

**From:** (b) (6), (b) (7)(C)  
**To:** [Ohr, Peter S.](#); [Nelson, Daniel N.](#); [Prokop, Paul](#); [Greenhill, Jay B.](#)  
**Cc:** [Bock, Richard](#); [Szapiro, Miriam](#); [Dodds, Amy L.](#); [Belin, Jeremy S.](#); [Shorter, LaDonna](#)  
**Subject:** 7 Gates Mediterranean Grill, Case 13-CA-255603,  
**Date:** Tuesday, June 30, 2020 2:14:31 PM

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The Region submitted this case for advice as to whether the Employer violated Section 8(a)(1) by discharging the Charging Party in retaliation for protected concerted activities, and by prohibiting employees from discussing terms and conditions of employment with third parties. We conclude that the Employer did not violate Section 8(a)(1) in either regard.

First, we conclude that the Charging Party was not engaged in protected concerted activities when (b) (6), (b) (7)(C) posted on the Employer's "WhatsApp" chat group announcing that (b) (6), (b) (7)(C) had been hospitalized with food poisoning, likely from a salad prepared by a restaurant coworker who did not wear gloves. Although employees receive restaurant meals as an employment benefit, the Charging Party's post did not reference the Employer's meal policy or other working conditions, much less seek to initiate, induce, or prepare for group action. Nor is there any evidence that (b) (6), (b) (7)(C) post related to prior group concerns. *See, e.g., Five Star Transportation, Inc.*, 349 NLRB 42, 44-45 (2007) (two drivers' letters to school committee were not protected where they expressed "generalized safety concerns, as opposed to the drivers' common concerns involving their terms and conditions of employment"), *enforced*, 522 F.3d 46 (1st Cir. 2008). Rather, at the heart of it, the Charging Party's post amounts to a critique of (b) (6), (b) (7)(C) coworker's handwashing practices, which is more akin to "mere griping." *See Quicken Loans, Inc.*, 367 NLRB No. 112, slip op. at 2 (Apr. 10, 2019) (finding brief discussion focusing on employee's complaint about receiving customer call not concerted activity). Nor was (b) (6), (b) (7)(C) conduct "inherently concerted." The Board has never held that discussions of health and safety issues are "inherently concerted" and, in any event, the Charging Party did not raise workplace health and safety issues. Although the Board has expressed an interest in reviewing the "inherently concerted" line of cases, *see Alstate Maintenance, LLC*, 367 NLRB No. 68, slip op. 1 n. 2 (Jan. 11, 2019), this case would not be a good vehicle for that purpose.

Second, we conclude the Employer did not unlawfully prohibit employees from discussing terms and conditions of employment with third parties, in a rule or otherwise. In its position statement to the Region, the Employer stated that the Charging Party's claim that (b) (6), (b) (7)(C) became ill because (b) (6), (b) (7)(C) ate a salad prepared by a chef without gloves was a serious accusation lacking proof, potential customers could see the post, "discussing work matters with non-employees (even previous employees) is not acceptable in any work environment," and the Employer was concerned about the potential harm to its reputation in a competitive field. Although one sentence in the position statement, read in isolation, could constitute a blanket prohibition on discussing terms and conditions of employment with third parties, there is no evidence the Employer communicated any such restrictions to the Charging Party. Indeed, the Employer told the Charging Party (b) (6), (b) (7)(C) was being discharged for (b) (6), (b) (7)(C) WhatsApp post, but it did not specify that (b) (6), (b) (7)(C) or other employees could not discuss workplace issues with third parties. Accordingly, the Employer did not make an unlawfully coercive statement. Finally, we note that neither a statement to the Charging Party alone nor a sentence in a position statement would constitute a rule subject to the *Boeing* analysis. *See Shamrock Foods Co.*, 369 NLRB No. 5, slip op. at 4 (Jan. 7, 2020) ("[t]he Board has repeatedly held that a statement made to a single employee is not the promulgation of a rule for the entire workforce" (citations omitted)).

Accordingly, the charges should be dismissed in their entirety, absent withdrawal. This email closes

this case in Advice as of today. Please feel free to contact us with questions or concerns.

(b) (6), (b) (7)(C)

