

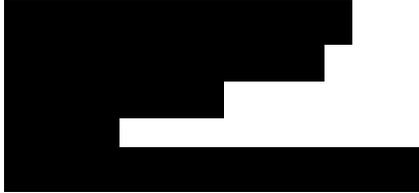


UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 11
4035 UNIVERSITY PKWY STE 200
WINSTON SALEM, NC 27106-3275

Agency Website: www.nlr.gov
Telephone: (336)631-5201
Fax: (336)631-5210

August 18, 2011



Re: Buel, Inc.
Case 11-CA-022936

Dear [REDACTED]

We have carefully investigated and considered your charge that BUEL, INC. has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

The charge alleges that the Employer 1 [REDACTED] posted threats of discharge or to take adverse action against [REDACTED] (Charging Party) on his Facebook page on about January 11, 2011; 2) engaged in surveillance of his Facebook page for protected concerted activities on about January 11, 2011; 3) removed him from his [REDACTED] status on about January 9, 2011; and 4) constructively discharged him on about January 28, 2011, because he engaged in protected concerted activities, in violation of Section 8(a)(1) of the Act.

As an initial matter, the investigation disclosed that the Charging Party was an employee under the Act, not an independent contractor. It was further concluded, however, that the Charging Party did not engage in protected concerted activity, and therefore, the Employer did not violate the Act, as alleged. Specifically, the evidence failed to establish that the Charging Party was engaged in any concerted activities when, on January 11, 2011, he posted comments on his Facebook page. Rather, the investigation revealed that he acted alone and was simply expressing his own frustration about his inability to reach the [REDACTED] while he was stranded in a snow storm. Although the Charging Party discussed this matter with other drivers in his Facebook postings, there is insufficient evidence that his Facebook activity was a continuation of any collective concerns. In this regard, there was no evidence that he had previously discussed his Facebook posts with any fellow employees and there is no evidence that any of his co-workers responded to his Facebook posts concerning his complaint. Likewise, there was no evidence that the Employer engaged in unlawful surveillance of employees' protected concerted activities when its agent viewed the Charging Party's Facebook postings. In this regard, it is undisputed that the [REDACTED] was a Facebook friend, and was essentially invited to view the Charging Party's Facebook page on January 11, 2011. Further, there was no evidence that

the [REDACTED] acted at the Employer's direction or was on Facebook for the sole purpose of monitoring employees' postings.

With regard to the threat allegation and the Charging Party's removal from [REDACTED], the investigation revealed that there was insufficient evidence that the Employer retaliated against him for engaging in any protected concerted activity or made any unlawful statements. Rather, the Charging Party admittedly removed himself voluntarily from [REDACTED] for reasons unrelated to any protected activity. Thus, any statements attributed to the Employer concerning the Charging Party's no longer occupying the [REDACTED] are not unlawful.

Finally, with regard to the constructive discharge allegation, the evidence failed to establish that the Charging Party was forced to resign because the Employer made his working conditions more onerous or burdensome in retaliation for any alleged protected activities. In this regard, the investigation revealed that the Charging Party decided to resign because the [REDACTED] gave him the "silent treatment" but, as noted above, since I have determined that his Facebook postings did not constitute concerted activity, there is insufficient evidence that the Employer's alleged conduct was in retaliation for any protected activity.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlr.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **September 1, 2011**. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than **August 31, 2011**.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before the original appeal due date**. A request for an extension of time that is

mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

Jane P. North
Acting Regional Director

Enclosure

cc GENERAL COUNSEL
OFFICE OF APPEALS
FRANKLIN COURT BUILDING
NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20570

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GREENVILLE, SC 29601-2882

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099 - 14th Street, N.W.
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)