



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

February 3, 2020

[REDACTED]

Re: H. Lee Moffitt Cancer Center and Research
Institute, Inc. d/b/a Moffitt Cancer Center
Case 12-CA-252206

Dear [REDACTED]

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

The National Labor Relations Act aims to protect workers' freedom of association and self-organization for mutual aid and protection. To find that an employee engaged in protected concerted activity, the Board requires that the activity "be engaged in with or on the authority of other employees, and not solely by and on behalf of the employee" himself. Concerted activity also includes "circumstances where individual employees seek to initiate or to induce or to prepare for group action," including where employees discuss shared concerns among themselves prior to any specific plan to engage in group action. *Meyers Industries (Meyers II)*, 281 NLRB 882, 885 (1986). On the other hand, comments made "solely by and on behalf of the employee himself" are not concerted. *Id.* at 887.

Once the activity engaged in by the employee is found to be concerted, a violation will be found if, in addition, the employer knew of the concerted nature of the employee's activity, the concerted activity was protected by the Act, and the adverse employment action at issue (e.g., discharge) was motivated by the employee's protected concerted activity. *Meyers Industries (Meyers I)*, 268 NLRB 493, 497 (1984). Only after such a showing does the inquiry turn to whether the employer would have taken the same action in the absence of the protected conduct. *See Wright Line*, 251 NLRB 1083 (1980), *enforced*, 662 F.2d 899 (1st Cir. 1981).

Here, the evidence failed to establish that you engaged in any conduct with your coworkers or on behalf of your coworkers concerning your terms and conditions of employment. While you and a coworker engaged in the conduct under consideration together, it appears that your actions concerned a personal matter. Thus, we find that the Employer did not discharge you for reasons violative of the National Labor Relations Act.

The appeal is denied.

Sincerely,

Peter Barr Robb
General Counsel



By: _____

Mark E. Arbesfeld, Director
Office of Appeals

cc: DAVID COHEN
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