A Survey of Social Media Issues Before the NLRB

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Table of Contents

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I. Executive Summary

The intersection of traditional labor law and social media has presented many new issues, and some old issues with new twists, for the National Labor Relations Board (NLRB), employers, and other stakeholders.

A survey of publicly available materials indicates that the NLRB has reviewed more than 129 cases involving social media in some way. While most of these cases are at the very initial stage, and may not be meritorious at all, some are more advanced. At least two Board decisions have social media components, as do another two decisions by administrative law judges. There are at least seven settlement agreements involving social media cases and the Board's General Counsel has issued complaints in an additional four cases. The General Counsel has also issued ten memoranda involving social media, eight of which are opinions from the Division of Advice.

The issues most commonly raised in the cases before the Board allege that an employer has overbroad policies restricting employee use of social media or that an employer unlawfully discharged or disciplined one or more employees over contents of social media posts.

With respect to employer policies restricting employee use of social media, our review of cases found many specific policies alleged to be overbroad, including those that restrict discussion of wages, corrective actions and discharge of co-workers, employment investigations, and disparagement of the company or its management. The context in which the policy was adopted and even the issue of whether a rule or policy has been actually adopted are also important in these cases.

The issues raised with respect to employer discharge or discipline of employees based on their social media posts include the threshold matter of whether the subject of social media posts is protected by the Act, as well as whether the employer unlawfully threatened, interrogated, or surveilled employees.

Additional issues revealed in our survey concern whether the employer bargained with an existing union over a social media policy and union communication using social media. It is, however, important to emphasize that a significant percentage of cases in our survey involved non-union employers with no union activity.

The Board has only just begun to address these many important issues, and it is, of course, hard to speculate as to how the Board will rule as these cases develop and whether those decisions will withstand judicial scrutiny. It is hoped that this survey can assist employers and counsel identify issues with which they should be aware as they grapple with the application of labor law to employee use of social media.

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II. Background

Most employers had probably never considered how the development of Facebook and other social media would interact with labor law until the National Labor Relations Board (NLRB) issued a complaint on October 27, 2010, against a Connecticut ambulance company alleging, among other things, that an employee was disciplined for posting comments about a dispute with her employer on her Facebook page.[1]

While this case was settled, recent reports have identified other cases before the Board involving social media.[2] In addition, at a Congressional hearing in April, Acting General Counsel Lafe Solomon indicated that the Board had several such charges that it was investigating.[3] Also in April, the General Counsel issued a memorandum directing all regions to submit cases to the Division of Advice if they involve "employer rules prohibiting, or discipline of employees for engaging in, protected concerted activity using social media, such as Facebook or Twitter."[4]

Consequently, the U.S. Chamber of Commerce submitted a Freedom of Information Act request to the Board seeking copies of all charges, complaints, and completed settlements related to social media. We received a significant amount of information, including 117 charges, 7 complaints, and 5 settlement agreements.[5] As we reviewed this and other publicly available information from the NLRB's website and other sources, we were surprised to learn that there have already been at least two Board decisions involving social media and that the General Counsel's Division of Advice had written about these issues as early as 2009.

The purpose of this survey is to summarize the publicly available information obtained through our FOIA request and other available sources regarding the NLRB's caseload related to social media in an effort to help reveal the many areas where social media and labor law intersect—areas that will confront the Board, employers, and other stakeholders in the coming months and years. While every attempt has been made to be comprehensive, we have no doubt that there may be cases we have missed and indeed many new charges may have been filed in the time since the NLRB responded to our request. If you are aware of cases not referenced in this report, we would be interested in learning about them.

Finally, we should note that we have made some decisions to limit the scope of this project. We focus primarily on issues raised through use of Facebook, Twitter, and

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[1] *American Medical Response of Connecticut*, Case No. 34-CA-12576.
[2] Such as the Advice Memorandum in *Lee Enterprises d/b/a Arizona Daily Star*, Case No. 28-CA-23267 (April 21, 2011) and complaints filed in *Hispanics United of Buffalo*, Case No. 3-CA-27872, and *Karl Knauz Motors, Inc. d/b/a Knauz BMW*, Case No. 13-CA-46452.
[3] See http://www.nlrbinsight.com/2011/04/nlrb-actively-considering-election-rulemaking/.
[4] General Counsel Memorandum 11-11, Mandatory Submissions to Advice (April 12, 2011).
[5] The NLRB responded to our FOIA request on May 5, 2011.

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similar channels. There are additional cases involving very similar issues, such as employees posting information onto more traditional web pages.[6] Clearly, these cases will inform the development of the law as it relates to social media. However, we leave that discussion for another day.

III. Documents Reviewed for This Survey

In completing this survey, we reviewed several types of NLRB documents, including charges, complaints, decisions issued by Administrative Law Judges (ALJs), and decisions issued by the National Labor Relations Board. We also reviewed different types of memoranda from the NLRB General Counsel's office and publicly available news stories.

A charge is a one-page form alleging that an employer or a union has committed an unfair labor practice. Technically any person may file a charge, but in practice typically employees or their representatives (including unions and private lawyers) file charges against employers. Employees or employers typically file charges against unions.

While the charging party must provide some information about the basis for the alleged unlawful activity, that information can be very general. Many charges provided as a result of our FOIA request were very short allegations such as "the employee was discharged for engaging in protected concerted activity."[7] On the other hand, other charges provide much more detailed information about the accusations.

After a charge is filed, the Board's General Counsel, through the Board's regional offices, will conduct an investigation. The investigation will include discussions with the charging party and the party alleged to have committed the unfair labor practice. The regional office then makes a determination as to whether the charge has merit. Most charges filed with the Board are not meritorious.[8]

If the General Counsel's office finds that a charge has merit, as a general rule it will prosecute the case. If it does so, it will issue a complaint. Complaints are significantly more detailed than charges. They set out the prima facie case against the employer and generally show the outline of the argument the General Counsel will use to attempt to prove the unfair labor practice charge. The overwhelming majority of meritorious cases are settled, either before or after a complaint is issued.

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[6] *See, e.g.*, *Endicott Interconnect Technologies, Inc. v. NLRB*, 453 F.3d 532 (DC Cir. 2006).

[7] In the response to our FOIA request, the Board's FOIA officer noted that the cases were identified and provided by regional offices as "being cases involving employee use of social media. In that regard, it may not be apparent from the face of some of the documents that the case involves social media."

[8] In fiscal year 2009, 36.6 percent of the 22,943 charges filed with the Board were found to have merit. See Seventy-Fourth Annual Report of the National Labor Relations Board at 5-6, available at: http://www. nlrb.gov/sites/default/files/documents/119/nlrb2009.pdf.

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Unfair labor practice charges are heard first by Administrative Law Judges (ALJs), who issue a written decision after parties have an opportunity for a hearing and the submission of briefs. ALJ opinions usually contain an extensive discussion of the issues, facts, and arguments of the General Counsel and the respondent. Either the General Counsel or the charged party may appeal an ALJ decision to the full Board. Board opinions may largely adopt the findings and recommendations of the ALJ, or they may disagree to a greater or lesser extent and offer new findings and orders.

Also relevant are different types of memoranda issued by the General Counsel. The first type is Advice Memoranda, which are prepared by the General Counsel's Division of Advice. These memos evaluate the facts of particular cases and advise the regional office where the charge originated whether it should issue a complaint.

The second type of memoranda are simply referred to as General Counsel Memoranda. These are memos issued by the General Counsel to field offices and/or the Washington office to provide policy guidance. The General Counsel is also responsible for a third type of memo, the Operations-Management Memoranda. This type of memo is used to give direction in case handling matters and other internal Board matters.

To supplement these materials, we also consulted numerous media reports, largely through free on-line services, but also a few subscription services.

IV. Trends and Issues in Social Media Cases Before the Board

The vast majority of the cases we reviewed through this survey fall into two general categories: employer policies restricting employee use of social media that are alleged to be overbroad and employer discharge or discipline based on an employee's comments posted through social media channels. Additional issues concern whether the employer bargained with a union over a social media policy and union communications during an organizing campaign.

A. Employer Policies

The specific employer policies alleged to be overbroad in the cases we have reviewed vary considerably. While our review did not provide many substantial excerpts from employer policies, we have set out the text from fives cases in section VII of this survey.

In some cases, the threshold issue of whether the employer has adopted a rule or policy is important. For example, in one Division of Advice memo, at issue was whether a supervisor's instructions to an employee to "stop airing his grievances or commenting about the employer in any public forum" were orally promulgated workplace rules. Advice opined that the statement was made solely to one employee in the context of

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discipline, in response to inappropriate conduct, and thus was not an orally promulgated rule.[9]

Context is clearly important as well. For example, the Division of Advice noted that a statement prohibiting employees from disparaging senior management could chill exercise of section 7 rights. However, the statement was found in a comprehensive Social Media Policy and Advice found that in this context no reasonable employee could have read the policy to chill exercise of section 7 rights.[10]

As to the breadth of employer policies, some charges have alleged that employer policies are overbroad by prohibiting solicitation during non-work time.[11] The majority of the allegations, however, aver that the rule or policy restricts discussions permitted by the Act. Employer policies that restrict discussion of wages,[12] corrective actions and discharge of co-workers,[13] employer investigations,[14] and the like are all the subject of complaints. For example, in one complaint, the employer was alleged to have a policy prohibiting "carrying of tales, gossip, and discussion regarding company business or employees."[15] Likewise, employer policies prohibiting disparagement of the company or executives are also issues in many cases.[16] While there is significant precedent dealing with non-disparagement rules and employee loyalty in other contexts,[17] application of the precedent to social media is clearly a major developing issue.

Some employer policies are also alleged to expressly prohibit communications to certain people or categories of people. For example, one employer was alleged to have a policy restricting employee conversations with the media,[18] while another restricted conversations with anyone, including co-workers.[19]

B. Discharge or Discrimination Based On Social Media Posts

Many cases allege that an employer discharged or otherwise improperly took action against one or more employees due to their social media posts. These issues include the

[9] Advice Memorandum, *Lee Enterprises, Inc. d/b/a Arizona Daily Star*, Case No. 28-CA-23267 (April 21, 2011).
[10] Advice Memorandum, *Sears Holdings (Roebucks)*, Case No. 18-CA-19081 (December 4, 2009).
[11] *Ingham Regional Medical Center*, Cases No, 07-CA-52070, 07-CA-52232 (settlement agreement approved November 4, 2009.
[12] *Healthcare Ventures of Ohio, LLC*, Case No. 08-CA-38825 (settlement agreement signed September 14, 2010).
[13] *Qualitest Pharmaceuticals*, Case No. 10-CA-38757 (complaint issued February 23, 2011).
[14] *Healthcare Ventures of Ohio, LLC*, Case No. 08-CA-38825 (settlement agreement signed September 14, 2010).
[15] *Qualitest Pharmaceuticals*, Case No. 10-CA-38757.
[16] *See American Medical Response of Connecticut*, Case No. 34-CA-12576 (settlement announced February 8, 2011); *ER Solutions, Inc.*, Case No. 19-CA-32943.
[17] *See NLRB v. Local Union 1229, IBEW (Jefferson Standard Broadcasting Co.)*, 346 U.S. 464 (1953).
[18] *Sodexo, Inc.*, Case No. 09-CA-46032.
[19] *See Innovation Ventures d/b/a Living Essentials, LLC*, Case No. 25-CA-031722; *MET Inc.*, Case No. 16-CA-27778.

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threshold matter of whether the posts concerned protected activity, as well as whether the employer unlawfully threatened, interrogated, or surveilled employees.

The threshold question of whether the social media posts were protected activity is clearly critically important in examining these cases. The Division of Advice has now examined at least six cases in which it opined that the posts at issue are outside the scope of section 7. In one case, an employee made Facebook posts suggesting that health care workers in an acute care facility might "withhold care if they were personally offended by the patients."[20] In another case, Advice found Tweets made by a newspaper reporter, including "You stay homicidal, Tucson, See Star Net for the bloody deets," were outside the scope of section 7 and not protected.[21]

In late June and July, 2011, the Division of Advice issued four memoranda involving the discharge or discipline of employees for the content of various Facebook posts. In each case, the employer found that the posts did not involve protected concerted activity. For example, one of these cases did not involve any mention of terms or conditions of employment,[22] while another was noted to be "mere griping," which is unprotected, as contrasted with group action that would be protected.[23] Another of these cases involved a post made on the Facebook page of a U.S. Senator. However, while the post discussed wages paid by the employer and other working conditions, there was no evidence of concerted activity.[24]

Also illustrative of the threshold issue of whether the employee was engaged in protected concerted activity is a letter from a region dismissing a charge.[25] In this case, an employee was demoted after posting that he expressed his desire for the employer's building to collapse during an earthquake while members of management were inside. The region determined that the comments could reasonably be considered to be disloyal and were unrelated to working conditions.

In some cases, the connection with section 7 rights is relatively clear, for example one complaint alleges employees were making Facebook posts about not receiving their paychecks on time.[26] In another case, the employer allegedly discharged employees after

[20] Advice Memorandum, *Monmouth Ocean Hospital Services Corp. d/b/a MONOC*, Cases 22-CA-29093, 22-CA-29084, 22-29234 (May 5, 2010).
[21] Advice Memorandum, *Lee Enterprises, Inc. d/b/a Arizona Daily Star*, Case No. 28-CA-23267 (April 21, 2011).
[22] Advice Memorandum, *Martin House*, Case No. 34-CA-12950 (July 19, 2011).
[23] Advice Memorandum, *Wal-Mart*, Case No. 17-CA-25030 (July 19, 2011).
[24] Advice Memorandum, *Rural Metro*, Case No. 25-CA-31802 (June 29, 2011).
[25] *Wal-Mart Distribution Center 6018*, Case No. 26-CA-24000 (June 30, 2011).
[26] *Baysys Technologies, LLC*, Case No. 5-CA-36314.

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they made posts related to whether employees were doing enough to help the nonprofit employer's clients.[27]

In other cases, the section 7 connection is less clear, such as one case alleging that an employee was discharged from his job as a car salesman after posting complaints about the pedestrian quality of the food served at a sales event. The NLRB complaint characterized the posting as being about "concerns about [the employer's] handling of an event which could impact" the earnings of salespeople. Meanwhile, the employer has responded that the discharge was not for Facebook posts related to the sales event, but an entirely different post involving a co-worker involved in a car accident during a test drive.[28]

One case decided by the Board involved allegations that the employer had unlawfully threatened employees by warning employees to be careful in their use of social networking. However, the ALJ, affirmed by the Board, found that the employer's warnings were "didactic, not coercive."[29] Also, the ALJ held that the employer's displeasure with negative social media posts was properly characterized as protected free speech when she wondered why employees would want to be friendly relations with former employees who wanted the employer to go out of business.[30]

Employers have also been alleged to have unlawfully interrogated employees about the identity of employees who have reportedly engaged in internet discussions about subjects protected by section 7.[31]

Some cases have questioned whether the employer engaged in unlawful surveillance related to employee social media posts. In one case, the Division of Advice examined a case in which Facebook posts by an employee and union president were provided to the employer by co-workers. Advice concluded that the employer had not unlawfully engaged in surveillance because it received copies of Facebook posts, unsolicited, from co-workers, that it notified employees and the union president that it had received the posts from co-workers, and the union president had restricted access to her Facebook page to "friends."[32] The facts in this case do not make it seem like a close case, but it is not hard to imagine scenarios where the analysis becomes significantly more difficult.

Further illustrating the many ways that social media posts can come to the attention of management is a case in which the employer learned of the posts when a local

[27] *Hispanics United of Buffalo, Inc.*, Case No. 3-CA-27872.
[28] *Karl Knauz Motors, Inc. d/b/a Knauz MNW*, Case No. 13-CA-46452.
[29] *Salon/Spa at Boro, Inc.*, 356 NLRB No. 69 (Dec. 30, 2010).
[30] *Id.*
[31] *See Healthcare Ventures of Ohio, LLC*, Case No. 08-CA-38825.
[32] *Monmouth Ocean Hospital Services Corp. d/b/a MONOC*, Cases No. 22-CA-29008, 22-CA-29234, 22-CA-29234, General Counsel Advice Memorandum (May 5, 2010).

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newspaper printed them.[33] Meanwhile, in another case an employer that operated a residence for homeless people with severe mental illness, learned of the posts through a former client that had been "friended" by the employee.[34]

C. Failure to Bargain

Several cases have alleged that an employer unilaterally adopted a social media or similar policy without negotiating with the union, albeit these cases are short on details. For example, in one complaint, the GC simply alleged that the employer promulgated a social media policy without proper notice to the union representing employees covered by the policy and without providing the union an opportunity to bargain over the policy or its effects.[35]

D. Union Communication

There are at least two cases where the employer looked to social media posts as evidence that the union was making improper inflammatory appeals to employees' racial or ethnic prejudices during organizing campaigns. In one case, the ALJ found that the posts were factual, not inflammatory, and in another, the ALJ stated that the employer had not demonstrated that the employee making the posts was a union agent, so neither claim was successful.[36]

One additional interesting case examined a union's use of Facebook and YouTube to post videos of interrogations that union agents made of non-union construction employees working at a contractor that the union hoped to organize. In this case, while the ALJ found the union's actions restrained and coerced employees, it did not do so with respect to activity protected by section 7 and consequently the ALJ found that union's actions did not violate the Act.[37]

[33] *Baysys Technologies, LLC*, Case No. 5-CA-36314.
[34] Advice Memorandum, *Martin House* ,Case No. 34-CA-12950 (July 19, 2011).
[35] *Children's Hospital of Pittsburg of UPMC*, Case No. 06-CA-37047.
[36] *See Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino*, 356 NLRB No. 111 (March 17, 2011); *Ashland Nursing & Rehabilitation Center*, Case No. 5-RC-16580 (ALJ Decision January 3, 2011).
[37] *Metropolitan Regional Council of Carpenters (Forcine Concrete & Construction Co., Inc.),* Case No. 04-CB-10520 (ALJ Decision May 18, 2011).

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V. Summaries of Memoranda, Cases, Complaints, and Settlement Agreements

A. General Counsel Memoranda

1. *Sears Holdings (Roebucks)* (Dec. 4, 2009).

Sears Holdings (Roebucks),[38] was submitted to Advice to review aspects of the employer's Social Media Policy for a determination of whether the policy reasonably tended to chill section 7 activity in violation of section 8(a)(1) of the Act. The Memo concludes that the policy "cannot reasonably be interpreted in a way that would chill section 7 activity."

The employer's Social Media Policy was adopted in the context of a union organizing campaign that utilized various forms of online media, including Facebook and MySpace. Many employees also communicated with colleagues through an e-mail listserv hosted by Yahoo that is unaffiliated with the employer. Participants on the listserv routinely use the list to discuss the union campaign and other work-related concerns.

The Social Media Policy stated "[I]n order to ensure that the Company and its associates adhere to their ethical and legal obligations, associates are required to comply with the Company's Social Media Policy. The intent of this policy is not to restrict the flow of useful and appropriate information, but to minimize the risk to the Company and its associates."

The policy also had a list of "prohibited subjects" that included "disparagement of company's or competitor's products, services, executive leadership, employees, strategy, and business prospects." The list also included confidential information, explicit sexual references, illegal drugs, and disparagement of any race, religion, gender, sexual orientation, disability, or national origin, among other things.

In analyzing the inquiry, Advice stated that the proper inquiry is whether maintenance of the work rule would reasonably tend to chill employees in their exercise of section 7 rights, citing *Lafayette Park Hotel*.[39] This test was further refined in *Lutheran Heritage Village – Livonia*[40] so that if the rule does not explicitly restrict section 7 protected activity, a violation will only be found if "employees would reasonably construe the language to prohibit section 7 activity; the rule was promulgated in response to union activity; or the rule has been applied to restrict the exercise of section 7 rights."

Advice noted that the key to determining "reasonableness" is the context of the rule. In applying this test, Advice notes that this case is similar to a rule at issue in *Tradesmen*

[38] Advice Memorandum, Case No. 18-CA-19081 (December 4, 2009).
[39] 326 NLRB 824 (1998).
[40] 343 NLRB 646 (2004).

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International,[41] where the Board considered a rule including "statements which are slanderous or detrimental to the company" on a list of prohibited conduct along with "sexual or racial harassment" and "sabotage." Advice noted that while a ban on "'[d]isparagement of company's … executive leadership, employees [or] strategy' could chill the exercise of section 7 rights if read in isolation, the Policy as a whole provides sufficient context to preclude a reasonable employee from construing the rule as a limitation on section 7 conduct.'"

2. *Monmouth Ocean Hospital Services Corp. d/b/a/ MONOC* (May 5, 2010)

Monmouth Ocean Hospital Services Corp. d/b/a/ MONOC[42] was submitted to advice as to, among other things, (1) whether the employer violated the act by disciplining employees based on Facebook posts and reporting those posts to state agencies; and (2) whether the employer engaged in unlawful surveillance through its review of Facebook pages and emails provided to it by other employees. As to these issues, the Memorandum advised that no violation had occurred.

The employer operated 15 acute care hospitals and related businesses. A union had been certified to represent a unit of emergency medical services employees, though no contract had been reached. The union and the employer had filed numberous unfair labor practice charges against each other.

The acting union president used her social networking site to communicate information regarding bargaining and other union activities. Only her "friends" could access her posts. An unidentified employee or employees provided copies of her postings to management periodically.

Management became concerned when posts indicated that four employees "might withhold care if they were personally offended by the patients."[43] The memo included the text of several posts and response by employees, however, the text of these posts has been redacted from the public version of the memo. Reference is made later in the memo to a "posting regarding the Holocaust Museum shooting." Based on these posts, the employer suspended the employees for "disparaging written comments made by [the employees] regarding patients and patient care that were brought to our attention."

Meanwhile, the employer sent copies of the posts to the state Board of Nursing and Office of Emergency Medical Services (OEMS), noting that it was investigating the matter, but requesting advice as to any action the Board (of Nursing) believed the employer should take.

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[41] 338 NLRB 460 (2002).
[42] Advice Memorandum, Case Nos. 22-CA-29008, 22-C A-29083, 22-CA-29084, 22-CA-29234. (May 5, 2010).
[43] The memo included the text of several postings and response by employees, however, the text of these postings has been redacted from the public version of the memo.

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A psychologist found the employees fit for duty and the employer's investigation into patient care did not raise additional issues. No further discipline was imposed, saving a memo to the employees' files noting that any future incidents would lead to progressive disciplinary procedures.

The Advice memo recalls that the Board has held that "an employer's discipline of an employee based on website statements relating to terms and conditions of employment" or a labor dispute is unlawful, citing *Valley Hospital Medical Center*.[44] The Board found a violation in V*alley Hospital Medical Center* since the employee's comments were not "'so disloyal, reckless, or maliciously untrue' as to lose protection." On the other hand, if the subject of the internet communications are not protected by section 7, no violation will be found.[45] Advice concluded that in this case, the comments did not involve section 7 concerns and that the employees were not disciplined for protected activity.

As to the surveillance allegation, the Advice memo recounts the general rule that surveillance or creation of an impression of surveillance constitutes unlawful interference "because employees should feel free to participate in union activity 'without the fear that members of management are peering over their shoulders.'"[46] The memo recounts that "no impression of surveillance is created where the employer explains that it obtained the information from other employees, particularly in the absence of evidence that the employer solicited the information." Therefore, Advice opined that the employer in this case did not engage in unlawful surveillance because here the employer obtained unsolicited Facebook materials from co-workers, the employer relayed that information to the union, and the union president restricted access to her Facebook page to "friends."

3. *American Medical Response of Connecticut, Inc.* (Oct. 5, 2010)

On October 5, 2010, Advice issued a memo in *American Medical Response of Connecticut*[47] recommending that the region issue a complaint. Because this case eventually resulted in a settlement agreement, we discuss the contents of this memo in greater detail in section V.D.6 of this survey.

4. *General Counsel Memorandum 11-11*, Mandatory Submissions to Advice (Apr. 12, 2011)

On April 12, 2011, the acting General Counsel issued a memorandum outlining the list of matters that must be submitted to Advice. The first category of issues listed on the memo is for cases requiring a decision by the GC due to an absence of precedent or

[44] 351 NLRB 1250 (2007), *enfd. sub. nom. Nevada Service Employees Union, Local 1107 v. NLRB*, 358 Fed. Appx. 783 (9th Cir. 2009).
[45] *See Amcast Automotive of Indiana, Inc.*, 348 NLRB 836 (2006).
[46] Citing *Flexsteel Industries*, 311 NLRB 257 (1993).
[47] Advice Memorandum, *American Medical Response of Connecticut*, Case No. 34-CA-12576 (October 5, 2010).

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identified policy priorities. Included on this portion of the list are "cases involving employer rules prohibiting, or discipline of employees for engaging in, protected concerted activity using social media, such as Facebook or Twitter."

5. *Lee Enterprises, Inc. d/b/a Arizona Daily Star* (Apr. 21, 2011)

In *Lee Enterprises, Inc. d/b/a Arizona Daily Star*[48] the Division of Advice concluded that the employer did not violate section 8(a)(1) by terminating an employee for posting unprofessional tweets to a work-related Twitter account.

The facts of the case involve a newspaper reporter who was discharged based on the content of messages that he posted on Twitter. The employer had no written social media policy, although it did have an employee handbook containing various rules of conduct.

Among the various tweets alleged to have been made by the employee are these:

- You stay homicidal, Tucson, See Star Net for the bloody deets.
- What?!?!? No overnight homicide? WTF? You're slacking Tucson.
- I'd root for daily death if it always happened in close proximity to Gus Balon's

The employee was warned and later discharged.

Advice concluded that the discharge did not violate section 8(a)(1) because the employee was terminated for writing inappropriate and offensive Twitter posts that did not involve protected concerted activity. The memorandum notes that the postings did not relate to the terms and conditions of employment or seek to involve other employees in issues related to employment. The employer warned the employee that conduct was inappropriate, but he ignored the warning and continued to post additional inappropriate tweets.

Advice did note that some of management's statements warning the employee could be interpreted to prohibit activities protected by section 7. For example, the managing editor told the employee to "stop airing his grievances or commenting about the employer in any public forum" and that the employee was instructed not to tweet about anything work related. In addition, the employer's termination letter to the employee instructed him to "refrain from using derogatory comments that may damage the goodwill of the company."

However, Advice found that this collection of statements did not constitute overbroad orally promulgated rules, noting that the statements were "made solely to the [employee] in the context of discipline, in response to specific inappropriate conduct." In addition, they were not communicated to other employees or characterized as new

[48] Case No. 28-CA-23267.

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rules. Finally, the memorandum notes that although these comments arguably constituted unlawful restrictions on that particular employee's section 7 rights, "it would not effectuate the purposes and policies of the Act to issue a complaint where the statements were directed to a single employee who was lawfully discharged."

6. *OM Memorandum 11-63*, Training Tuesday Program Update (June 10, 2011)

On June 10, 2011, the GC's Division of Operations-Management issued OM Memorandum 11-63 that describes various voluntary training programs available for Board staff as part of "Training Tuesdays." The training schedule includes a course entitled "Facebook and the Board: Is There Something To 'Tweet' About?"

7. *Rural Metro* (June 29, 2011)

In Rural Metro,[49] an employee was discharged after making a post to the Facebook "wall" of a U.S. Senator. In response to a post by the Senator regarding federal grants made to four Indiana fire departments, the employee posted:

> My husband and I work for Rural Metro, me as a [redacted] and he as an [redacted]. Rural Metro has contracts w/ several fire departments to provide EMS. The reason they contract out to us? BECAUSE WE'RE THE CHEAPEST SERVICE IN TOWN! How do we manage that? BY PAYING OUR EMPLOYEES $2 LESS THAN THE NATIONAL AVERAGE! We both make less than $10 an hr. And he's worked for them for 3.5 yrs! …the fact that we're employees of a cheap contract company instead of government employees hurts us. Maybe some of that grant money could be used toward hiring personnel to run the new equipment too. Unfortunately, the state is going the other way and looking for more cheap companies to farm the jobs out to. Privatization hard at work … And the 20 year old that dies in [redacted] townshiop, he was a friend of mines familymember. Rural Metro provides coverage for that area, but we only have 2 trucks for all of [redacted] county and they're stationed near [redacted] Hospital nearly 15-20 minutes from [redacted] township driving emergent. Furthermore, one of our crews showed up on a scene of a cardiac arrest where the volunteer firefighters/first responders didn't even know how to perform CPR! …

The memo also observed that the employee did not discuss her Facebook comments with other employees prior to or immediately after posting them. In addition, the memo notes that she made the post to make the Senator aware "that she disagreed with how emergency medical services were handled in Indiana and that her kind of company was not helping the current situation. She did not think that that [the Senator] could help with her employment situation in any way."

[49] Advice Memorandum, *Rural Metro*, Case No. 25-CA-31802 (June 29, 2011).

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In reviewing the facts, Advice found that the employee had not engaged in any concerted activity and advised that the charge should be dismissed.

8. *JT's Porch Saloon & Eatery, Ltd.* (July 7, 2011)

JT's Porch Saloon & Eatery, LTD.[50] involves an employee who was discharged after making a post to his facebook page. The memo describes the post as a response by an employee to a question from his step-sister about how his night at work went. It describes the employee's response as making complaints "that he hadn't had a raise in five years and that he was doing the waitresses' work without tips. He also called the employer's customers 'rednecks' and stated that he hoped they choked on glass as they drove home drunk."

While the employee had engaged in a prior conversation with a co-workers about the employer's tipping policy, he did not discuss his Facebook posting with any employees either before or after he wrote it and no co-workers responded to it.

Advice concluded that while the post did relate to terms and conditions of employment, it did not grow out of his prior conversation with a co-worker about the tipping policy and that there was no other evidence of concerted activity. Advice stated that here, the employee was "merely responding to a question from his step-sister about how his evening at work went."

9. *Wal-Mart* (July 19, 2011)

In *Wal-Mart*[51] an employee was disciplined after a co-worker gave management a copy of an employee's profane comments on Facebook critical of local store management. Among the employee's comments were:

> Wuck Falmart! I swear if this tyranny doesn't end in this store they are about to get a wakeup call because lots are about to quit!

And

> You have no clue … [Assistant Manager] is being a super mega puta! Its retarded I get chewed out cuz we got people putting stuff in the wrong spot and then the customer wanting it for that price … that's false advertisement if you don't sell it for that price … I'm talking to [Store manager] about this shit cuz if she don't change walmart can kiss my royal white ass!

Advice stated that an employee's activity is concerted "when he or she acts 'with or on the authority of other employees,' when the individual activity seeks to initiate, induce, or prepare for group action, or when the employee brings 'truly group complaints to the

[50] Case No. 13-CA-46689.
[51] Case No. 17-CA-25030.

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attention of management." In this case, Advice concluded that the employee's comments were more akin to mere griping, which is not protected, and that co-worker comments on the employee's Facebook page did not indicate that they viewed the comments in any other way. Consequently, Advice recommended dismissal of the charge.

10. *Martin House* (July 19, 2011)

Martin House[52] is another case where an employee was terminated due to her Facebook posts. In this case, the employee worked at a residential facility for homeless people with significant mental health issues. Among her posts, as reported by advice, was the following:

> Charging Party: Spooky is overnight, third floor, alone in a mental institution, btw Im not a client, not yet anyway.
>
> Friend 1: Then who will you tell when you hear the voices?
>
> Charging Party: me, myself, and I, one of us had to be right, either way we'll just pop meds until they go away! Ya Baby!
>
> Charging party: My dear client ms 1 is cracking up at my post, I don't know if shes laughing at me, with me or at her voices, not that it matters, good to laugh

The employer learned of the employee's posts through a former client who was Facebook friends with the employee. After learning of the posts, the employee was terminated. In the termination letter provided to the employee, the employer, among other things, noted that '[w]e are invested in protecting people we serve from stigma' and it was not 'recovery oriented' to use the client's illnesses for [the employee's] personal amusement. The letter also cited confidentiality concerns raised by … disclosing information about clients to others. Moreover the employer noted that her posts were entered on work time when she should have been performing work-related duties."

In reviewing the employee's posts, Advice found no evidence of protected concerted activity. Most significantly, the posts "did not even mention any terms or conditions of employment." Nor did the posts involve any coworkers. Accordingly, Advice directed dismissal of the charge.

[52] Case No. 34-CA-12950.

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B. Board Decisions[53]

1. *Salon/Spa at Boro, Inc.*, 356 NLRB No. 69 (Dec. 30, 2010)

Salon/Spa at Boro, Inc., 356 NLRB No. 69 (Dec. 30, 2010)[54] involves a small, nonunion hair salon and day spa that was alleged, among other things, to have violated section 8(a)(1) by threatening "employees with unspecified reprisals if they engaged in protected concerted activity, including such activities conducted on 'internet social sites.'"[55]

At issue was the employer's policy against "negativity" and comments that were raised in a staff meeting regarding social networking. The record also indicates that the employer was made aware of negative comments on Facebook posted by former employees and various conversations among employees regarding working conditions. Ultimately, two employees were discharged.

The Board's decision affirmed the rulings, findings and conclusions by ALJ Paul Buxbaum, and made minor modifications to the order not relevant here.

The ALJ recommended dismissing the allegation on both procedural and substantive grounds. After finding that the charge was filed too late, the ALJ nevertheless examined the merits in the interests of decisional completeness.

The ALJ noted that the evidence related to two specific themes. First, the employer's statements at a staff meeting indicating that employee postings on social networking sites "were perhaps more available for public viewing then they had realized. Because of the possibility that customers or other interested persons may read such postings, she urged the staff to exercise judgment and restraint in making use of the sites."[56] In evaluating the evidence, the ALJ observed that "much of [the employer's] objective in making her comments was educational and almost parental in nature. The evidence reveals that the audience took the remarks that way as well." He also stated "It is clear to me that [the employer's] overall purpose in warning her employees to be careful in their use of social networking media was didactic, not coercive. Thus, her references to the potential negative effects of the exercise of poor judgment when using the sites did not represent a threat of reprisal from management but rather a warning that poorly chosen

[53] As we were finalizing this survey, the Board issued its decision in *Bay Sys Technologies, LLC*, 357 NLRB No. 28 (August 2, 2011), granting a default judgment against the employer. The facts of this case are discussed in section V.E. (Complaints).
[54] 2010 NLRB LEXIS 533, Case Nos. 9-CA-45349, 9-CA-45426, 9-CA-45538. Lexis citations used to help identify pinpoint citations.
[55] 2010 NLRB LEXIS 533, *62.
[56] *Id.* at *74.

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statements or photographs could have a negative impact on a young person's reputation with resulting impact on her career."[57]

The second theme concerned the employer's "displeasure that certain employees were choosing to post comments on social network sites belonging to disgruntled former employees." The ALJ characterized the employer's statements as posing "a rather persuasive rhetorical question, asking staff members if they would want to have friendly relations with persons who desired their employer to go out of business, thereby rendering them jobless." The ALJ concluded that such a statement did not constitute a threat of reprisal and was instead an expression of opinion protected by the free speech provisions of the Act.

While the ALJ ultimately found that the employer violated 8(a)(1), his finding rested on other grounds and not the social networking allegations.

2. *Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino*, 356 NLRB No. 111 (Mar. 17, 2011)

In *Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino*, 356 NLRB No. 111 (Mar. 17, 2011),[58] the employer filed objections to a union representation election that the union won arguing that the union made "inflammatory appeals to voters' racial and ethnic prejudice regarding the granting of preferential employment rights to Native Americans."[59] The Board largely endorsed the ALJ's decision.

One of the major issues in the union's organizing campaign was the intersection of seniority rights among employees at the casino and a new tribal law granting preferences in hiring and in shift assignments to tribal members and certain others. It should also be noted that at the same time, due to economic conditions, the monthly distribution of casino revenue to the 450 adult Tribe Members would be eliminated. One article reported these payments ranged from $90,000 to $120,000 per year, on average.

Statements about the tribal preferences were made by paid union agents, employees who were union agents, and employees who were not agents of the union. These statements were made "in the form of letters, leaflets and facebook postings."[60]

One example of the postings made on Facebook reported by the ALJ is this:

> LOOK OUT! Because change is coming. It is going to surely happen to all of us if you do not protect yourself now! … Tribal stipends will be cut in January …. Translation: every one of our jobs are on the line. They will come to work here

[57] *Id.* at *75-76.
[58] 2011 NLRB LEXIS 103, Case No. 34-RC-2392.
[5959] *Id.* at *8.
[60] *Id.* at *14.

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> and are going to take tipped positions like mine and yours. So if you are seniority 20 you may become seniority 40 overnight. They will come and take your job.[61]

The ALJ noted that the Board, in *Sewell Mfg. Co.*,[62] held that "campaign propaganda intended to inflame racial prejudice, deliberately seeking to overemphasize and exacerbate racial feeling by irrelevant, inflammatory appeals, was sufficient cause to set aside an election." However, in this case, the ALJ found the statements insufficient to set aside the election as the statements were "not demeaning to members of the Nation or to Native Americans in any way … they do not, on their face or by implication, appeal to racial or ethnic stereotypes and cannot, in my opinion be construed as inflammatory. They simply state a fact; the casino has a policy of granting seniority preference to tribal members."[63]

C. ALJ Decisions

1. *Ashland Nursing & Rehabilitation Center* (Jan. 3, 2011)

Social media is only tangentially involved in *Ashland Nursing & Rehabilitation Center*,[64] in which an employer objected to union conduct during a representation election. The relevant objection was that the union's campaign was "based in whole or in substantial part on unlawful appeals to racial prejudice."[65] As part of the evidence, an employee testified that she visited the Facebook site of another employee who had passed out authorization cards for the union. The pro-union employee was alleged to have posted that the employer was "firing all the sisters."[66]

The ALJ disregarded this testimony on the grounds that the employer had not shown that the pro-union employee was an agent of the union.

2. *Metropolitan Regional Council of Carpenters (Forcine Concrete & Construction Co., Inc.)* (May 18, 2011)

The facts of *Metropolitan Regional Council of Carpenters (Forcine Concrete & Construction Co., Inc.)*[67] arise in the context of a salting campaign that the union was waging against the non-union employer to try to have some of its business agents and organizers hired. The employer did not hire the individuals. The union filed charges that were later settled.

The facts at issue here involve four full-time employees of the union who entered a construction site where the employer's employees were working. The union agents

[61] *Id.* at *18.
[62] 138 NLRB 66 (1962).
[63] *Id.* at 26-27.
[64] 2010 NLRB LEXIS 534, Case No. 5-RC-16580 (ALJ Decision January 3, 2011).
[65] *Id. at *2.*
[66] *Id.* at *16.
[67] 2011 NLRB LEXIS 235, Case No. 4-CB-10520 (ALJ Decision May 18, 2011).

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stated that they were doing an "inspection" and interrogated several employees of the employer, primarily about immigration status, but also about other issues, such as how they were hired and how they were being paid. The video was later edited and posted on YouTube with commentary. Carpenters Union Local 2012 linked the YouTube video to its Facebook page. As noted by the ALJ, the YouTube video had been viewed nearly 30,000 times.

In analyzing the case, the ALJ found that the union representatives restrained and coerced the employees. And while he surmised that the union's "conduct may violate trespassing and other laws," he found it did not violate the Act because the employees were not restrained in exercising their section 7 rights.[68] The judge distinguished all of the precedent relied upon by the General Counsel in each case and said:

> The interrogations of [the] employees could only have been calculated to discourage them from working for [the employer] and had a reasonable tendency to do so. Regardless of whether or not [the employer's] employees were in the United States legally, the conduct of [the union] had a reasonable tendency to restrain them from continuing their employment with [the employer]. However, the union's conduct in this case did not present [the] employees with a choice between engaging in protected activity or not.[69]

As to the postings on YouTube and Facebook, the ALJ concluded that "as with the interrogation itself, the postings on YouTube and Facebook did not present employees with a choice of engaging in protected activity or refraining from engaging in protected activity."[70] Further, the judge noted that there was "no evidence that any of [the employer's] employees or other non-union employees viewing the YouTube video and Facebook page were aware of a labor dispute … Thus, non-union employees were not being coerced or restrained with respect to supporting the union in these matters."[71]

On June 14, 2011, the General Counsel's office filed exceptions to the ALJ's decision, seeking Board review of the decision.

D. Settlement Agreements

1. *Ingham Regional Medical Center*

The complaint in *Ingham Regional Medical Center*[72] alleges that two employees "engaged in protected concerted activity by electronically discussing with fellow employees the terms and conditions of their employment, for the purposes of their

[68] *Id.* at *7.
[69] *Id.* at *10.
[70] *Id.* at *11.
[71] *Id.*
[72] Case Nos. 07-CA-52070, 07-CA-52232 (settlement agreement approved November 4, 2009).

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mutual aid and protection" and that both employees were discharged to discourage employees from engaging in such conduct. The complaint also alleges that the employer applied policy regarding the use of cellular phones and other personal communications equipment in an overly broad manner, so as to bar employee solicitations during nonwork time. The complaint also alleged application of several overbroad policies, including those on standards of conduct, harassment, and severe misconduct.

Under the settlement agreement, the employer agreed to make the two discharged employees whole, post a notice, and comply with its terms. The terms of the notice state that the employer will not apply specifically enumerated policies in an overbroad manner so as to prohibit employees from discussing, with fellow employees during their nonwork time, terms and conditions of employment.

2. *Healthcare Ventures of Ohio, LLC* (Sept. 14, 2010)

The complaint filed in *Healthcare Ventures of Ohio, LLC*,[73] sets forth an alleged overbroad employer policy on confidentiality and proprietary information that includes "medical information, corrective actions, wages, performance evaluations, etc." The complaint then alleges that a management representative:

- Interrogated an employee about the identity of other employees who engaged in internet discussions concerning terminated co-workers;
- Interrogated an employee about employee union duties and internet discussions concerning the termination of co-workers; and
- Coercively informed an employee that the employee could not discuss the employer's investigation regarding alleged employer conduct with anyone

The complaint also alleged that two employees were discharged for violating the employer's overbroad rule and to discourage other employees from engaging in these and other concerted activities.

In the settlement agreement, among other things, the employer agreed to make the two employees whole, post a notice, and comply with its terms. Among the terms of the notice are the following:

- The employer will not maintain an "overly broad confidentiality rule prohibiting employees from discussing corrective actions, wages, performance evaluations, and other terms and conditions of employment. As long as such communications are not prohibited by HIPPA or other Ohio Department of Health Regulations, but provided that enforcement of these statutes do not conflict with employee rights under" the NLRA.

[73] Case No. 08-CA-38825 (settlement agreement signed September 14, 2010).

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- The employer will not discharge employees for violating unlawful rules.
- The employer will not prohibit employees from discussing discipline against employees.
- The employer will rescind the overly broad policies from its handbook.

3. *Sodexo* (Dec. 29, 2010)

The charge in *Sodexo*[74] alleges that the employer, through its employee handbook maintained rules governing employee conduct that chills section 7 rights, specifically includied policies barring statements or comments to the media as well as a discriminatory bulletin board posting policy.

The settlement agreement requires the employer to provide all U.S. employees with inserts for their employee handbook that provide a lawful rule and state that the change was made pursuant to a settlement agreement. The agreement requires the employer to post a notice and comply with its terms.

4. *Children's Hospital of Pittsburgh of UPMC* (Jan. 21, 2011)

The complaint in *Children's Hospital of Pittsburgh of UPMC*[75] alleges that the employer promulgated and maintained a Social Networking Policy[76] without prior notice to the union representing employees covered by the policy and without providing an opportunity for the union to bargain over the conduct covered by the policy or the effects of such conduct.

The settlement agreement provided pursuant to the Chamber's FOIA request included the familiar provision that the employer post a notice and comply with its terms, but the notice itself was not included, so we do not have a very complete picture of the terms of the agreement.

5. *The Majestic Star, LLC d/b/a The Fitzgerald's Casino and Hotel* (Jan. 25, 2011)

In *The Majestic Star, LLC d/b/a The Fitzgerald's Casino and Hotel*[77] the charge alleged that the employer promulgated and implemented a non-solicitation and social media policy which inhibit section 7 rights and violate the terms of a prior settlement agreement.

The settlement agreement requires the employer, among other things, to post a notice and comply with its terms. The FOIA materials provided to the Chamber did not include a copy of the notice.

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[74] Case No. 09-CA-46032 (settlement agreement approved December 29, 2010).
[75] Case No. 06-CA-37047 (settlement agreement approved January 21, 2011).
[76] Relevant text of the policy appears in Section VII.
[77] Case No. 26-CA-23847 (settlement agreement approved January 25, 2011).

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6. *American Medical Response of Connecticut* (Feb. 8, 2011)

On October 5, 2010, the Division of Advice issued a memorandum concluding that the region should issue a complaint in *American Medical Response of Connecticut*.[78] On October 27, 2010, the General Counsel filed a complaint that alleged, among other things, that an employer maintained numerous overbroad policies. For example, the complaint alleged that the employer prohibited employees from posting pictures of themselves in any media, including the Internet, which depicts the company in any way without authorization and that employees are prohibited from making disparaging, discriminatory, or defamatory comments when discussing the company, or the employee's "superiors, co-workers, and/or competitors."

The complaint also alleged that an employee had been asked to prepare a written incident report and that her request for union representation was denied. After this incident, according to the complaint, the employee, along with other employees, criticized her supervisor on her Facebook page and was terminated for doing so.

The Advice memo and news reports indicated that the employee called her supervisor a "dick" and "scumbag" on Facebook and also made a post stating "Love how the company allows a 17 to be a supervisor." The term "17" is reportedly AMR's code for a psychiatric patient.[79]

News reports also indicated that the employer took the position that the discharge "was actually based on multiple, serious issues" and that the employer believed "the facts will prove that this was an employee who failed to meet the important standards necessary for us to provide this service to the community [referring to providing high quality medical care]."[80] The Advice memo detailed four specific incidents on which the employer argued the discharge was based.

In applying Board law to the facts of this case, Advice first noted that the employee engaged in protected activity "by discussing supervisory actions with coworkers in her Facebook post." However, Advice recognized a determination must be made as to whether the employee lost the Act's protection by referring to her supervisor as a "17," "dick," and "scumbag." Advice concluded that the employee's conduct "was not so opprobrious as to lose the protections of the Act." In particular, Advice noted that the

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[78] Advice Memorandum, *American Medical Response of Connecticut*, Case No. 34-CA-12576 (October 5, 2010).
[79] Steven Musil, *Company Settles Facebook Firing Case*, CNET (February 7, 2011), available at: http://news.cnet.com/8301-1023_3-20030955-93.html; Leigh Kamping-Carder, *Landmark NLRB Facebook Case Ends With Settlement*, LAW360 (February 7, 2011), available at: http://www.law360.com/topnews/articles/224315/landmark-nlrb-facebook-case-ends-with-settlement.
[80] The BLT: Blog of the Legal Times, *NLRB Sues Company for Firing Worker over Facebook Post* (Nov. 2, 2010), available at: http://legaltimes.typepad.com/blt/2010/11/nlrb-sues-company-for-firing-worker-over-facebook-post.html.

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"name-calling was not accompanied by any verbal or physical threats, and the Board has found more egregious name-calling protected."[81]

In discussing the alleged overbroad policies, advice opined that most of the policies at issue were unlawful. For example, it asserted that the employer's blogging and internet policy was unlawful because "it would prohibit an employee from engaging in protected activity; for example, an employee would be prohibited from posting a picture of employees carrying a picket sign depicting the Company's name, or wearing a t-shirt portraying the company's logo in connecting with a protest involving the terms and conditions of employment. Advice further opined that the policy prohibiting employees from making disparaging comments "while discussing the employee's superious, co-workers, and/or competitors" was unlawful because it did not contain any language making it clear that it did not apply to section 7 rights.

On February 8, 2011, the NLRB announced that it had reached a settlement agreement with the employer. In the news release announcing the settlement agreement, the NLRB stated that the employer "agreed to revise its overly-broad rules to ensure that they do not improperly restrict employees from discussing their wages, hours, and working conditions with co-workers and others while not at work, and that they would not discipline or discharge employees for engaging in such discussions." The allegations related to the employee's discharge were resolved through a separate, private settlement between the employee and the company.[82]

7. *Build.com* (Apr. 27, 2011)

According to an NLRB news release, on February 28, 2011, an employee charged, in *Build.com,*[83] that she was "terminated in retaliation for having posted comments about [her employer] and possible state labor code violations, which drew responses from other employees who were 'Facebook friends.'"

The release also notes that after the charge was filed, the employer immediately offered to engage in settlement discussions. The employee declined reinstatement, but will be made whole. The employer will also post a notice for 60 days stating that "employees have the right to post comments about terms and conditions of employment on their social media pages, and that they will not be terminated or otherwise punished for such conduct."[84]

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[81] Advice cited to cases where referring to supervisors as a "liar and a bitch," a "fucking son of a bitch," and an "egotistical fuck" were found to not be so opprobrious as to lose the Act's protection. *Stanford Hotel*, 344 NLRB 557 (2005); *Alcoa Inc.*, 352 NLRB 1222 (2008).
[82] NLRB News Release: *Settlement Reached in Case Involving Discharge for Facebook Comments* (February 8, 2011).
[83] Settlement announced April 27, 2011.
[84] *NLRB Regional News: Build.com settles charge of unlawful discharge for comments posted on Facebook with NLRB agreement in San Francisco* (April 27, 2011).

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E. Complaints Issued

1. *Qualitest Pharmaceuticals* (Feb. 23, 2011)

The complaint, in *Qualitest Pharmaceuticals*,[85] alleges that the employer maintains overbroad rules related to government investigations and standards of conduct.[86] One example of prohibited conduct under the policy is "carrying of tales, gossip, and discussion regarding company business or employees."

The complaint also alleges that the employer issued a written disciplinary warning to certain employees and prohibited discussion of the disciplinary warning. Subsequently, an employee commented about the warning on her Facebook page in concerted action with other employees. The employee was later discharged.

2. *Hispanics United of Buffalo, Inc.,* (May 9, 2011)

The complaint, in *Hispanics United of Buffalo, Inc.,*[87] alleges that the employer discharged five employees for complaining on Facebook regarding their working conditions and did so to discourage employees from engaging in these or other concerted activities.

According to a news release by the NLRB, the employee, "in advance of a meeting with management about working conditions, posted to her Facebook page a coworkers' allegation that employees did not do enough to help the organization's clients. The initial post generated responses from other employees who defended their job performance and criticized working conditions, including work load and staffing issues."[88]

3. *Karl Knauz Motors, Inc. d/b/a Knauz MNW* (Complaint issued May 20, 2011)

The complaint, in *Karl Knauz Motors, Inc. d/b/a Knauz MNW,*[89] offers little in the way of factual allegations, but does say that the charging party posted on his Facebook page "employees' concerted protest and concerns about [the employer's] handling of a sales event which could impact their earnings." It also alleges the charging party was discharged as a result of this conduct.

According to a NLRB news release, the content of the Facebook postings concerned the quality of food and beverages served at an event promoting a new model of car. The news release states that the salesman "posted photos and commentary on his Facebook page critical that only hotdogs and bottled water were being offered to customers." The

[85] Case No. 10-CA-38757 (complaint issued February 23, 2011).
[86] The text of the relevant policy provisions appears in Section VII.
[87] Case No. 3-CA-27872 (complaint issued May 9, 2011).
[88] *NLRB News Release: Facebook Posts* (April 27, 2011).
[89] Case No. 13-CA-46452 (complaint issued May 20, 2011).

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news release also states that management asked the employee to remove the posts and that he immediately complied.[90]

News reports also indicate the employer's position, which is that the employee was not discharged for the Facebook posts about the food and beverage, but for a different post including a photo of an accident "involving another salesperson while on a test drive with a customer that occurred at an adjacent dealership owned by the same company as the one he was employed by."[91]

4. *Baysys Technologies, LLC* (Motion To Transfer Proceedings to the Board and Motion for Default Judgment May 27, 2011)

In *Baysys Technologies, LLC,*[92] an employee allegedly posted comments to co-workers' Facebook pages "so they could concertedly complain about [the employer] not having issued their paychecks on time." About one week later, a local newspaper published the Facebook conversation.

The employer then allegedly sent an email to employees (1) expressing disappointment that they took their complaints to the newspaper, rather than to management; (2) told employees their activities breached their nondisclosure agreements; (3) threatened employees with legal action; and (4) implied that employees would be discharged unless they issued written explanations to other employees and the newspaper; and (5) threatened that supervisors would be conducting performance evaluations in which these activities would be a consideration.

One employee was later discharged.

On May 27, 2010, the employer sent a letter withdrawing its answer to the complaint. The General Counsel then filed a motion to transfer the matter to the Board and moved for default judgment.[93]

F. Dismissed Charge

Our survey revealed a single letter by one of the Board's regional offices dismissing a charge.[94] In *Wal-Mart Distribution Center 6018*,[95] an employee charged that he or she

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[90] *NLRB News Release: Chicago car dealership wrongfully discharged employee for Facebook posts, complaint alleges* (May 24, 2011).
[91] Arnold Tijernia, *NLRB Files Complaint Against Luxury Car Dealership for Unlawful Termination over Employee's FB Post*, DEALER MAGAZINE (May 24, 2011). Available at: http://www.dealer-magazine.com/digital-dealer/blogs/new-directions-with-arnold-tijerina/blog/breaking-news-nlrb-files-complaint-against-luxury-car-dealership-for-unlawful-termination-over-employees-fb-post/0523e19d83.html.
[92] Case No. 5-CA-36314. Motion to Transfer Proceedings to the Board and Motion for Default Judgment May 27, 2011.
[93] As we were going to press with this survey, the Board issued its decision in *Bay Sys Technologies, LLC*, 357 NLRB No. 28 (August 2, 2011), in which it granted the motion for default judgment and found the employer in violation of the Act.

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had been demoted in retaliation for protected concerted activity engaged in through a Facebook account. In its letter to the employee dismissing the charge, the region noted that its investigation revealed "that you engaged in a dialogue with a co-worker on your Facebook account regarding recent earthquakes near your place of employment. During that dialogue, the investigation disclosed that you made statements expressing your desire for the building to collapse while certain members of management were inside the building."

The region noted that the employee was probably a statutory supervisor and excluded from the Act's protection. However, even assuming the employee was covered, the region found "the Facebook comments were such to cause you to lose protection of the Act inasmuch as the statements could reasonably be considered to be disloyal and unrelated to working conditions."

VI. Examples of Issues Raised in Charges[96]

A. Employer Policies. The text of alleged overbroad policies from five cases are included in section VII. Cases before the Board alleging overbroad employer policies include the following allegations:

- The employer promulgated, maintained, or enforced an overbroad policy related to confidentiality, unacceptable conduct, complaint procedures, use of communication systems, and employee participation in investigations.[97]
- The employer promulgated, maintained, and enforced an overbroad social media, blogging, and social networking policy.[98]
- The employer promulgated and maintained overbroad rules restricting section 7 rights with respect to use of external web logs and social networking sites.[99]
- The employer promulgated, implemented, and maintained an overly broad social media policy which inhibits section 7 rights.[100]
- The employer promulgated, maintained or enforced an overbroad Social Networking Media policy.[101]
- The employer maintained overbroad rules prohibiting employees from engaging in concerted activities, including: not allowing employees to air grievances over social media, not allowing employees to post derogatory comments that would

[94] It should be noted that many charges are withdrawn if found to be unmeritorious.
[95] Case No. 26-CA-24000 (charge dismissed June 30, 2011).
[96] The section includes summaries of issued raised in charges. Where the case has moved to complaint or decision, these issues may be duplicative of those discussed earlier in this survey.
[97] *The Court at South Park*, Case No. 11-CA-22900
[98] *Flagler Hospital*, Case No. 12-CA-27031.
[99] *The H Group, BBT Inc.,* Case No. 14-CA-30313.
[100] *Sears Holding (Roebucks),* Case No. 18-CA-19440.
[101] *Lowes Home Improvement*, Case No. 19-CA-32951.

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damage the company via social media, and requiring employees to observe rules regarding professional courtesy.[102]

- The employer maintained and enforced an overly broad policy prohibiting employees from making disparaging remarks about the company.[103]
- A manager sent an email stating that employees had breached their nondisclosure agreement.[104]
- The employer required employees to sign confidentiality agreements prohibiting employees from discussing terms and conditions of employment, including discharge, with anyone, including co-workers.[105]
- An employer policy that forbade employees from discussing workplace issues with anyone, including coworkers.[106]
- The employer sent an email expressing disappointment that employees took things to a newspaper rather than handling internally.[107]
- The employer maintained a policy that the employer "speak with one voice."[108]
- The employer orally promulgated an overbroad non-solicitation rule by telling employees they violated a code of ethics by using a company computer to post to a website.[109]
- The employer orally promulgated and maintained an overbroad social media policy.[110]

B. Protected Activity. Many charges offer few details on the type of protected activity involved. However, the following cases are examples of those containing some description of the alleged protected activity:

- Posting something negative about the employer and a manager.[111]
- Posting concerns about the employer not issuing paychecks on time.[112]
- Discussion of co-worker's termination and the employer's misconduct investigation.[113]
- Termination based on an employee posting work-related comments on Facebook.[114]

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[102] *Lee Enterprises d/b/a Arizona Daily Star*, Case No. 28-CA-23267.
[103] *ER Solutions, Inc.*, Case No. 19-CA-32943.
[104] *BaySys Technologies, LLC*, Case No. 05-CA-36314.
[105] *Innovation Ventures d/b/a Living Essentials, LLC*, Case No. 25-CA-031722.
[106] *MET Inc.*, Case No. 16-CA-27778.
[107] *BaySys Technologies, LLC*, Case No. 05-CA-36314.
[108] *Sodexo, Inc.*, Case No. 09-CA-46032.
[109] *Cox Communications*, Case No. 05-CA-36476.
[110] *Golden Living Center*, Case No. 09-CA-046173.
[111] *North River Home Care*, Case No. 01-CA-046702.
[112] *BaySys Technologies, LLC*, Case No. 05-CA-36314.
[113] *Healthcare Ventures of Ohio, LLC*, Case No. 08-CA-38825
[114] *Sunshop Sunoco*, Case No. 08-CA-39229.

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- Discharge for discussing terms and conditions of employment on Facebook.[115]
- Discharge for communicating on Facebook regarding terms and conditions of employment.[116]
- Discharge for discussing a disciplinary warning on Facebook.[117]
- Posting complaints about wages, hours, and/or working conditions. [118]
- Discharge for being on Facebook while at work.[119]
- Discharge for engaging in a discussion of workplace issues while on Facebook.[120]
- Blocking personal email addresses from sending to company email addresses to interfere with section 7 rights.[121]
- Discharge of an employee based on "private Facebook emails" exchanged with friends and co-workers in which they complained about their working conditions and discussed a potential April 1 walkout to protest such conditions.[122]
- Ordering an employee to remove comments posted on a Facebook page and asked him to sign a confidentiality agreement not to discuss his termination and circumstances surrounding it with coworkers and others.[123]
- Discharge of an employee for posting information about a medical insurance issue on the personal Facebook page of a coworker.[124]
- Discharge of an employee after posting on Facebook a complaint that the employer failed to pay employees on a scheduled pay day.[125]
- Discharged of an employee after posting "on his Facebook account to a co-worker stating in substance, 'I don't want to be here anymore. They don't pay me enough and I don't give a shit.'"[126]
- Discharge of an employee for engaging in protected concerted activities by posting a picture or comments regarding the employer on Facebook.[127]

C. Concerted Activity. A few charges provide minimal details on the concerted nature of the activity involved, including these allegations:

- Discharge of an employee for having voiced her and other employee complaints on Facebook.[128]

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[115] *Rittenhouse Senior Living of Middletown*, Case No. 09-CA-46202.
[116] *Qualitest Pharmaceuticals*, Case No. 10-CA-38757.
[117] *Id.*
[118] *Grand Isle Emergency Medical Services*, Case No. 15-CA-19855.
[119] *Citronelle Police Department*, Case No. 15-CA-19894.
[120] *H&R Block*, Case No. 16-CA-27774.
[121] *National Enzyme Company (NEC)*, Case No. 17-CA-24883.
[122] *Teletech Holdings, Inc.*, Case No. 19-CA-33041.
[123] *Innovation Ventures d/b/a Living Essentials, LLC*, Case No. 25-CA-031722.
[124] *Reggie White Sleep Disorder Center – Desoto*, Case No. 26-CA-023896.
[125] *Marco Transportation*, Case No. 22-CA-21850.
[126] *Advance Publications Inc.*, Case No. 29-CA-30532.
[127] *FedEx Ground*, Case No., Case No. 33-CA-16212.

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- Discharge of an employee for discussing her and other employees' concerns for her and other employees' wages, hours, and working conditions on Facebook.[129]
- Discharge of an employee for using Facebook collectively with coworkers for the purposes of complaining about working conditions and other terms and conditions of employment.[130]
- Discharge of an employee for engaging in protected concerted activity on a coworkers Facebook page.[131]

D. Employer Awareness of Conduct. A few charges include allegations of how an employer learned of the conduct in question. These include the following allegations:

- The employer's monitoring of Facebook constituted unlawful surveillance.[132]
- The employer engaged in unlawful surveillance by monitoring employee Facebook pages.[133]
- An employer learned of employees discussing not receiving paychecks on time when a local newspaper printed excerpts from a Facebook conversation.[134]
- A co-worker shared with management a Facebook conversation leading to the discharge of two employees.[135]
- An employer discharged an employee after comments he wrote on his Facebook page were printed out by a co-worker and given to a supervisor.[136]
- The employer interrogated an employee to learn the identity of co-workers who engaged in internet discussions concerning a terminated co-worker.[137]

E. Interrogation or Intimidation Tool. While most charges received in the FOIA request were filed against employers, a few were filed against labor unions, including this interesting example:

- Union officers allegedly entered a non-union construction site and videotaped interrogations of employees regarding immigration status, posted videos to YouTube and Facebook.[138]

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[128] *Houston Medical Center*, Case No. 10-CA-38688.
[129] *Polly's Corner Café*, Case No. 10-CA-38799.
[130] *Inter-Con Security Systems, Inc.*, Case No. 31-CA-30166.
[131] *Triple Play Sports Bar*, Case No. 34-CA-12915.
[132] *Buel, Inc.*, Case No. 11-CA-22936.
[133] *Wal-Mart*, Case No. 17-CA-25030.
[134] *BaySys Technologies, LLC*, Case No. 05-CA-36314.
[135] *St. Joseph's Hospital*, Case No. 06-CA-37254.
[136] *Charley Creek Inn*, Case No. 25-CA-031741.
[137] *Healthcare Ventures of Ohio, LLC*, Case No. 08-CA-38825.
[138] *Metropolitan Regional Counsel of Carpenters (Forcine Concrete & Construction Co., Inc.)*, Case No. 04-CB-010520.

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F. Personal or Company Equipment. Very few charges made reference to ownership of the communication device used, including these allegations:

- Oral promulgation of an overbroad non-solicitation rule by informing employees they violated a code of ethics by using a company computer to post to a website.[139]
- Discharge of an employee for crying and posting on Facebook after being cited for insubordination. The charge alleges that the posts were made on a personal device while on break.[140]

G. Work Time / Non-work Time. The following cases made explicit statements about whether the conduct occurred on work time or chilled activity that might occur on nonwork time:

- A policy regarding use of cellular phones and other personal communication devices was alleged to apply in an overly broad manner, so as to bar employee solicitations during their non-work time.[141]

- An alleged discharge for crying and posting on Facebook after being cited for insubordination. The charge alleges that the posts were made on a personal device while on break.[142]

- An alleged discharge for being on Facebook while at work.[143]

H. Failure to Bargain. Failure to bargain over an employer policy was alleged in these cases:

- The employer unilaterally implemented a new policy concerning the use of Twitter.[144]
- The employer unilaterally implemented and disparately enforced a no solicitation policy contrary to historic practice and without bargaining.[145]
- The employer failed to bargain with the union over the employer's social media policy.[146]

[139] *Cox Communications*, Case No. 05-CA-36476.
[140] *Hausbeck Pickle Co., Inc.*, Case No. 07-CA-53613.
[141] *Ingham Regional Medical Center*, Case Nos. 07-CA-72070; 07-CA-52232.
[142] *Hausbeck Pickle Co., Inc.*, Case No. 07-CA-53613.
[143] *Citronelle Police Department*, Case No. 15-CA-19894.
[144] *Thompson Reuters Corp.*, Case No. 2-CA-39682.
[145] *Giant Eagle*, Case No. 06-CA-37086.
[146] *Children's Hospital of Pittsburgh of UPMC*, Case No. 06-CA-37047

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VII. Examples of Employer Policies Alleged to be Overbroad

In this section, we provide excerpts of employer policies the Board has alleged to be overbroad. Five excerpts are provided, four from complaints and one from a settlement agreement.

A. Complaint Against American Medical Response of Connecticut, Inc.:[147]

(a) Blogging and Internet Posting Policy:

- Employees are prohibited from posting pictures of themselves in any media, including but not limited to the Internet, which depicts the Company in any way, including but not limited to a Company uniform, corporate logo or an ambulance, unless the employee receives written approval from the EMSC Vice President of Corporate Communications in advance of the posting;

- Employees are prohibited from making disparaging, discriminatory or defamatory comments when discussing the Company or the employee's superiors, co-workers and/or competitors.

(b) Standards of Conduct [prohibiting the following conduct]:

- Rude or discourteous behavior to a client or coworker.
- Use of language or action that is inappropriate in the workplace whether racial, sexual or of a general offensive nature.

(c) Solicitation and Distribution Policy

- It is the policy of the Company to prohibit solicitation and distribution by non-employees on Company premises and through Company mail and e-mail systems, and to permit solicitation and distribution by employees only as outlined below.

- Solicitation of others regarding the sale of material goods, contests, donations, etc., is to be limited to approved announcements posted on designated break room bulletin boards.

B. Complaint Against Children's Hospital of Pittsburgh of the UPMC Health System:[148]

IV. GUIDELINES

A. Without [the employer]'s prior consent, a ... Staff Member and/or Representative shall not independently establish (or otherwise participate in) a website, social network (such as Facebook, MySpace, Linkedln, blogs, peer-to-

[147] Case No. 34-CA-12576. See both the complant and the General Counsel's Advice Memoranda issued on October 5, 2010.
[148] Case No. 6-CA-37047 (issued October 29, 2010).

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peer networks, Twitter, etc.), electronic bulletin board or other web-based applications or tools that:

- Disparage, misrepresent or negatively impact [the employer]. Make false or misleading statements regarding [the employer].

and

D. When choosing to participate in an online community or other form of public media, for example (but not limited to) Twitter, MySpace, YouTube, Facebook, etc., Staff Members should do so with the understanding that they are accountable for anything they send/post. In the event that a Staff Member's comments/videos/posts violate [the employer's] policies or are inconsistent with our mission, vision, values and … Systemwide competencies and behaviors, the Staff Member will be subject to discipline, up to and including termination.

C. Complaint Against Healthcare Ventures of Ohio, LLC:[149]

CONFIDENTIAL AND PROPRIETARY INFORMATION

… employees with access to company-related information regarding other staff members must hold such information in strictest confidence. This may include medical information, corrective actions, wages, performance evaluation, etc.

D. Settlement Agreement with Sodexo, Inc.:[150]

It is the policy of the Company that, in releasing information with corporate implications to print and broadcast media, we must "speak with one voice." Statements from and concerning the Company to news media must be coordinated, approved and released through a central corporate source. Do not make statements or comments to the media. If you are asked by the media to speak or comment on any subject, contact your manager or Corporate Communications immediately.

E. Complaint Against Qualitest Pharmaceuticals:[151]

(a) Cooperation with Government Agencies and Investigations
As a participant in a highly regulated industry, Qualitest may at times be subject to inquiries and investigations by government agencies. It is Qualitest's policy to cooperate with any such inquiry or investigation. Qualitest and its employees are entitled to be represented by legal counsel in connection with any government investigation or inquiry. If you are contacted in connection with a government investigation or inquiry, please

[149] Case No. 08-CA-38825 (issued June 28, 2010).
[150] Case No. 9-CA-46032.
[151] Case No. 10-CA-38757.

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contact the Corporate Compliance Officer immediately. Employees may provide truthful and accurate information to government investigators, but may not provide information to non-government attorneys or investigators without first contacting the Corporate Compliance Officer to ensure the Company's legal interests are protected. Qualitest employees must never destroy any documents or other information related to an investigation or legal proceedings which are subject to a litigation hold.

(b) Standards of Conduct
The standards of conduct for Qualitest Pharmaceuticals are important, and the Company regards them seriously. All employees are urged to become familiar with these standards. In addition, employees are expected to follow the rules and standards faithfully in doing their own jobs and conducting Qualitest Pharmaceuticals' business. Please note that any employee who deviates from these rules and standards will be subject to corrective action, up to and including immediate termination of employment.

While not intended to list all the forms of behavior that are considered unacceptable in the workplace, the following are examples of rule infractions or misconduct that may result in disciplinary action, up to and including immediate termination of employment. These examples are in no way a limitation on or intended to change the Company's at-will policy.

- Carrying of tales, gossip and discussion regarding company business or employees

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Appendix I – Excerpts of Key NLRA Provisions

Section 7 (29 U.S.C. §157)

Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) of this Act.

Section 8(a)(1) (29 U.S.C. §158(a)(1))

It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 of this Act;

Section 8(a)(3) (29 U.S.C. §158(a)(3))

It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization …[152]

Section 8(a)(4) (29 U.S.C. §158(a)(4))

It shall be an unfair labor practice for an employer—

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter;

Section 8(a)(5) (29 U.S.C. §158(a)(5))

It shall be an unfair labor practice for an employer—

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) of this Act.

Section 8(b)(1) (29 U.S.C. §158(b)(1))

It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of rights guaranteed under section 7 of this Act …[153]

[152] Portions of section 8(a)(3) not relevant here have been omitted.
[153] Portions of section 8(b)(1) not relevant here have been omitted.

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Appendix II – List of Cases Cited in FOIA Request

The chart below includes citation to all cases referenced in the NLRB's response to the Chamber's FOIA request.

Case No.	Charged Party
01-CA-46665	Northern Bank and Trust
01-CA-46702	North River Home Care
02-CA-39682	Thompson Reuters Corp.
03-CA-27872	Hispanics United of Buffalo
04-CB-10520	Carpenters Union Local 2012
05-CA-36311	W Hotel Washington DC
05-CA-36314	BaySys Technologies, LLC
05-CA-36456	Redner's Warehouse Markets
05-CA-36476	Cox Communications, Inc.
06-CA-37047	Children's Hospital of Pittsburgh of UPMC
06-CA-37086	Giant Eagle, Inc.
06-CA-37217	Giant Eagle, Inc.
06-CA-37254	St. Joseph's Hospital
06-CA-37260	Giant Eagle
06-CB-11718	UFCW Local No. 23
06-CB-11739	UFCW Local No. 23
07-CA-52070	Ingham Regional Medical Center
07-CA-52232	Ingham Regional Medical Center
07-CA-53623	Hill and Dales General Hospital
07-CA-53613	Hausbeck Pickle Co., Inc.
07-CA-53570	General Motors, Lansing Delta Township Plant
07-CA-53556	Hill and Dales General Hospital
08-CA-38825	Healthcare Ventures of Ohio, LLC
08-CA-39229	Sunshop Sunoco
09-CA-46032	Sodexo
09-CA-46124	Beverly Health Care – Glasgow d/b/a Golden Living Center
09-CA-46131	Tropical Tan
09-CA-46147	TGI Fridays
09-CA-46172	All Wealth Federal Credit Union
09-CA-46173	Golden Living Center
09-CA-46202	Rittenhouse Senior Living of Middletown
09-CA-46205	Rittenhouse Senior Living of Middletown
09-CA-46285	Rescare, Inc.
10-CA-38688	Houston Medical Center
10-CA-38701	Firehouse Sub
10-CA-38727	AT&T, Inc.
10-CA-38757	Qualitest Pharmaceuticals
10-CA-38787	BellSouth Telecommunications Inc., d/b/a AT&T Alabama
10-CA-38799	Polly's Corner Cafe
10-CA-38828	Alabama Gas Corporation
10-CA-38830	Regional Paramedical Services, Inc.
10-CA-38843	Academy Sports and Outdoors
10-CA-38848	Greater Birmingham Transportation Services
10-CA-38858	Sunset-Brown Funeral Services
10-CA-38876	Transportation General, LLC
11-CA-22936	Buel, Inc.
11-CA-22942	The Court at South Park
11-CA-22905	The Court at South Park
11-CA-22900	The Court at South Park
11-CA-23026	Taco Bell
11-CA-22878	Allendale County E911
12-CA-26947	Flagler Hospital
12-CA-26966	Baptist Medical Center
12-CA-27031	Flagler Hospital
12-CA-27066	Bright House
13-CA-45926	Ridge Ambulance Service, Inc.
13-CA-46427	Illinois Eye-Bank, Chicago
13-CA-46452	Karl Knauz BMW, Knauz Auto Group
13-CA-46609	J.P. McCarthy's
13-CA-46689	JT's Porch
14-CA-30313	The H Group, B.B.T. Inc.
15-CA-19852	Mobile Lumber and Millwork
15-CA-19855	Grand Isle Emergency

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Case No.	Charged Party
	Medical Services
15-CA-19894	Citronelle Police Department
16-CA-27774	H & R Block
16-CA-27788	MET Inc.
16-CA-27855	PRO-MEDIC EMS LLC
17-CA-24883	National Enzyme Company (NEC)
17-CA-25010	Bethany Luthern Home
17-CA-25030	Wal-Mart
18-CA-19081	Sears Holding (Roebucks)
18-CA-19440	Maple Grove Hospital
18-CA-19541	F&A Dairy Products, Inc.
18-CA-19760	Miklin Enterprises d/b/a Jimmy Johns
19-CA-32835	Central Peninsula Hospital
19-CA-32882	Lowes Home Improvement
19-CA-32943	ER Solutions, Inc.
19-CA-32951	Lowes Home Improvement
19-CA-32977	Central Peninsula Hospital
19-CA-32981	The Rock Wood Fire Pizza d/b/a The Wedge Corp.
19-CA-33026	Teletech Holdings Inc.
19-CA-33041	Teletech Holding
19-CB-10192	Alaska Nurses Association
20-CA-35511	Design Technology Group LLC dba Bettie Page Clothing
21-CA-39640	GreatCall, Inc.
22-CA-29008	Monmouth Ocean Hospital Services Corp. d/b/a MONOC
22-CA-29084	Monmouth Ocean Hospital Services Corp. d/b/a MONOC
25-CA-31722	Innovation Ventures d/b/a Living Essentials, LLC
25-CA-31741	Charley Creek Inn
25-CA-31782	JD Byrder
25-CA-31802	Rural Metro
25-CA-31804	Great Lakes Packaging
26-CA-23847	The Majestic Star, LLC d/b/a The Fitzgerald's Casino and Hotel
26-CA-23896	Reggie White Sleep Disorder Center - Desoto
26-CA-23914	Bank of America
27-CA-21850	Marco Transportation
28-CA-23267	Lee Enterprises d/b/a Arizona Daily Star
28-CA-23350	Parks and Sons of Sun City, Inc.
28-CA-23405	Sprouts Farmers Markets LLC
28-CA-23408	LLU Enterprises LLC d/b/a Sport Clips
29-CA-30532	Advance Publications Inc.
29-CA-30556	T-Mobile
29-CA-30713	Target Corp.
29-CA-30645	Walgreens Co.
30-CA-18850	GGNSC Glendale LLC d/b/a Golden Living Colonial Manor
30-CA-18853	GGNSC Glendale LLC d/b/a Golden Living Colonial Manor
30-CA-18854	GGNSC Glendale LLC d/b/a Golden Living Colonial Manor
31-CA-30118	Vista Cove Care Center at Santa Paula
31-CA-30131	Applebee's Restaurant
31-CA-30166	Inter-Con Security Systems, Inc.
33-CA-16212	FedEx Ground
33-CA-16215	Downs Community Fire Protection District
34-CA-12576	American Medical Response of Connecticut, Inc.
34-CA-12915	Triple Play Sports Bar
34-CA-12926	Triple Play Sports Bar
34-CA-12951	Luxotica Retail d/b/a Lenscrafters
36-CA-10824	Rock Creek Veterinary Hospital

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