

NLRB Reminds Employers That Social Media Comments Are Protected By the NLRA

August 23, 2011

Bay Sys Technologies, LLC (05-CA-36314; 357 NLRB No. 28) (August 2, 2011)

On February 28, 2011, the Acting General Counsel of the NLRB issued a complaint against Bay Sys Technologies, LLC, alleging violation of Section 8(a)(1) of the National Labor Relations Act.

The employee posted comments on several employees' Facebook pages so the employees could concertedly complain about Bay Sys not having issued their paychecks on time. Three days later a newspaper published the Facebook conversation.

Bay Sys subsequently sent an email message to its employees

- (1) expressing disappointment that the employees took their complaints to a newspaper rather than Bay Sys;
- (2) telling employees their complaints breached their nondisclosure agreements;
- (3) threatening the employees with legal action for posting their comments;
- (4) implying that employees would be fired unless they issued written explanations about their comments to other employees and to the newspaper, and explained, in writing, their future intentions; and
- (5) suggesting that the FaceBook quotes would be taken into account in performance evaluations.

Bay Sys later questioned the employees about their posts; told the employees they should find another job if they had complaints; and told the employees they should have brought their complaints to Bay Sys instead of posting them on Facebook. Bay Sys later fired one employee: Dontray Tull.

BaySys filed an answer to the complaint, but withdrew its answer on May 27, 2011. As a result, the Board granted the Motion for Default Judgment. Based on the default, the Board deemed the complaint allegations true and found that Bay Sys discharged Mr. Tull because he "engaged in concerted activities for the purposes of mutual aid and protection and to discourage employees from engaging in these or other concerted activities."

The Board ordered that Bay Sys cease and desist from all of the actions it took in response to the FaceBook posts and ordered the Respondent to reinstate the employee it fired; to make the employee whole for any loss of

earnings and benefits; and to remove from its files any references to his discharge.