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

Advice Memorandum

DATE: November 24, 2015

TO: Charles L. Posner, Regional Director
Region 5

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

SUBJECT: New Organizing Institute Education Fund
Cases 05-CA-146817, et al.

506-4033-1200
506-4033-7600
506-6090-5000
512-6036-6720-7200
512-5036-6720-7500

The Region submitted this case for advice as to: 1) whether a memo signed by some of the Charging Parties seeking the dismissal of the Employer's Executive Director constituted a threat to resign or a notice of resignation; 2) whether the memo constituted protected concerted activity; 3) whether the Employer discharged the Charging Parties because of their protected concerted activity and if so, what the appropriate remedy should be; and 4) whether the Employer's request that an employee provide copies of protected emails exchanged amongst her former coworkers should be analyzed under *Johnnie's Poultry Co.*[1] We conclude that: 1) the memo constituted a conditional threat to resign rather than a tendering of those employees' resignations; 2) the employees who signed the memo were engaged in protected concerted activity; 3) there is insufficient evidence to establish that the Employer discharged any of the Charging Parties because of their protected concerted activity and therefore we need not address the remedy question; and 4) the Employer's request that an employee provide copies of a protected email exchange was not an interrogation that would trigger the *Johnnie's Poultry* requirements. Accordingly, the Region should dismiss the charges, absent withdrawal.

FACTS

The Employer, New Organizing Institute Education Fund (NOIEF), is a private organization that provides data and digital training services to progressive and non-partisan nonprofit organizations, labor organizations, and political campaigns. The

[1] 146 NLRB 770 (1964), *enforcement denied,* 344 F.2d 617 (8th Cir. 1965).

Employer is affiliated with the New Organizing Institute (NOI) and the two organizations constitute a single employer under the Act. As of February 9, 2015,[2] the Employer had approximately 23 total staff, with approximately seventeen non-supervisory employees and six supervisory staff. Non-supervisory staff were referred to as the junior staff or "players," while supervisory staff were referred to as senior staff or the "Coordinating Team."

The Employer had financial difficulties dating back to at least November 2014. That month, the Executive Director announced that the Employer was experiencing a budget shortfall. By mid-November 2014, the Employer had laid off seven employees and informed several contract employees that their contracts would not be renewed. In December 2014, the Executive Director announced that he was taking a twenty percent pay cut, that all employee wages were to be frozen through mid-2015, and that further layoffs were possible. By early January, members of the Coordinating Team were informing their subordinate employees that the budget crisis might force staff furloughs in the immediate future, possibly as early as the pay period beginning February 9. The Employer's annual budget was due in early February, and the Executive Director indicated that he would know about further layoffs and furloughs once the budget was completed.

Alarmed by the uncertainty surrounding the Employer's financial stability, the junior staff began organizing sometime in late January at the suggestion of Charging Party (b) (6), (b) (7)(C) sent an email to the entire staff, including the Coordinating Team, announcing a "players-only" meeting to be held on January 29. At this meeting, the junior staff discussed concerns regarding morale; the specter of additional layoffs, furloughs, or an inability to meet payroll; the possibility of unionizing; recommendations for cutting costs; frustrations with the Board of Directors and the Executive Director; and the option of calling for the Executive Director's resignation. Around the same time, (b) (6), (b) (7)(C) created a Google group for the junior staff using their personal email addresses that allowed them to jointly create and edit documents.

After the first players-only meeting, several of the junior staff drafted a "staff requirements" memorandum and circulated it amongst the rest of the junior staff using the Google group. All of the junior staff electronically signed on. The memo included various recommendations regarding expenditures, layoffs, and supervisory staff pay cuts. The memo also included requests that the junior staff have a chance to see the proposed budget before its approval—which was scheduled for February 5—and that employees receive 30 days' notice in the event that the Employer could not meet payroll. (b) (6), (b) (7)(C) emailed the "staff requirements" memo to the Coordinating Team on January 30.

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[2] All subsequent dates are in 2015 unless otherwise indicated.

The Executive Director addressed the requests and recommendations of the "staff requirements" memo in a staff meeting on February 3. In addition to rejecting several of the junior staff's money-saving suggestions, he informed the staff that an additional six to fourteen individuals were going to be laid off in the near term and that furloughs, if necessary, would last from two to eight weeks.

The junior staff continued to hold "players-only" meetings in the aftermath of the February 3 staff meeting. On February 4, the members of the Coordinating Team, minus the Executive Director, requested to join a "players-only" meeting. At that time, the Coordinating Team invited the junior staff to join them in calling for the Executive Director's resignation. The Coordinating Team had decided that they would ask for the Executive Director's voluntary resignation by February 9. If he did not resign, they intended to ask the Board of Directors to terminate the Executive Director by February 11. If the Board of Directors refused, the entire Coordinating Team planned to offer their own resignations. All of the Charging Parties agreed to call for the resignation or discharge of the Executive Director, but only three of them agreed to threaten to resign if he were not removed.

On February 5, the Coordinating Team met with the Executive Director to request his resignation and informed him that "key junior staffers" shared their concerns. He did not respond. That evening, he reported this request to the Board of Directors, which resulted in the Board Chair deciding to drive cross-country to visit the office in person.

The Board Chair arrived in the office on February 9. That evening, one of the supervisory employees emailed the Board of Directors a memorandum demanding the Executive Director's removal. The seven-page memo rehashed the staff's grievances and frustrations with the Executive Director. It also stated, in pertinent part:

> We are deeply committed to NOI and would love nothing more than to continue on as members of this team, striving to achieve NOI's mission. We love and respect the NOI community, and we are proud of NOI's role as a home for organizers and the only pipeline of diverse and highly-skilled talent for the progressive movement.
>
> But NOI is now on the brink of financial collapse. We risk failing in our mission and failing the movement and community we serve. This is more important than any one of us as individuals.
>
> We believe that [the Executive Director] shares our commitment to NOI, and he is a great asset to the progressive community and data profession. But based on his record as Executive Director over the past year and a half, [he] has not proven himself up to the task of meeting

> the crisis we face in his current role. It has become evident that he lacks the skills, judgment and experience required in this moment.
>
> Based on this assessment, we are requesting that the Board of Directors remove [him] from his position as Executive Director and execute a quiet transition of power to an Interim ED or Senior Advisor before a public and transparent search for a new ED can be held.
>
> We request that [the Executive Director] remains (sic) on for at least 30 days after an interim ED or "senior advisor" can be found, and transition responsibilities and relationships to this individual . . . . We are willing to work with the board in whatever capacity needed in order to identify, recruit and hire an interim ED and, later, a permanent ED.
>
> . . .
>
> We request that you make this decision within 48 hours. This request has majority support from remaining permanent staff. **If you do not act within 48 hours, the following key employees will resign** (emphasis added)….

The memo then named four members of the Coordinating Team and four of the junior staff.[3]

On February 10, the eight signatories to the memo held a meeting to discuss logistics. They decided collectively that they would offer their resignations the following day, February 11, to be effective three weeks later. They did not communicate this timeline to the Board of Directors.

At 3 p.m. that afternoon, two members of the Board of Directors held a meeting with the eight signatory staff. The Board Chair announced that the Board did not intend to terminate the Executive Director and therefore considered the memo to be their resignations and that the eight needed to leave the office immediately. They were informed that they would be permitted to return to the office at a future date to collect their personal belongings. None of the signatories recanted or indicated that they wished to withdraw their resignations. The Board Chair presented the eight with documents stating that they were resigning effective immediately, which all declined to sign.

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[3] Three of the four junior staff signatories are Charging Parties – (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

Subsequent to this meeting, the Board Chair and the Executive Director began meeting with the remaining staff individually. The eight signatories had begun notifying the remaining staff of their separation from employment, and two employees who had been slated for retention resigned in protest on the spot. Charging Party (b) (6), (b) (7)(C) inferred that the Employer intended to lay (b) (6), (b) (7)(C) off and therefore resigned prior to (b) (6), (b) (7)(C) scheduled meeting; indeed, (b) (6), (b) (7)(C) position had been slated for layoff. One employee, Charging Party (b) (6), (b) (7) (C) was told that (b) (6), (b) (7)(C) was being terminated "for cause," although the Employer did not offer any further explanation.[4] By the end of the day, the staff had been reduced to the Executive Director and four junior staff; eighteen employees and supervisors had been laid off or resigned.[5]

The eight signatory employees were paid through February 13. The Employer offered severance packages to the employees it identified as laid-off. All of the employees who were let go were allowed to keep their laptop computers at no cost to the employees.

In late January, the Coordinating Team and the Executive Director had considered various staffing scenarios, identifying specific positions that should be retained or eliminated as well as some that were borderline. On February 5, the Executive Director emailed the Board Chair a final recommendation regarding staffing in conjunction with the annual budget proposal. According to the Employer, the recommendations were based on a variety of factors, including the respective positions' net costs, employees' revenue-generating capacity, and the likelihood that individuals in other positions could cover their tasks. The following chart summarizes the recommendations and outcome for the seven Charging Parties:

Charging Party	**Outcome**	**January 30 recommendation**	**February 5 recommendation**
(b) (6), (b) (7)(C)	Signatory to memo; regarded as resigned	Retain	Retain
(b) (6), (b) (7)(C)	Signatory to memo; regarded as resigned	Retain	Retain
(b) (6), (b) (7)(C)	Signatory to memo; regarded as resigned	Retain	Retain

[4] The Employer states that Charging Party (b) (6), (b) (7)(C) was discharged for economic reasons, not for cause.

[5] All four retained junior staff had signed the January 30 "staff requirements" memo.

(b) (6), (b) (7)(C)	Resigned prior to (b) (6), (b) (7)(C) individual meetin	Layoff	Layoff
(b) (6), (b) (7)(C)	Laid off	Mixed recommendation: retained under two of four scenarios	Layoff
(b) (6), (b) (7)(C)	Laid off	Layoff	Layoff
(b) (6), (b) (7)(C)	Laid off	Retain	Retain

As noted, all three Charging Parties who were signatories to the resignation memo had been slated for retention. The Employer explained that it would have retained them but for their resignations. Charging Party (b) (6), (b) (7)(C) was the only laid-off Charging Party who had been designated for retention in the February 5 recommendation. According to the Employer, it reconsidered (b) (6), (b) (7)(C) continued employment as a result of the mass resignation because it no longer had anyone to supervise (b) (6), (b) (7) (C) work and because it deemed (b) (6), (b) (7)(C) less versatile than some of the retained employees.

Of the four employees who were retained, only one had been slated for layoff in the Executive Director's February 5 recommendation. The Employer explained that (b) (6), (b) (7)(C) was retained because (b) (6), (b) (7)(C) supervisor resigned per the memo to the Board and (b) (6), (b) (7)(C) was the only remaining individual who could organize specific revenue-generating programming. The Employer claims that it retained another employee because (b) (6), (b) (7) (C) generated more revenue for the organization than any other employee. (b) (6), (b) (7)(C) position was not mentioned on the February 5 recommendation. The remaining two employees had been slated for retention in the February 5 recommendation.

Sometime approximately one to two weeks following the February 10 discharges, one of the remaining junior staffers informed the Executive Director and Board Chair of the "players-only" Google group emails that the junior staff had circulated in early February. The three were discussing the media coverage of the Employer's layoffs, including articles and/or blog posts authored by former employees. The junior staffer observed that some of the things being said publicly were contradicted by emails those same former employees had sent. Either the Executive Director or the Board Director asked if (b) (6), (b) (7)(C) would be willing to share those emails with the Employer's attorneys, "just in case." (b) (6), (b) (7)(C) was told that this was strictly voluntary and that (b) (6), (b) (7)(C) was not required to share the emails. The staffer agreed and provided four or five screenshots of employee emails to the Employer.

ACTION

We conclude that the February 9 memo signed by some of the Charging Parties was a conditional threat to resign rather than a resignation, and those Charging Parties engaged in protected concerted activity when they signed the memo, but there is insufficient evidence that the Employer discharged any of the Charging Parties because of their protected concerted activity rather than the Employer's financial difficulties. We further conclude that the Employer's request that an employee provide copies of protected emails exchanged amongst the former employees after (b) (6), (b) (7)(C) revealed their existence on (b) (6), (b) (7)(C) own initiative did not constitute an interrogation that would trigger the *Johnnie's Poultry* requirements. Accordingly, the Region should dismiss the charges, absent withdrawal.

1) The memo to the Board of Directors constituted a conditional threat to resign.

The Board recognizes a distinction between a concerted threat to resign and a mass resignation. The former may be protected if it is intended to induce an employer response to employee demands, while the latter is deemed job abandonment and is not protected. Thus, in *Southern Pine Electrical Cooperative*, the Board held that a group of employees had engaged in protected concerted activity when they told their employer that they would submit a notice of resignation on the first day of the following month if the employer failed to meet their demand for a wage increase.[6] However, in a decision released the same day in *Crescent Wharf and Warehouse Company*, the Board held that a group letter to the employer was not protected because it constituted a notice of job abandonment rather than a conditional threat to resign.[7] In that letter the signatory employees stated that they were tendering their resignations effective in a week and a half because their pay increases had not kept up with the rise in the cost of living. In both cases, a group of employees concertedly expressed dissatisfaction with their wages in conjunction with mention of their resignation. According to the Board, the key distinction was the presence or absence of conditional language.[8] The protected employee communication in *Southern Pine* included conditional language, making it a concerted threat to take action at a specified future date in order to induce the employer to take a particular action.[9] The

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[6] 104 NLRB 834, 834 (1953) (employee statements that a group of employees would offer their two-week notice if something were not done about their pay constituted a conditional threat to resign in the future), *enforced,* 218 F.2d 824 (5th Cir. 1955).

[7] 104 NLRB 860, 861–62 (1953).

[8] *Id.* at 861.

[9] 104 NLRB at 834. *Cf. Boeing Airplane Company*, 110 NLRB 147, 150 (1954) ("[t]here was here in essence only a conditional threat that some of the Respondent's employees would resign if the Respondent did not meet the Union's stated bargaining

unprotected employee letter in *Crescent Wharf* was a "voluntary, unconditional notice of resignation to take effect in the future, as distinguished from a conditional threat to resign in the future if conditions are not met."[10] The Board also pointed out the presence or absence of a labor dispute preceding the concerted employee action as a factor to be considered; in *Crescent Wharf*, the Board regarded the lack of a preceding labor dispute as further indication that the employees were not attempting to pressure the employer to accede to their demands but were merely announcing their future mass resignation.[11]

In the instant case, the employees' memo to the Board of Directors contained conditional language intended to induce Employer action[12]—here, to persuade the Board of Directors to dismiss the Executive Director. Moreover, the memo was part and parcel of an employment dispute: the employees had been engaged in an open campaign to influence the Employer's response to its economic crisis. The fact that the employees gave the Employer a short time frame in which to dismiss the Executive Director prior to their carrying out their threat does not undermine the conditional nature of the memo. Rather, the compressed time frame merely reflects the urgency of the Employer's economic crisis—the employees knew that the Board of Directors was on the verge of approving the Employer's annual budget and likely would be announcing imminent layoffs or furloughs. Under the circumstances, it was reasonable for the employees to give the Board of Directors 48 hours to accede to their demands. Accordingly, the memo to the Board of Directors constituted a threat to resign rather than a notice of future resignation.

2) The memo to the Board of Directors was protected concerted activity.

The determination that the memo to the Board of Directors was a conditional threat to resign does not end the question of whether it was protected. Concerted attempts by employees to influence the identity of management are ordinarily unprotected because they lie outside the scope of the "mutual aid or protection" clause of Section 7.[13] The Board, however, has held that the act of seeking the dismissal of a

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demands, conduct which the Board, with court approval, has held to be protected concerted activity" (citing *Southern Pine*)), *petition for review granted on other grounds*, 238 F.2d 188 (9th Cir. 1956).

[10] 104 NLRB at 861.

[11] *Id*. at 862.

[12] "[I]f you do not act within 48 hours, the following key employees will resign . . . ."

[13] *See, e.g.*, *Lutheran Social Service of Minnesota*, 250 NLRB 35, 41 (1980) ("employee efforts to affect the ultimate direction and managerial policies of the business are beyond the scope of the clause").

supervisor is protected when "it is evident that [the supervisor's conduct] had an impact on employee working conditions."[14] In making that determination, the Board has also applied the four-part test articulated in *NLRB v. Oakes Machine Corp.*[15] There, the Second Circuit held that whether employee activity for the purpose of removing a supervisor is related to terms and conditions of employment, and therefore protected, is a factual inquiry that turns on 1) whether the protest originated with employees rather than other supervisors; 2) whether the supervisor at issue dealt directly with the employees; 3) whether the identity of the supervisor is directly related to terms and conditions of employment; and 4) the reasonableness of the means of protest.[16]

In this case, the employees' attempt to remove the Executive Director was related to the terms and conditions of employment, and was protected, whether we apply the Board standard or the *Oakes* test. This employment dispute sprang from the Employer's dire economic straits and the likelihood that it would lay off and/or furlough a significant complement of its staff in the immediate future. The employees

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[14] *Hoytuck Corp.*, 285 NLRB 904, 904 n.3 (1987) (distinguishing between employee attempts to effect or influence changes in the management hierarchy that have no bearing on working conditions, which are unprotected, and employee activity aimed at the selection or removal of a supervisor who has an impact on working conditions, which is protected). *See also, e.g.*, *Epilepsy Foundation of Northeast Ohio*, 331 NLRB 676, 681 (2000) (employees' attempts to have their supervisor removed were protected because he wielded significant influence over their evaluations, direction of work, and discipline), *enforcement denied in relevant part,* 268 F.3d 1095 (D.C. Cir. 2001); *Caterpillar, Inc.*, 321 NLRB 1178, 1179 (1996) (employee protest was protected even if it sought to remove employer's CEO because his decision to permanently replace strikers at another plant had a substantial impact on their terms and conditions of employment), vacated as moot (March 19, 1998); *Dobbs Houses, Inc.*, 135 NLRB 885, 888–89 (1962) (concerted employee activity protesting the selection or termination of a supervisor may be protected if the "identity and capability of the supervisor" has a direct impact on the employees' terms and conditions of employment), *enforcement denied,* 325 F.2d 531 (5th Cir. 1963); *Guernsey-Muskingum Electric Cooperative, Inc.*, 124 NLRB 618, 618 n.1 (1959) (concerted employee protest of the appointment of a direct supervisor is protected), *enforced,* 285 F.2d 8 (6th Cir. 1960).

[15] 897 F.2d 84, 89 (2d Cir. 1990) (enforcing Board determination that employee letter regarding the company president requiring employees to work on his personal projects was protected).

[16] *Id.*; *see also, e.g.*, *Caterpillar, Inc.*, 321 NLRB at 1179 (holding that employee signs saying "Permanently Replace [CEO]" were protected under the *Oakes* test); *Rhee Bros., Inc.*, 343 NLRB 695, 695 n.3 (2004) (holding that employee strike to protest supervisor's conduct was protected under *Oakes* test).

believed that the Executive Director's managerial decisions were at least partially responsible for the Employer's financial collapse. Certainly the question of whether or not one will continue to receive a paycheck relates to the terms and conditions of employment.[17] The Employer was a very small organization, and the Executive Director had frequent, direct contact with the employees. The specific memo to the Board of Directors may have originated with the Coordinating Team, but the junior staff had already begun organizing around their concerns for the Employer's financial state and had discussed seeking the Executive Director's dismissal prior to any participation from the Coordinating Team. And a concerted threat to resign seems reasonable and proportional under the circumstances, where the employees faced the very real and imminent prospect of economic layoff or extended furlough, in large part apparently due to the Executive Director's management, and had first attempted other means of influencing the Employer's decision-making.[18] Moreover, the employees wrote the memo to the Board of Directors in the context of extensive protected concerted activity. In addition to the resignation memo, they had composed the earlier "staff requirements" memo to the Coordinating Team with recommended actions and were routinely meeting to develop a coordinated strategy for dealing with the Employer's economic crisis. Thus, the employees' resignation memo to the Board of Directors was protected Section 7 activity.

3) *There is insufficient evidence that the Employer discharged the employees because of their Section 7 activity.*

To establish that an employee's discharge or other discipline violates the Act, the General Counsel must demonstrate by a preponderance of the evidence that the employee engaged in concerted activity; the employer was aware of its concerted nature; the activity was protected by the Act; and the discharge or other adverse personnel action was motivated by the protected concerted activity.[19]

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[17] *See, e.g.*, *Hoodview Vending Co.*, 362 NLRB No. 81, slip op. at 1 & n.1 (Apr. 30, 2015) (holding that conversations about job security are inherently concerted because job security "is about the very existence of an employment relationship" and characterizing job security as "a topic of mutual (and obvious) concern and directly linked to their interests as employees"), incorporating by reference 359 NLRB No. 36, slip op. (Dec. 14, 2012).

[18] *See, e.g.*, *Rhee Bros., Inc.*, 343 NLRB at 695 n.3 (holding that employees' strike was a reasonable response to supervisory conduct where the employees' action was not overly destructive to the employer's operation and the employees had first attempted other means of protest).

[19] *Meyers Industries (Meyers I)*, 268 NLRB 493, 497 (1984), *remanded sub nom.*, *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), *on remand Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), *enforced sub nom., Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987).

Although we have concluded that the employees were engaged in protected concerted activity, a violation in this case exists only if the Employer discharged the employees because of their protected concerted activity. In that regard, the Employer was certainly aware of their concerted activity—much of the activity consisted of memoranda addressed to the Employer, signed by some or all of the employees. However, we conclude that there is insufficient evidence to establish that such activity was a contributing factor in the Employer's layoff decisions.

The Employer needed to shed a large portion of its workforce because of its dire economic straits. Three of the Charging Parties—(b) (6), (b) (7)(C) had threatened to resign if the Board of Directors declined to dismiss the Executive Director. Once the Board of Directors determined that it would not dismiss the Executive Director, it reasonably concluded that these employees would resign on February 11, as they had indicated in their memo, and instead merely accepted their resignations a day early, on February 10. Thus it appears that these employees were let go not because of their protected concerted activity but because they had announced their intention to leave the Employer's employment if their conditions were not met.[20]

There is also insufficient evidence to indicate that the remaining four Charging Parties were discharged because of their protected concerted activity. Two of them—(b) (6), (b) (7)(C)—had been slated for layoff in both the January 30 and February 5 staffing recommendations. One of these, Charging Party (b) (6), (b) (7)(C) voluntarily resigned prior to (b) (6), (b) (7)(C) discharge because (b) (6), (b) (7)(C) (correctly) assumed that (b) (6), (b) (7)(C) had been selected for layoff. Charging Party (b) (6), (b) (7)(C) had a mixed recommendation under the January 30 staffing scenarios, but by February 5, the Executive Director was recommending that (b) (6), (b) (7)(C) position be eliminated. Charging Party (b) (6), (b) (7)(C) was the only one among the discharged who had been slated for retention in the February 5 staffing recommendation. However, the Employer claims that it chose to lay (b) (6), (b) (7)(C) off after the mass resignation because it no longer had anyone to supervise (b) (6), (b) (7)(C) work and because (b) (6), (b) (7)(C) was less versatile than some of the retained employees. There is no evidence that the Employer changed its decision regarding (b) (6), (b) (7)(C) continued employment because of (b) (6), (b) (7)(C) protected activity, nor was (b) (6), (b) (7)(C) particularly active as compared to (b) (6), (b) (7)(C) colleagues. Moreover, the employees who were retained had also participated in at least some of the protected concerted activity. All of the employees who were retained had signed the "staff requirements" memo to the Coordinating Team and had participated in the "players-only" meetings.

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[20] To the extent that the Employer accelerated their resignation date by one day, we note that these employees were compensated through February 13, two days beyond the resignation date proffered in their memo to the Board of Directors.

Accordingly, there is insufficient evidence to conclude that the Employer discharged any of the Charging Parties because of their protected concerted activity.

4) The Employer's request for a copy of the protected email exchange was not an interrogation subject to the Johnnie's Poultry requirements.

We agree with the Region that the facts in this case do not require a *Johnnie's Poultry* analysis.[21] The Board in *Johnnie's Poultry* established safeguards designed to minimize the coercive impact of an investigatory interview by an employer, while allowing the employer to gather facts concerning issues raised in a charge or complaint in preparation of its defense.[22] Under these safeguards, the employer must communicate to the employee the purpose for the questioning, assure (b) (6), (b) (7)(C) that no reprisals will take place, and obtain (b) (6), (b) (7)(C) participation on a voluntary basis.[23] Moreover, the questioning itself must not be coercive in nature.[24] Here, the evidence indicates that the employee in question raised the issue of inconsistent employee statements and volunteered the existence of the protected email chain on (b) (6), (b) (7)(C) own initiative. Although the Employer then requested a copy of these emails, it made clear that provision of the emails was strictly voluntary. This does not constitute an interrogation or an investigation that would trigger the *Johnnie's Poultry* requirements.[25]

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[21] *Johnnie's Poultry Co.*, 146 NLRB 770 (1964), *enforcement denied,* 344 F.2d 617 (8th Cir. 1964).

[22] *Id.*

[23] *Id.* at 775.

[24] *Id.*

[25] *See, e.g. Scheid Electric*, 355 NLRB 160, 160 (2010) (in determining the legality of an interrogation, the Board examines whether, under all the circumstances, the questions tends to reasonably interfere with, restrain, or coerce employees in the exercise of their Section 7 rights"). *Cf. Bates Nitewear Co.,* 283 NLRB 1128, 1128 (1987) (no violation where, after employee volunteered that co-workers were harassing her about the union and readily agreed to discuss the matter with employer's vice president, he questioned her about "information [that] was within the scope of that which [she] freely disclosed").

Accordingly, the Region should dismiss the charges, absent withdrawal.

/s/
B.J.K.