



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

January 30, 2019

[REDACTED]

Re: SecTek, Inc.
Case 05-CA-190674

Dear [REDACTED]

Your appeal from the Acting Regional Director's partial refusal to issue complaint has been carefully considered. The appeal is denied.

With respect to the allegations that the Employer engaged in unlawful [REDACTED] or [REDACTED] of employees' union activities, the evidence fails to establish that the Employer's interview or its reference to [REDACTED] evidence constituted unlawful coercion under Section 8(a)(1) of the National Labor Relations Act. Specifically, the evidence shows that there was a representative from the Union present at the interview and that the purpose of the interview was to investigate the employee's alleged [REDACTED] of their [REDACTED], not to determine if the employee was engaging in union activity. Likewise, the Employer's use of [REDACTED] was to determine if employees had engaging in workplace misconduct by abandoning their posts, not to surveil their union activities.

With respect to the allegations that the Employer unlawfully disciplined employees, the evidence fails to establish that a nexus between the employees' protected union activity and their discipline. With regard to the [REDACTED], the evidence shows that the employees were [REDACTED] based on the Employer's belief that their [REDACTED] were part of an unprotected strike in violation of the collective bargaining agreement, and that the employees were allowed to [REDACTED] to work upon showing justification for their [REDACTED].

Regarding the allegation that [REDACTED] employees were unlawfully terminated, when an employer discharges an employee for misconduct arising out of a protected activity, the employer has the burden of showing that it held an honest belief that the employee engaged in serious misconduct. *NLRB v. Burnup & Sims*, 379 U.S. 21, 23 (1964). Once the employer establishes an honest belief, the burden shifts to the charging party to show that the misconduct did not in fact occur. *Rubin Bros. Footwear, Inc.*, 99 NLRB 610, 611 (1952) *enf. denied on other grounds* 203 F.2d 486 (5th Cir. 1953). Here, the evidence shows that Employer had an honest belief that the employees had engaged in misconduct by instigating the unprotected strike. While you argue on appeal that witnesses give written statements supporting the employees' positions, this alone does not refute the Employer's sincere belief that the misconduct occurred

or establish that the misconduct did not in fact occur. On appeal you also contend that evidence from an Inspector General's investigation was not considered by the Regional Office. As a result, the Regional Office conducted a supplemental investigation. The evidence shows that the terminated employees were not part of the Inspector General's complaint. Accordingly, this evidence would not alter the Regional Director's determination.

Contrary to your remaining contentions on appeal, the evidence fails to establish that the Employer prolonged responses to delay the processing of the charge. Rather, the evidence shows that the Employer cooperated with the investigation and the delay was largely due to a third party's challenge of a subpoena. In addition, there is also no evidence to establish that the Employer altered witness statements. Finally, the Employer's willingness to settle the meritorious allegations does not imply guilt. Accordingly, your appeal is denied.

Sincerely,

Peter Barr Robb
General Counsel



By: _____

Mark E. Arbesfeld, Director
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