" and where individual employees bring "truly group complaints" to management's attention.⁵ On the other hand, activity that does not look forward to group action and thus does not go beyond "mere griping" is not concerted.⁶

Here, there is no evidence of concerted activity. The Charging Party did not discuss her Facebook posting with any other employee, including her spouse, either before or immediately thereafter. There had been no employee meetings or any attempt to initiate group action. She was not trying to take employee complaints to management and admittedly did not expect Senator Lugar to take any action that would affect her employment situation. Instead, she was merely trying to make a public official aware of the state of emergency medical services in Indiana.

We conclude that in the absence of any evidence of concerted activity, the Employer did not violate Section

² *Meyers Industries*, 281 NLRB 882, 885 (1986) (*Meyers II*), *aff'd sub nom. Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), *cert. denied*, 487 U.S. 1205 (1988).

³ *Id.* at 886.

⁴ *See, e.g., Five Star Transportation, Inc.*, 349 NLRB 42, 43-44, 59 (2007), *enforced*, 522 F.3d 46 (1st Cir. 2008) (drivers' letters to school committee raising individual concerns over a change in bus contractors were logical outgrowth of concerns expressed at a group meeting).

⁵ *Meyers II*, 281 NLRB at 887.

⁶ *See Holling Press, Inc.*, 343 NLRB 301, 302 (2004) (activity that involves only a speaker and a listener may be concerted "so long as what is being articulated goes beyond mere griping"); *Mushroom Transp. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964) ("[a]ctivity which consists of mere talk must, in order to be protected, be talk looking toward group action ... and, if it looks forward to no action at all, it is more than likely to be mere 'griping'").

8(a)(1) by discharging the Charging Party.⁷ Accordingly, the Region should dismiss the instant charge, absent withdrawal.

B.J.K.



⁷ It therefore is not necessary to reach the question of whether the Charging Party's postings raised concerns that are protected under the Act. Although the major thrust of the Charging Party's comments were the effects of privatization on the quality of emergency medical service, her posting alluded to terms and conditions of employment, such as wages and training. See, e.g., *Five Star Transportation, Inc.*, 349 NLRB at 44-47 (school-bus drivers who wrote letters to school district that raised employment-related concerns about the maintenance of working conditions by the potential new contractor engaged in protected activity, but drivers who raised more general safety concerns on behalf of the students or merely disparaged the new potential employer did not).