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Unfair Labor Practices

NLRB Orders Reinstatement of Two Baristas, Finds Starbucks Violated Federal Labor Law

The National Labor Relations Board Oct. 30 affirmed the findings of an administrative law judge that Starbucks Corp. violated the rights of employees under the National Labor Relations Act by restricting activity on behalf of an Industrial Workers of the World union local and by firing two workers because of their support for the labor organization (*Starbucks Corp. d/b/a Starbucks Coffee Co.*, 354 N.L.R.B. No. 99, 10/30/09 [released 11/3/09]).

With one exception, the board said it found no basis for reversing the findings of ALJ Mindy E. Landow and adopted the judge's December findings that Starbucks violated Section 8(a)(1) of the NLRA and discriminated against union supporters in violation of Section 8(a)(3) of the act(23 LRW 58, 1/8/09).

Starbucks had appealed four of the judge's rulings, three of which the board affirmed. The company appealed the judge's finding that its discharge of three employees had violated the act and that its rule prohibiting employees from wearing more than one pro-union button is justified.

Reinstatement With Back Pay

NLRB ordered Starbucks to reinstate with back pay two of the three employees, Joseph J. Agins Jr. and Daniel Gross, who the ALJ had determined were fired unlawfully, and to allow workers to wear pro-union pins to work.

The company interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the NLRA by restricting the freedom of employees at four stores in New York City to wear union buttons, the board said.

In March 2006, Starbucks had settled various charges filed by the union, and entered into an agreement approved by an NLRB regional director that recognized the right of employees to wear "reasonably-sized-and-placed buttons or pins that identify a particular labor organization or a partner's support for that organization." Starbucks officials interpreted the settlement to limit employees to the wearing a single union button and told employees they could wear only one pin, but the ALJ said the company's position was insupportable.

The board summarily adopted the ALJ findings that Starbucks discriminated against

certain employees by prohibiting them from using a company bulletin board, from talking about unions and working conditions, disparately enforcing its dress code, and preventing them from working shifts at other Starbucks locations. The company had offered business justifications for several of its actions, but the judge found the arguments were undermined by evidence that rules were used to limit union-related conduct and were not consistently enforced against other forms of employee activity.

The charges against Starbucks arose out of an attempt by the IWW, also referred to as the "Starbucks Workers Union," to organize employees at four Starbucks stores that were located on 9th, 36th and 57th Streets, and Union Square East, in New York. In May 2004, the union's Local 660 filed a petition seeking an election among employees at one store in Manhattan (18 LRW 948, 7/8/04) but later withdrew the petition (18 LRW 1086, 8/5/04).

The union filed a number of unfair labor practice charges against the company, alleging that Starbucks interfered with the rights of workers (19 LRW 1663, 12/8/05). The ALJ said the union continued leafleting and publicizing its effort to organize Starbucks workers but never filed another election petition for any of the Manhattan stores covered by its unfair labor practice charges.

An NLRB regional director issued a complaint against the company based on the union's charges, and Landow heard testimony from witnesses during hearings that began in July 2007 and ended in October 2007.

Although the judge had found that the company unlawfully fired Agins, Gross, and Isis Saenz because of their activity or comments in support of the union, the board reversed the ALJ finding that Starbucks discharged Saenz in violation of federal labor law. She had participated with a group of people after a union rally in pursuing a Starbucks regional vice president for nearly two city blocks shouting threats, taunts, and profane comments at him.

Starbucks had discharged Saenz for her conduct "due to the fact that she was not following our guiding principle of treating people with respect and dignity."

As to whether the NLRA protected Saenz's conduct because she had been at a union rally prior to the event, the board said although "employees are permitted some leeway for impulsive behavior when engaged in concerted activity, this leeway is balanced against an employer's right to maintain order and respect."

The board applied four factors, as applied in *Atlantic Steel* (245 N.L.R.B. 814, 816 (1979)), to analyze conduct that occurs in connection with otherwise protected activity: the place of the discussion, the subject matter, the nature of the employee's outburst, and whether the outburst was provoked by an employer's unfair labor practice. The board found that she engaged in conduct of deliberate intimidation that lost the act's protection. Of the four factors, only the subject matter weighs in favor of protection of

Saenz under the act.

Starbucks also was ordered to post a notice in the workplace stating to employees that it had violated federal labor law and informing them of their rights under federal law.

Text of the decision may be accessed at <http://op.bna.com/dlrcases.nsf/r?Open=shos-7xgt5a>.