

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

DATE: December 18, 2015

TO: Ronald K. Hooks, Regional Director  
Region 19

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

SUBJECT: Premera Blue Cross of Washington  
Case 19-CA-156038

Meyers Chron  
506-0170-0000-0000  
506-2001-5000-0000  
506-4033-0300-0000  
506-4067-9500-0000  
506-6070-5000-0000  
506-6090-4500-0000

The Region submitted this case for advice as to whether the Employer violated Section 8(a)(1) of the Act when it discharged three of its customer service employees for complaining about customer treatment on a private Facebook page. We conclude that the three employees were engaged in protected concerted activity when they posted their comments and that the comments did not lose the protection of the Act. Therefore, the Employer violated the Act when it discharged the employees.

**FACTS**

Premera Blue Cross of Washington (Employer) provides health insurance and related services in Washington state. The Employer and its predecessors have operated in Washington state since 1933. The employees at issue are customer service representatives at the Employer's customer service call center in Spokane, Washington.

On (b) (6), (b) (7)(C) 2015,<sup>1</sup> a number of the Employer's customer service representatives engaged in discussion on Facebook. The discussion occurred solely on Employee 1's Facebook page, which was set to only allow "friends" to view (b) (6), (b) (7)(C) page. Employee 1's

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<sup>1</sup> All dates are in 2015 unless otherwise indicated.

Facebook page indicates that (b) (6), (b) (7) is employed by the Employer. The conversation, concerning customers of the Employer, was as follows:<sup>2</sup>

**Employee 1:**

I think to myself....as this b word is complaining about having to repeat (b) (6), (b) (7)(C) over and over (to me)...you're soooo lucky I have enough respect for myself and my boss too NOT tell you to go f your own rude crotchety douchebag SELF.

[Seven of Employee 1's friends "liked" this post, including four of Employee 1's co-workers.]

**Employee 2:**

...had one of those today because merchant location couldn't take the HSA payment card. Soooo rude screaming at me (because its my fault) and then (b) (6), (b) (7)(C) grabbed the phone and said sorry for all the attitude you just received. And then (b) (6), (b) (7)(C) screaming in the background "I ain't giving no mother fu\*\*ing attitude" Yes I set up that point of sale system at their office through the credit card company.<sup>3</sup>

**Employee 1:**

Its our fault! Its your fault the card ist accepted and my fault b words can't communicate!! It could be worse i guess

**Employee 3:**

These made my day.

**Employee 2:**

I had a guy that said I changed my address 8 months ago and was told it was changed. I have 3 minutes to get this resolved. Someone is lying to me about my address actually being changed and I never got my HSA card and I

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<sup>2</sup> The Facebook conversation is reproduced below without the emoticons (thumbs up, smiley face, etc.) used in the original text.

<sup>3</sup> Employee 2 states that (b) (6), (b) (7) Facebook comment concerned both a rude customer and some of the problems that caused customers to be upset, such as health savings account card problems and merchant location problems with those cards.

want a manager to get it over nighted. Ok well (b) (6), (b) (7)(C) with 3 minutes time I will not be able to get a supe on the line and get a card over nighted. So I'll call you back once we have the request made for an overnight you prick.

[One person "liked" this comment.]

**Employee 3:**

What a freaking dick!! People were just mean today!!!! Tell (b) (6), (b) (7)(C) to take (b) (6), (b) (7)(C) card and shove it where the sun doesn't shine! And don't be soooooo rude...gess!!

[One person "liked" this comment]

**Employee 4:**

Wow glad I wasn't the only one with mean people.

**Employee 2:**

All dayyyy long...!! Lol.

**Employee 4:**

Yep from 730am-8pm today, just wished today would have been nice to everyone day. Not take it out on everyone day, lol.

On (b) (6), (b) (7)(C), the Employer received an employee complaint on its ethics line regarding the Facebook conversation above. The employee provided screenshots of the Facebook posts, comments, and the employee "likes" of Employee 1's initial post.

On (b) (6), (b) (7)(C), the Employer terminated Employees 1, 2, and 3, citing its Customer Care Core Values policy, which states: "We anticipate, listen and respond to our customers' needs." The Employer also gave verbal warnings to a number of employees who had liked or made comments that did not involve profanity towards customers.<sup>4</sup> The Employer has not presented evidence that any of its customers saw the Facebook conversation but asserts that the employees' Facebook friends possibly included Employer customers.

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<sup>4</sup> The verbal warnings are not currently encompassed in the charge.

### ACTION

We conclude that Employees 1, 2, and 3 were engaged in protected concerted activity when they posted their comments on Facebook and that the comments did not lose the protection of the Act. Therefore, the Employer violated the Act when it discharged the employees.

#### **A. The Employees Were Engaged in Protected Concerted Activity When They Posted Comments on Employee 1’s Facebook Page Complaining About Customer Treatment.**

In order to constitute protected concerted activity under Section 7 of the Act, employee conduct that is not union-related must be engaged in for the purpose of “mutual aid or protection” and must be “concerted”—two elements that are closely related but analytically distinct.<sup>5</sup> Conduct involves mutual aid or protection if “the employee or employees involved are seeking to ‘improve terms and conditions of employment or otherwise improve their lot as employees.’”<sup>6</sup> Further, “mutual aid or protection” is not necessarily limited to activity directed at conditions that an employer has direct authority to change.<sup>7</sup>

The Board’s test for concerted activity is 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.”<sup>8</sup> Concerted activity 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.<sup>9</sup> In addition, the Board has found concerted activity where employees discuss shared

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<sup>5</sup> *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB No. 12, slip op. at 3 (Aug. 11, 2014).

<sup>6</sup> *Id.* (internal citations omitted).

<sup>7</sup> *See Nellis Cab Co.*, 362 NLRB No. 185, slip. op. at 2, 10 (Aug. 27, 2015) (finding that cab drivers’ protest regarding issuance of taxicab medallions was for mutual aid or protection even though taxicab authority was to make final decision because employer-taxi company “could be expected and did seek to influence that decision”); *Eastex v. NLRB*, 437 U.S. 556, 568 n.18 (1978).

<sup>8</sup> *Meyers Industries*, 281 NLRB 882, 885 (1986) (*Meyers II*), *enforced*, 835 F.2d 1481 (D.C. Cir. 1987), *cert. denied*, 487 U.S. 1205 (1988).

<sup>9</sup> *Id.* at 887.

concerns among themselves prior to any specific plan to engage in group action.<sup>10</sup> On the other hand, comments made “solely by and on behalf of the employee himself are not concerted.”<sup>11</sup> For example, in *Tampa Tribune*, the Board held that when an employee who raised a concern about favoritism was speaking “only for himself” and there was no evidence that his coworkers even shared his belief that favoritism existed, his complaint was “a personal gripe,” not protected concerted activity.<sup>12</sup>

We conclude initially that the employees’ Facebook comments constituted conduct for mutual aid or protection. Viewed together, the postings reference difficult employee interactions with customers, e.g., a customer who objected that [REDACTED] had to repeat [REDACTED] complaint to Employee 1, a customer who screamed at and blamed Employee 2 because a merchant would not accept a Health Savings Account card, and a customer who demanded that Employee 2 fix [REDACTED] address-change problem in three minutes. The Board has held that employee complaints about customer treatment are protected because these complaints relate directly to the employees’ daily working conditions.<sup>13</sup> Indeed, customer service representatives employed at call centers, like the employees here, spend much of their working time interacting with dissatisfied customers.<sup>14</sup> And studies have shown that call center employees can experience emotional exhaustion and other serious health effects from the “emotional labor” that the employees’ job duties require.<sup>15</sup> Additionally, while it is not necessary that the Employer have direct authority to change the working conditions being protested, the postings do address Employer business practices that affect customer dissatisfaction, e.g., problems with Health Savings Account cards, which, in turn, affect the

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<sup>10</sup> *Id.* (citing *Vought Corp.*, 273 NLRB 1290, 1294 (1984), *enforced*, 788 F.2d 1378 (8th Cir. 1986)).

<sup>11</sup> *Id.* at 885.

<sup>12</sup> *Tampa Tribune*, 346 NLRB 369, 371-72 (2006).

<sup>13</sup> See *Los Angeles Airport Hilton Hotel & Tower*, 354 NLRB 202, 214 (2009) (holding that employee’s displaying poster protesting customer harassment was protected concerted activity and the employer’s discipline of the employee for doing so was therefore unlawful), *adopted by three member panel*, 355 NLRB 602 (2010), *enforced in relevant part*, 665 F.3d 1295 (D.C. Cir. 2011).

<sup>14</sup> Danielle Van Jaarsveld & Winifred R. Poster, *Call Centers, Emotional Labor Over the Phone*, in *EMOTIONAL LABOR IN THE 21<sup>ST</sup> CENTURY: DIVERSE PERSPECTIVES ON EMOTION REGULATION AT WORK*, 153, 160 (Alicia A. Grandey, et al. eds., 2013).

<sup>15</sup> *Id.* at 166.

employees' working conditions.<sup>16</sup> Thus, because the employees were "trying to protect themselves from [uncomfortable] working conditions," their Facebook postings were activity for mutual aid or protection.<sup>17</sup>

We also conclude that the employees' Facebook comments are concerted. Unlike situations involving employee complaints that are solely of a personal nature,<sup>18</sup> multiple employees here posted shared concerns over working conditions during the (b) (6), (b) (7)(C) Facebook conversation.<sup>19</sup> The Board has recognized that discussions amongst employees complaining about their working conditions are an "indispensable preliminary step to employee self-organization" and are protected as long as they have "some relation to group action in the interest of the employees."<sup>20</sup> Further, it appears that the employee complaints related to ongoing problems with customer

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<sup>16</sup> Cf. *Edward's Restaurant*, 305 NLRB 1097, 1098 (1992) (employees' discussions of tips and tip policies constitute protected activity), *enforced*, 983 F.2d 1068 (6th Cir. 1992).

<sup>17</sup> *NLRB v. Washington Aluminum Co.*, 370 U.S. 9, 17 (1962).

<sup>18</sup> See, e.g., *Garage Floor Coating of Minnesota, LLC*, Case 18-CA-103727, Advice Memorandum dated October 25, 2013 (employee complaints about his working conditions were not shared by his co-workers and merely expressed an individual gripe); *Tasker Healthcare Group, d/b/a Skinsmart Dermatology*, Case 04-CA-094222, Advice Memorandum dated May 8, 2013 (Facebook comments reflecting employee's personal contempt for returning coworker and supervisor constituted individual gripe rather than shared concern over working conditions); *Wal-Mart*, Case 17-CA-25030, Advice Memorandum dated July 19, 2011 (employee complaint on Facebook about assistant manager "chew[ing him] out" when real fault was elsewhere was an individual gripe); *JT's Porch Saloon & Eatery, Ltd.*, Case 13-CA-46689, Advice Memorandum dated July 7, 2011 (employee Facebook post regarding tipping and raises not concerted where employee did not discuss the issues with fellow employees either before or after he posted it and none of his coworkers responded to the posting); *Martin House*, Case 34-CA-12950, Advice Memorandum dated July 19, 2011 (employee's Facebook discussion with her nonwork friends about what was happening on her shift was not concerted).

<sup>19</sup> See, e.g., *Phoenix Processor Limited Partnership*, 348 NLRB 28, 28 n.7, 46 (2006) (terminating employee who complained to other employees about wages and arduous schedule, which affected other employees as well as the complaining employee, was unlawful), *petition for review denied sub nom. Cornelio v. NLRB*, 276 F. App'x 608 (9th Cir. 2008), *cert. denied*, 555 U.S. 994 (2008).

<sup>20</sup> *Meyers II*, 281 NLRB at 887 (internal citations omitted).

dissatisfaction caused by the Employer's practices, e.g., Health Savings Account cards being rejected at certain merchant locations.<sup>21</sup> Thus, although there is no evidence that the employees discussed "group action" regarding these matters, we find that the comments, in addition to being protected, were also concerted.

## **B. The Employees Did Not Lose Protection Under the Act.**

In *Triple Play*,<sup>22</sup> the Board held that it will assess whether offsite use of social media to communicate with other employees or third parties has lost the protection of the Act under *Jefferson Standard*<sup>23</sup> and *Linn*.<sup>24</sup> Under *Jefferson Standard* and *Linn*, otherwise protected communications relating to a labor dispute remain protected unless "they are so disloyal, reckless, or maliciously untrue as to lose the Act's protection."<sup>25</sup> A labor dispute, defined broadly in Section 2(9) of the Act, encompasses "any controversy concerning terms, tenure or conditions of employment, . . . , regardless of whether the disputants stand in the proximate relation of employer and employee."<sup>26</sup>

In *Jefferson Standard*, the Supreme Court held that employee handbills were unprotected when made "at a critical time in the initiation of the company's business," were unrelated to any ongoing labor dispute, and constituted "a sharp, public, disparaging attack upon the quality of the company's product and its business policies, in a manner reasonably calculated to harm the company's reputation and reduce its income."<sup>27</sup> In applying the *Jefferson Standard* test, the Board has been careful "to distinguish between disparagement of an employer's product and the

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<sup>21</sup> The Region should further investigate employee discussion and activity regarding customer mistreatment before and after the June 1 Facebook conversation. If it appears that the June 1 conversation was actually only an isolated incident, the Region should contact the Division of Advice.

<sup>22</sup> *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 3-4 (Aug. 22, 2014), *enforced*, \_\_ F. App'x \_\_, 2015 WL 6161477 (2d Cir. 2015).

<sup>23</sup> *NLRB v. Electrical Workers Local 1229 (Jefferson Standard)*, 346 U.S. 464 (1953).

<sup>24</sup> *Linn v. Plant Guards Local 114*, 383 U.S. 53 (1966).

<sup>25</sup> *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 5.

<sup>26</sup> *Endicott Interconnect Technologies, Inc.*, 345 NLRB 448, 450 (2005), *enforcement denied on other grounds*, 453 F.3d 532 (D.C. Cir. 2006).

<sup>27</sup> *Electrical Workers Local 1229 (Jefferson Standard)*, 346 U.S. at 472.

airing of what may be highly sensitive issues.”<sup>28</sup> Activity that is otherwise protected under the Act does not lose its status simply because the activity is or could be prejudicial to the employer.<sup>29</sup> The Board has stated that it will not find a public statement unprotected unless it is “flagrantly disloyal, wholly incommensurate with any grievances which [employees] might have.”<sup>30</sup> Further, the Board has held that “[t]o lose the Act’s protection as an act of disloyalty, an employee’s public criticism of an employer must evidence ‘a malicious motive.’”<sup>31</sup>

In the instant case, the employees’ Facebook comments relate to a “labor dispute” under the *Jefferson Standard* test because they concern a controversy regarding terms and conditions of employment.<sup>32</sup> Specifically, the employees commiserated about customers being rude and abusive by, among other things, blaming employees for problems that they did not control, demanding that employees fix problems in an insufficient period of time, and screaming at employees. As described above, mistreatment by customers is a term or condition of employment. Further, while the existence of a “labor dispute” does not require that disputants stand in the proximate relation of employer and employee, the Facebook comments also suggest that the Employer’s business practices have contributed to the controversy.

With respect to whether the comments were “so disloyal” as to lose the protection of the Act, we first note that there is no evidence that they were made at a critical time in the initiation of the Employer’s business.<sup>33</sup> The Employer has been in business for decades. Nor does the evidence even suggest that the employees calculated to harm the Employer’s reputation or reduce its income.<sup>34</sup> The comments

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<sup>28</sup> *Valley Hospital Medical Center*, 351 NLRB 1250, 1252 (2007) (internal citations omitted), *enforced*, 358 F. App’x 783 (9th Cir. 2009).

<sup>29</sup> *Jimmy John’s*, 361 NLRB No. 27, slip op. at 4 & n.15 (Aug. 21, 2014).

<sup>30</sup> *MasTec Advanced Technologies*, 357 NLRB No. 17, slip op. at 6 (July 21, 2011).

<sup>31</sup> *Jimmy John’s*, 361 NLRB No. 27, slip op. at 4 (citing *Valley Hospital Medical Center*, 351 NLRB at 1252).

<sup>32</sup> See *Endicott Interconnect Technologies, Inc.*, 345 NLRB at 450 (where a layoff announcement sparked disagreement between management and employees affected, there was a labor dispute under Section 2(9)).

<sup>33</sup> See, e.g., *Jimmy John’s*, 361 NLRB No. 27, slip op. at 6; *Valley Hospital Medical Center*, 351 NLRB at 1253.

<sup>34</sup> See *id.* (finding that employee’s statement, that nurse-to-patient ratios were causing patients to not receive medications on time and that patients could be lying in

were not part of a campaign aimed at the public; rather, they were part of a social media conversation between employees that some nonemployees may have viewed by happenstance, because they were Facebook friends with one of the employees. Further, the employees' comments do not disparage the Employer's product, which is health insurance.<sup>35</sup> To the extent that the Employer's product arguably also includes customer service related to health insurance, the employees did not disparage the Employer's customer service. Rather, they protested their mistreatment by customers. Moreover, the comments were not "unrelated to the ongoing labor dispute"; as described above, they related directly to the controversy over customers mistreating employees.<sup>36</sup>

Finally, the Employer has not alleged that the comments were maliciously untrue. Statements are maliciously untrue if they are made with knowledge of their falsity or with reckless disregard for their truth or falsity.<sup>37</sup> The mere fact that statements are false, misleading, or inaccurate is insufficient to demonstrate that they are maliciously untrue.<sup>38</sup> The Board and courts have also recognized that statements of opinion or figurative expression, "rhetorical hyperbole," are incapable of being proved true or false in any objective sense.<sup>39</sup> Here, a number of employee statements in the Facebook conversation, such as the characterizations of customers as rude or mean, were mere rhetorical hyperbole and were devoid of direct statements of fact that could be challenged as false.<sup>40</sup> Additionally, the Employer does not allege,

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their own excrement, was protected because the statement was not made in a manner reasonably calculated to harm the employer's reputation and reduce its income).

<sup>35</sup> *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 5 (comments about employer's failure to properly prepare paperwork, which caused employees to owe back taxes, were not about the employer's products or services).

<sup>36</sup> *Cf. Electrical Workers Local 1229 (Jefferson Standard)*, 346 U.S. at 468, 476 (handbills to the public communicating that the employer did not have the proper equipment to bring customers the quality of programming that other cities received without any mention of labor dispute, unprotected).

<sup>37</sup> *Jimmy John's*, 361 NLRB No. 27, slip op. at 3 (citing *MasTec Advanced Technologies*, 357 NLRB No. 17, slip op. at 5).

<sup>38</sup> *Id.*

<sup>39</sup> *Steam Press Holdings v. Hawaii Teamsters and Allied Workers Union, Local 996*, 302 F.3d 998, 1005-07 (9th Cir. 2002) (citing various cases).

<sup>40</sup> *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 6 (finding that employee's characterization of his boss as an "asshole" cannot reasonably be read as a

and there is no evidence that suggests, that employee statements regarding what customers said to them were untrue, let alone made with knowledge of or reckless disregard to their falsity. Thus, under *Jefferson Standard* and *Linn*, the employees did not lose the protection of the Act.

While the Board held in *Triple Play* that *Jefferson Standard* and *Linn* apply to the type of employee social media use at issue here, we conclude that the employees likewise would retain the Act's protection under a "totality of the circumstances" test.<sup>41</sup> The location of the conversation, on a private Facebook page, with no evidence that any customers saw the posts, would weigh in favor of retaining protection of the Act.<sup>42</sup> The subject matter of the posts, being directly related to employee working conditions, would also weigh in favor of retaining the Act's protection.<sup>43</sup> Moreover, the employees did not identify any customers by name, nor is there any evidence that the employee postings disrupted the Employer's operations or its relationships with its customers.<sup>44</sup>

While some of the language that the employees used was vulgar, Board law is protective of employee speech concerning working conditions, even where it is vulgar and offensive, as long as it is not "so violent or of such serious character as to render

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statement of fact); *El San Juan Hotel*, 289 NLRB 1453, 1455 (1988) (leaflet's "references to the trustee as a 'Dictator' and as 'Robin Hood' [were] obvious rhetorical hyperbole"); *NLRB v. Container Corp. of America*, 649 F.2d 1213, 1214, 1215-16 (6th Cir. 1981) (per curiam) (newsletter criticizing company's grievance process and calling the general manager a "slave driver" was protected rhetoric), *enforcing in relevant part*, 244 NLRB 318 (1979).

<sup>41</sup> See, e.g., *Pier Sixty, LLC*, 362 NLRB No. 59, slip op. at 2 (Mar. 31, 2015) (noting that a multi-factor totality of the circumstances test had been applied by the judge and that it was applying that test absent exceptions from the parties); see also *Richmond District Neighborhood Center*, 361 NLRB No. 74, slip op. at 3 (Oct. 28, 2014) (stating that employees' Facebook posts lost the protection of the Act because the posts advocated "serious and pervasive" insubordination).

<sup>42</sup> *Pier Sixty, LLC*, 362 NLRB No. 59, slip op. at 3 (comments were made outside of employer's facility, which weighed in favor of retaining protection of the Act).

<sup>43</sup> *Id.* (finding that the subject matter of employee comments involved management's disrespectful treatment of service employees and thus did not weigh in favor of finding that employee lost the Act's protection).

<sup>44</sup> *Id.* (no evidence that employees' comments interrupted the employer's work environment or its relationship with its customers).

the employee unfit for further service.”<sup>45</sup> Based on the tone, language, and subject matter of the employees’ Facebook conversation, we conclude that the statement from Employee 3 to Employee 2, encouraging [REDACTED] to “tell [the customer] to take [REDACTED] card and shove it where the sun doesn’t shine,” is mere hyperbole rather than a serious threat (or encouragement) of violence.<sup>46</sup> For this reason, we also conclude that the employees in the instant case, unlike the employees in *Richmond District Neighborhood Center*, did not advocate serious and pervasive insubordination, and thus were not rendered “unfit for further service” on these grounds.<sup>47</sup> Finally, the Board has found, in a variety of cases, that employees’ vulgar or profane language does not necessarily cost them the protection of the Act if it is part of the *res gestae* of otherwise protected activity.<sup>48</sup>

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<sup>45</sup> *St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 204-05 (2007), *enforced*, 519 F.3d 373 (7th Cir. 2008).

<sup>46</sup> *Richmond District Neighborhood Center*, 361 NLRB No. 74, slip op. at 3 (contrasting a “joke or hyperbole divorced from any likelihood of implementation” from lengthy exchange repeatedly advocating serious and pervasive insubordination); *Leasco, Inc.*, 289 NLRB 549, 549 n.1 (1988) (finding that an employee did not lose the Act’s protection by telling a company official that “if you’re taking my truck, I’m kicking your ass right now,” as it was not a serious threat of physical harm in the context of the workplace’s culture).

<sup>47</sup> 361 NLRB No. 74, slip op. at 3 (employees engaged in “pervasive advocacy of insubordination comprised of numerous detailed descriptions of specific insubordinate acts,” and thus were unfit for further service). *Cf. Hahner, Foreman & Harness, Inc.*, 343 NLRB 1423, 1424 (2004) (employee’s joke about work slowdown did not lose protection of the Act).

<sup>48</sup> *See, e.g., Pier Sixty, LLC*, 362 NLRB No. 59, slip op. at 2, 4 (holding that a Facebook comment stating, “[Supervisor] is such a NASTY MOTHER FUCKER don’t know how to talk to people!!!! Fuck his mother and his entire fucking family!!!! What a LOSER!!!! Vote YES for the UNION!!!!!!” was protected under the circumstances); *Beverly Health & Rehabilitation Services*, 346 NLRB 1319, 1322-23 (2006) (employee did not lose protection for telling fellow employee, in the presence of other employees, to “mind [her] fucking business” unaccompanied by insubordination, physical contact, or threat of physical harm); *Traverse City Osteopathic Hospital*, 260 NLRB 1061, 1061-62 (1982) (employee did not lose protection for referring to fellow employee as “a brown-nosing suck-ass” in a meeting with other employees; among other things, use of profanity in workplace was not uncommon and employee’s outburst was, to a degree, provoked by coworker’s intemperate and profane comments about unionization), *enforced*, 711 F.2d 1059 (6th Cir. 1983). *Cf. Honda of America Mfg.*, 334 NLRB 746, 747 (2001) (employee’s newsletter directing one named employee to come “out of the closet” and “come out of hiding” and using the phrase “bone us” to critique the

Accordingly, the Region should issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(1) by terminating the three employees.

/s/  
B.J.K.

ADV.19-CA-156038.Response.PremeraBlueCross. (b) (6), (c)

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employer's bonus program could not be dismissed as impulsive behavior and was so offensive as to lose the Act's protection).