



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

February 24, 2021

[REDACTED]
CP LAW CHICAGO, LLC
180 . LASALLE ST STE 3700
CHICAGO, IL 60601

Re: LCS Community Employment, LLC
Case 13-CA-267103

Dear [REDACTED]

Your appeal from the Acting Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied.

The National Labor Relations Act aims to protect workers' freedom of association and self-organization for mutual aid and protection. To find that an employee engaged in protected concerted activity, the Board requires that the activity "be engaged in with or on the authority of other employees, and not solely by and on behalf of the employee" [REDACTED]. Concerted activity also includes "circumstances where individual employees seek to initiate or to induce or to prepare for group action," including where employees discuss shared concerns among themselves prior to any specific plan to engage in group action. *Meyers Industries (Meyers II)*, 281 NLRB 882, 885 (1986). On the other hand, statements made "solely by and on behalf of the employee" herself are not concerted. *Id.* at 887. Once the employee's activity is found to be concerted, a violation will be found if, in addition, the employer knew of the concerted nature of the employee's activity, the concerted activity was protected by the Act, and the adverse employment action at issue (e.g., discharge) was motivated by the employee's protected concerted activity. *Meyers Industries (Meyers I)*, 268 NLRB 493, 497 (1984). Only after such showing does the inquiry turn to whether the employer would have taken the same action in the absence of the protected conduct. *See Wright Line*, 251 NLRB 1083 (1980), *enforced*, 662 F.2d 899 (1st Cir. 1981).

The Regional Office investigation revealed that your client had several conversations with [REDACTED] co-workers before [REDACTED] discharge. The evidence failed to show that [REDACTED] and [REDACTED] coworkers talked about their working conditions with the object of initiating or inducing or preparing for group action. Rather, the evidence indicates that these conversations focused on your client's personal concerns about the lack of personal protective equipment and [REDACTED] personal concerns regarding the COVID status of another employee. When your client communicated with the Employer's Director of Health on [REDACTED] regarding [REDACTED] possible exposure to the Coronavirus, the evidence supports that your client was speaking on [REDACTED] own behalf, not on behalf of [REDACTED] fellow coworkers.

This conclusion, coupled with the lack of evidence of Employer knowledge of [REDACTED] discussions with other employees or any evidence of animus, led to our conclusion that there was insufficient evidence demonstrating that your client engaged in protected concerted activity.

Even assuming that your client engaged in protected concerted activity, the evidence supported that the Employer discharged her for legitimate business reasons in accord with its policies. Thus, we could not conclude that the Employer discharged your client for reasons violative of Section 8(a)(1) of the Act. To the extent you raise Section 8(b)(1)(A) issues, considering there has been no charge filed against a labor organization, this Section is not applicable in the instant charge against the Employer.

Accordingly, the appeal is denied.

Sincerely,

Iva Y. Choe
Acting Deputy General Counsel



By: _____

Mark E. Arbesfeld, Director
Office of Appeals

cc: PAUL HITTERMAN
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
DIRKSEN FEDERAL BUILDING
219 S DEARBORN ST STE 808
CHICAGO, IL 60604-2027

[REDACTED]
JACKSON LEWIS, P.C.
150 N MICHIGAN AVE STE 2500
CHICAGO, IL 60601-7619

[REDACTED]
LCS COMMUNITY
EMPLOYMENT, LLC
150 N MICHIGAN AVE STE 2500
CHICAGO, IL 60601