

Section of
Litigation First Amendment & Media Litigation

Home / First Amendment & Media Litigation / News & Developments

News & Developments

February 10, 2011

Highly Publicized NLRB Facebook Case Settles

The ambulance company that fired a worker after she criticized her supervisor and employer on Facebook has settled a complaint issued to the National Labor Relations Board (NLRB). Under the accord, which was announced this week in an NLRB [press release](#), American Medical Response of Connecticut, Inc., agreed it would change its "overtly broad rules" to ensure it does not restrict employees' speech while they are away from work.

The NLRB's unfair labor practice complaint against American Medical Response was originally scheduled for a hearing on January 25, 2011, but was reportedly delayed so that the parties could finalize a settlement. The formal settlement announcement came one day before the rescheduled hearing was to begin.

This was the NLRB's first complaint against an employer for taking action against a worker for social media postings made from a personal computer.

On November 8, 2009, Dawnmarie Souza, an emergency medical technician and member of Teamsters Local 442, was asked by management to complete an incident report after the ambulance service company received complaints from clients that Souza had been rude. In response to the company's request, Souza asked for union representation, which she was denied. On that same day, Souza posted disparaging comments on her Facebook page about her boss and also criticized the company, maintaining that it allowed a "psychiatric patient" to be a supervisor. The Facebook posting drew comments from Souza's coworkers, to which she responded with additional posts. Three weeks later, Souza's employment was terminated.

In addition to protecting employees' rights to form unions, the National Labor Relations Act (NLRA) prohibits employers from disciplining employees for discussing working conditions, regardless of whether or not the employees are members of a labor union. On October 27, 2010, the NLRB issued an unfair labor practice complaint (No. 34-CA-12976-001) against the ambulance service, alleging that the company violated the NLRA when it discouraged Souza for voicing the company's social media policy and by denying her union representation. The NLRB took the position that the company's social media policy was overtly broad and that terminating Souza's employment was a violation of the NLRA because she and her coworkers were simply discussing their working conditions. In other words, the NLRB believed the employees were engaging in concerted activity protected under the act.

American Medical Response's social media policy sought to prevent employees from disparaging the company or its management, as well as prohibiting the depiction of the company "in any way" on the internet without the company's express permission. The company indicated that the real reason Souza's employment ended was because it had received two complaints about her "rude and discourteous behavior" over a 10-day period.

According to the news release issued by the NLRB's Office of the General Counsel, the settlement approved by NLRB Hartford Regional Director Jonathan Kolesberg requires that the company revise and narrow its social media policy so that it does not restrict employees from discussing their wages, hours, and working conditions with coworkers and others while not at work and so that it will not discipline or discharge employees for engaging in such conduct. The company also agreed not to deny union representation in the future, nor threaten employees with discipline for requesting such representation. The company reached a separate, confidential agreement with Souza.

— [Mimi G. Jacobs](#), [Armstrong Teasdale, LLP](#)