

From: (b) (6), (b) (7)(C)
To: [Ohr, Peter S.](#)
Cc: [Hitterman, Paul](#); [Nelson, Daniel N.](#); [Gianopoulos, Kate](#); [Chekuru, Latha](#); [Bock, Richard](#); [Dodds, Amy L.](#); [Shorter, LaDonna](#)
Subject: 2438 W. Cermak McDonald's, 13-CA-263453 [case-closing email]
Date: Tuesday, November 3, 2020 1:40:59 PM

This case was submitted for advice on whether the Employer unlawfully implemented its Electronic Devices/Online Communications policies by instructing employees to send management their cell phone videos of an in-store fight between customers and employees, delete the recordings from their cell phones, and remove their social media posts regarding the incident. We conclude that the Region should dismiss the charge, absent withdrawal.

On July 8, 2020, two customers instigated a fight with two store employees over wait times and in-store mask requirements. Two other employees recorded the fight on their cell phones and posted the videos to Snapchat. After the incident, a manager met with employees to remind them of the Employer's Electronic Devices/Online Communications policies and asked them to send management the video recordings, delete the recordings from their cell phones, and delete the Snapchat posts. No one was disciplined. Additionally, according to the Employer, the manager explained to employees that (b) (6), (b) (7)(C) wanted the videos and posts deleted because (b) (6), (b) (7)(C) was concerned for the safety and privacy of the employees involved and did not want anyone to feel targeted, exposed, or embarrassed. The Employer also claims that the two employees who recorded the fight told the manager they recorded the fight to obtain evidence for the police and had already deleted the Snapchat posts. These employees have refused to provide affidavits to the Region.

As a preliminary matter, we agree with the Region that the Electronic Devices/Online Communications policies are facially lawful. We also conclude that the Employer's post-fight instructions to employees were lawful. Significantly, the employees who filmed the fight have not provided affidavits to the Region, and, based on the current record, which includes one affidavit from a different employee witness, we cannot find that the recording and posting of the videos was concerted. Although two employees engaged in this activity, there is no evidence that they coordinated their actions in any way. Nor is there any evidence that any employees discussed workplace safety issues arising from the fight, much less sought to induce or encourage group action. In addition, there is no evidence the employees acted for mutual aid or protection. Even assuming, as the Employer claims, that the employees recorded the fight to obtain evidence for a potential police investigation, this would not necessarily show that they acted for the purpose of improving workplace safety or other working conditions. *See, e.g., Alstate Maintenance, LLC*, 367 NLRB No. 68, slip op. at 8-9 (Jan. 11, 2019).

Moreover, the Employer's instructions to employees regarding the videos and social media postings did not reasonably tend to restrain or coerce employees' protected concerted activity, as there is no evidence the Employer conveyed to employees that it believed any employees had engaged in protected concerted activity. Nor is there any evidence that the Employer demonstrated any concern about future protected concerted activity. *Cf. Parexel International, LLC*, 356 NLRB 516, 519-20 (2011) (finding discharge of employee who had not engaged in protected concerted activity violated Section 8(a)(1) because it was a preemptive strike to prevent her from engaging in future

protected concerted activity). Rather, the Employer states its manager told employees that [REDACTED] was acting out of concern for the safety and privacy of the employees involved in the fight.

Accordingly, the Region should dismiss the charge, absent withdrawal. This email closes this case in Advice as of today. Please feel free to contact us with questions or concerns.

[REDACTED]
[REDACTED]

NLRB Division of Advice
1015 Half St., SE
Washington, DC 20570

[REDACTED]