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NLRB Rules Employee Handbook's "No Disruptions" Workplace Rule Violates Federal Labor Law

By Mary Pat Gallagher

In a recent decision, *Purple Communications, Inc.*, 361 NLRB No. 43 (2014), the National Labor Relations Board ("NLRB") determined that a company's rule prohibiting employees from creating "disruptions" violated the National Labor Relations Act ("Act"). Specifically, the NLRB ruled that the employer's maintenance of the handbook policy prohibiting employees from "[c]ausing, creating, or participating in a disruption of any kind during working hours on Company property" interfered with the Section 7 rights of employees to engage in union and protected concerted activity. In so doing, the NLRB accepted the findings of the administrative law judge as they pertained to the "no disruptions" rule for the reasons stated, but rejected the Judge's conclusion that the no disruptions rule was insufficient, standing alone, to require new elections.

Purple Communications, Inc. ("Purple") is in the business of offering sign language interpretation services. Purple's employees provide two-way, real-time interpretation of telephone communications between deaf or hard-of-hearing individuals and hearing individuals. In 2012, the Communications Workers of America ("CWA") filed petitions for elections in two of Purple's facilities. The CWA lost both elections, but filed objections with the NLRB. The CWA also filed unfair labor practice charges against Purple

related to certain provisions in its employee handbook. Among those provisions under review was the following policy:

The following acts are specifically prohibited and will not be tolerated by Purple. Violations will result in disciplinary action, up to and including termination of employment.

....

Causing, creating, or participating in a disruption of any kind during working hours on Company property.

Purple's prohibition on "causing, creating, or participating in a disruption of any kind during working hours on Company property" did not explicitly restrict Section 7 activity, that is, "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities."

However, the Administrative Law Judge ("ALJ") found that because Purple's prohibition did not define or limit the meaning of "disruption" or state that it was not intended to refer to Section 7 activity, employees would reasonably interpret the handbook provision to prohibit such activity. On review, the NLRB agreed.

Purple's arguments that the rule only prohibited disruptions during working hours and that the Company was entitled to prohibit union activities during working time were rejected. As interpreted by the ALJ, Purple's "no disruption" rule was "so broad that it can reasonably be understood to apply not only to strike activity, but also to other forms of protected Section 7 activity, including, for example, solicitation." Also problematic was the prohibition's application to the entire "working hours" period. The NLRB has long held that the phrase "working hours" is broader than the phrase "working time," because "working hours" includes periods such as meal times and break periods, as well as times when employees have completed their shifts but are still on the company premises pursuant to the work relationship. "Working time," on the other hand, generally references the time when an employee is engaged, or should be engaged, in work-related tasks. For this reason, the NLRB has held that a rule prohibiting union solicitation during "working hours" is presumptively invalid, even though a prohibition on solicitation during "working time" is generally lawful. As applied to Purple's 24/7 operation, this distinction was seen as particularly significant in that the prohibition on disruptions during "working hours" arguably applied to all hours of the day and night.

The rule was also deemed overbroad because, as interpreted by the NLRB, it not only prohibited employees from directly participating in a disruption, but also from "causing" or "creating" a

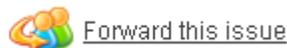
disruption that takes place during working hours on company property. From the NLRB's viewpoint, employees could reasonably fear that this would allow the employer to discipline them for participating in meetings or other Section 7 activities that take place during non-work time and away from the workplace if those activities are causally linked to a disruption at the facility.

This decision underscores the need for employers to regularly review and evaluate work rules and policies under a variety of federal and state labor and employment laws. Employers need to clarify any policies or workplace rules by making clear that the rule is not to be construed as limiting the rights of employees to engage in union and protected concerted activity, such as strikes, solicitations, and walk-outs. For example, a general policy prohibiting solicitation in the workplace on the grounds that it is disruptive to the operations of the employer will most likely not withstand NLRB scrutiny.

To avoid a rule being construed as interfering with an employee's protected rights, employers may want to consider defining and/or providing examples of what constitutes inappropriate workplace behavior, e.g., "Disruptive behavior" means disruptive or abusive behavior, including intimidating and/or threatening language, gestures or behaviors directed at others for reasons unrelated to workplace conditions.

However, even where the rule or policy, as written, withstands NLRB scrutiny, careful attention must be paid when assessing whether an employee's conduct is so disruptive as to forfeit the protection of the Act. Employers with questions regarding their policies and the application of those policies to specific instances involving disruptive employee conduct should consult an employment attorney.

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