



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 36
601 SW 2ND AVE
STE 1910
PORTLAND, OR 97204-3170

Agency Website: www.nlr.gov
Telephone: (503)326-3085
Fax: (503)326-5387

October 11, 2011

████████████████████
McClendon Owens Melia McBreen LLP
630 SE Powell Blvd
Portland, OR 97202-2623

Re: Frito-Lay, Inc.
Case 36-CA-010882

Dear Mr. Owens:

We have carefully investigated and considered your charge that Frito Lay, 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 Charging Party alleges the Employer unlawfully discharged ██████ for posting a criticism of a supervisor on his Facebook page, which the Employer regarded as inappropriate and threatening.

The Board's test for determination of whether an activity is concerted turns on whether the activity is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." *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). Thus, individual activities that are the "logical outgrowth of concerns expressed by the employees collectively" are considered concerted. Concerted activities also include "circumstances where individual employees seek to initiate or to induce or to prepare for group action," such as those where employees discuss their shared concerns prior to any specific plan to engage in group action, *Meyers II*, 281 NLRB at 887.

Here, there is no evidence of concerted activity. Although the Charging Party's postings addressed his terms and conditions of employment, ██████ did not seek to initiate or induce coworkers to engage in group action, and none of ██████ oworkers responded to the postings with similar concerns. Nor were ██████ postings an outgrowth of prior employee meetings or attempts to initiate group action with regard to the Employer's sick leave or absenteeism policy. Indeed, the Charging Party ██████ characterized ██████ conduct as "just venting."

Because the Charging Party's Facebook posting did not involve any concerted activity, [REDACTED] was not discharged in violation of Section 8(a)(1) of the Act.¹ Accordingly, the charge is dismissed.

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 October 25, 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 October 24, 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** October 25, 2011. 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

¹ In the absence of any evidence of concerted activity, it is unnecessary to reach the question of whether the Charging Party's comments lost the protection of the Act because they could be considered threatening or violent.

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,

RICHARD L. AHEARN
Regional Director

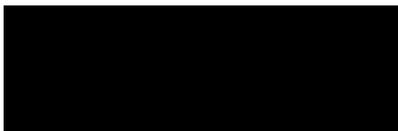
By: 
LINDA L. DAVIDSON
Officer in Charge

Enclosure

cc General Counsel
Office Of Appeals
Franklin Court Building
National Labor Relations Board
1099 14TH Street, NW
Washington, DC 20570



Frito Lay, Inc.
18990 NE Riverside Pkwy
Portland, OR 97230



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

Frito-Lay, Inc.

Case Name(s).

36-CA-10882

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

(Signature)