

ALLEGHENY COUNTY LABOR COUNCIL
REPORT OF LEGAL COUNSEL
November 5, 2015

1. RECENT NLRB DECISION INVOLVING PROFANITY AND SOCIAL MEDIA

Three D, LLC v. NLRB

A number of recent court and board decisions have involved the interaction between social media and the protections of the National Labor Relations Act. In the recent decision of *Three D, LLC v. NLRB*, decided on October 21, 2015, the Second Circuit Court of Appeals affirmed a decision of the NLRB involving protected speech on social media. Essentially, the court ruled that the employees' social media activity remained protected under section 7 of the National Labor Relations act even though it contained a number of graphic obscenities.

Under Section 7 of the National Labor Relations Act, an employer is prohibited from interfering with employees in their rights to engage in concerted activity for the purpose of mutual aid or protection. However, the Act does not always protect an employee if that employee's statements are viewed as highly defamatory to the company.

This case involved a sports bar and grille ("Three D") which had failed to properly withhold its employees' income taxes. As a result, a number of current employees of Three D owed additional income taxes. One of those employees posted a strongly worded status update on Facebook which expressed annoyance that Triple D had failed to correctly withhold income taxes. A few other employees clicked "like" on this status update and made comments of support, some of which contained obscenities. The post and responses included strong expletives. Three D discharged two of the employees who made the comments on Facebook claiming that the employees had disparaged the company.

The court upheld the ruling of the NLRB that Three D had violated the Act by firing the employees because of their Facebook posts. The court reasoned that the Facebook discussion about improperly withheld taxes constituted protected concerted activity because it involved four current employees and was part of an ongoing sequence of discussions that began in the workplace about calculation of employees' tax withholding. The court also discussed concern

that allowing the employer to discipline the employees for these Facebook posts could seriously chill the freedom of employees to speak about their employer. In so doing, the court upheld the Board's decision that Three D had violated the Act by: (1) threatening employees with discharge for their Facebook activity; (2) interrogating employees about their Facebook activity; and (3) informing employees that they were being discharged for their Facebook activity. In sum, under the Act, employee speech regarding the workplace is protected under the act even if it contains obscenities.

2. LOCAL LABOR NEWS

On October 22, 2015, Professors at the University of Pittsburgh have publicly announced that they will begin a campaign to organize a faculty union. They are working with organizers with from the United Steelworkers. Organizers plan to include all levels of professors including adjunct and visiting professors. The organizing drive also seeks to include faculty from each of Pitt's four branch campuses. This is an encouraging sign for strengthening the organized labor movement in Allegheny County.

Respectfully submitted,

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