

From: (b) (6), (b) (7)(C)
To: [Goonan, Thomas A.](#); [Maier, Harold A.](#); [Heller, Richard P.](#); [Reese, Noelle M.](#); [Fies-Keller, Cara L.](#); [Alvo-Sadiky, Lea](#)
Cc: [Bock, Richard](#); [Dodds, Amy L.](#); [Shorter, LaDonna](#)
Subject: Peacock Laboratories, 04-CA-266343 (case closing email; Covid-19)
Date: Tuesday, December 8, 2020 12:06:32 PM

This case was submitted for Advice due to its relation to COVID-19. Charging Party (b) (6), (b) (7)(C) asserts (b) (6), (b) (7)(C) was discharged for (b) (6), (b) (7)(C) protected concerted activity, namely (b) (6), (b) (7)(C) participation in a concerted demand for improved terms and conditions of employment in light of the risks associated with working during the pandemic. Specifically, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) co-workers concurrently sent identical text messages to the Employer's owner on the morning of March 19, after discussing their concerns as a group the day before. These texts demanded either a \$2 increase or additional paid time off. Upon receipt of the four texts, the Employer agreed to the \$2 increase temporarily and subject to change depending on changing economic conditions associated with the pandemic. Subsequently, a more stringent shutdown order than had been in place earlier prompted the Employer to close. On or about (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) Charging Party and another employee who sent one of the text messages were discharged. Other employees, including (b) (6), (b) (7)(C) others who sent identical texts were furloughed. When the Employer reopened in May, with business volume low, all furloughed employees returned but only on an as needed basis.

We agree with the Region that the text messages, although each sent individually, represented protected concerted activity given the group meeting that led to them. Clearly they were part of a group effort to demand improved terms and conditions of employment. We further agree that dismissal is warranted given the lack of animus here. First, the Employer responded to the concerted demand for higher wages by agreeing to it, albeit on a temporary basis subject to economic conditions. Second, and more significantly, we note that all (b) (6), (b) (7)(C) employees sent identical texts demanding the \$2 wage increase or additional paid time off, yet there is no evidence that Charging Party either played a more prominent role in the effort or, even if (b) (6), (b) (7)(C) did, the Employer had reason to know that. Rather, the Employer's explanation that at the time, (b) (6), (b) (7)(C) position was no longer needed, is reasonable under the circumstances. And, while it is true that the Employer hired a new employee in August for the position Charging Party previously held, the Employer's explanation that it believed (b) (6), (b) (7)(C) had obtained alternative employment also is reasonable under the circumstances.

Accordingly, dismissal is warranted. This email closes the case in Advice. Please let us know if you have any questions or concerns.

Thanks,
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