

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

Advice Memorandum

DATE: December 17, 2002

TO : Frederick Calatrello, Regional Director
John Kollar, Regional Attorney
Donald A. Knowlton, Assistant to Regional Director
Region 8

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

SUBJECT: TNT Logistics, North America Inc. 506-4033-1200
Case 8-CA-33664 506-6060-5000

This case was submitted for advice on whether employees were engaged in protected conduct when they sent a letter to corporate managers and the Employer's largest customer complaining about the local managers and their effect on working conditions.

TNT Logistics North America, Inc. (the Employer) is a Delaware corporation engaged in providing interstate transportation service throughout the United States. The Employer's headquarters is in Jacksonville, Florida. The facility at issue here is in East Liberty, Ohio, where the Employer's largest customer is Honda of America. The employees at this facility are not represented by a union.

Employees at the East Liberty facility have been unhappy with their local management, in particular District Manager Robert Wheeler, and Jeff Basinger, the contract manager for the drivers. From late Spring/early Summer, 2002, a number of the drivers discussed among themselves their problems with management, and decided to gather the complaints and present them in a letter to corporate management in headquarters and to Honda.

On August 12, the employees sent an unsigned letter to the Employer's headquarters and to Honda. The letter contained specific complaints about the management style of both Wheeler and Basinger, and listed some of the policies imposed by the managers that the employees found objectionable. These included matters such as getting points for unexcused absences when employees take time off for health reasons, funeral leave policy, logbook policy, health insurance and worker's compensation. The letter repeatedly implored its recipients to step in and rectify the employees' situation, and indicated that if nothing was resolved, the employees might send copies of the letter to the local media.

On August 27 and 28, three of the employees who had been involved in producing and sending the letter were discharged for their involvement. They were informed in writing that "sending a threatening letter of this nature to our customer . . . could lead to a loss of business." The Employer has also argued that the letter is unprotected because it disparaged and criticized supervisors Wheeler and Basinger.

In agreement with the Region, we conclude that the employee's August 12 letter was protected, notwithstanding that it criticized the managers, was sent to the Employer's largest customer, and threatened to go to the media. First, unlike in Jefferson Standard Broadcasting Co.,¹ the clear focus of the letter was the employee's interest in improving their working conditions.² Second, the statements about the managers were in the nature of complaints about their management style and personnel policies, and not disparaging of the Employer's product.³ Finally, neither the employees' decision to send the letter to Honda, nor their threat to go to the media, would remove their activity from the protection of the Act. The Board has held that, "absent a malicious motive, [an employee's] right to appeal to the public is not dependent on the sensitivity of Respondent to his choice of forum."⁴ There is no evidence that the employees here were motivated by malice or anything other than a desire to improve their working conditions.

Accordingly, the Region should issue complaint, absent settlement, alleging that the Employer's discharge of the

¹ 346 U.S. 464 (1951).

² Community Hospital of Roanoke Valley, Inc., 220 NLRB 217, 223, enfd. 538 F.2d 607 (4th Cir. 1976) (protected activity where statement "made in a context of, and was specifically related by [the employee] to, the employees' efforts to improve wages and working conditions").

³ See, Oakes Machine Corp., 288 NLRB 456, 456 (1988) (letter to parent company regarding mismanagement of subsidiary in a way that affected employee working conditions was protected).

⁴ Allied Aviation Service Co. of New Jersey, 248 NLRB 229, 231 (1980). Accord: Richboro Community Mental Health Council, 242 NLRB 1267, 1268 (1979) (protected right of employees to obtain the assistance of third parties in an ongoing labor dispute).

three employees for sending the August 12 letter violated Section 8(a)(1) of the Act.⁵

B. J. K.

⁵ [FOIA Exemption 5