From: (b) (6), (b) (7)(C)
To: Ohr, Peter S.; Hitterman, Paul; Muth, Jessica T.; Nelson, Daniel N.; Prokop, Paul
Cc: Bock, Richard; Dodds, Amy L.; Compton, Kayce R.; Belin, Jeremy S.; Shorter, LaDonna
Subject: Third Street Station 13-CA-269669
Date: Friday, May 7, 2021 4:47:24 PM

This case was submitted for advice as to whether the Employer terminated the Charging Party (CP) for engaging in alleged protected concerted activities, which included raising concerns about COVID-19, in violation of Section 8(a) (1). We conclude that CP's communications regarding COVID-19 were not concerted and were therefore unprotected, and the evidence does not show (b) (6), (b) was discharged for other arguably protected concerted activity. Accordingly, the charge should be dismissed, absent withdrawal.

CP worked as a bartender at the Employer's bar and grille. The bar was closed between March and May 2020 due to the COVID-19 pandemic but then reopened again in late May. During a staff meeting held on May 26, CP complained to management about the Employer's decision to not pay employees for time spent cleaning in preparation for reopening. On May 28, CP participated in a text message exchange with a manager and another bartender in which the manager stated the owner was not going to make the employees wear masks. The CP responded, "[e]ven though Mayor Burns says we have to [?]" There is no evidence that CP discussed either of these issues with co-workers or that either issue was raised again by the CP or any other employees. After the reopening, CP worked on May 30 and 31 and June 2. During that period, (b) (6), (b) raised complaints and concerns with (b) (6), (b) supervisor about risks from patrons coming inside and whether or not they were required to stay on the outside patio per local COVID ordinances, and stated (b) (6), (b) was concerned that one of the owners had brought a firearm into the bar during (b) (6), (b) June 2 shift. In text exchanges with a supervisor between June 3 and 9, CP informed the supervisor that (b) (6), (b) would only feel safe returning to work once there were no firearms present and the Employer altered its COVID policies for patrons. The Employer told CP it was removing (b) (6), (b) from the schedule due to (b) (6), (b) unwillingness to work.

We conclude that the Employer lawfully discharged CP because the evidence does not demonstrate (b) (6), (b) was terminated for protected, concerted activity. The Employer claims the CP was terminated because (b) (6), (b) refused to work unless the owner stopped bringing (b) (6), gun to work and the Employer stopped allowing patrons to come inside. Those communications were not protected concerted activity because there is no evidence (b) (6), (b) discussed these concerns with other employees or otherwise involved them in (b) (6), (b) efforts. Although CP's complaints regarding employee pay during the May 26 group meeting arguably constituted protected concerted activity, *see Whittaker Corp.*, 289 NLRB 933, 934 (1988) (finding individual employee engaged in protected concerted activity by objecting to employer's announcement at group meeting that anticipated pay increases would be suspended), they bore no relation to (b) (6), (b) subsequent complaints about the owner's gun or patrons being allowed inside the bar and grille.[1] Nor is there any evidence that the CP's complaint during the group meeting was the real reason for the discharge. Thus, there is no evidence the Employer harbored animus toward CP for that complaint, and the discharge occurred only after CP conditioned (b) (6), (b) return to work on changes to Employer policies different from the one discussed at the staff meeting. Also, there is no evidence of disparate treatment, shifting explanations, or other factors that would indicate the Employer's stated reasons for the discharge were pretextual. In

these circumstances, we conclude the Region would not be able to satisfy its initial *Wright Line* burden; therefore, the charge should be dismissed, absent withdrawal.

This email closes this case in Advice as of today.

(b) (6), (b) (7)(C)

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[1] CP's May 28 text exchange with a manager and another bartender was not protected concerted activity because all (b) (6), (b) did was ask the manager if the Employer's decision to not require employees to wear masks conflicted with the mayor's requirements (b) (6), (b) (7)(did not complain to the manager or engage the other bartender.