

NLRB Walmart Decision: A Look at Extraordinary Remedies

02/02/2016, California PERB Blog, Tim Yeung

In 2014, the General Counsel of the National Labor Relations Board (NLRB) brought a complaint against Walmart for disciplining employees who participated in a set of strikes referred to as the “Ride for Respect.” Walmart asserted that the discipline was lawful because the employees were engaged in “intermittent work stoppages” that are not protected by the National Labor Relations Act (NLRA). On January 21, 2016, the Administrative Law Judge (ALJ) who heard the case issued his decision finding that the work stoppages were in fact protected by the NLRA. Because the work stoppages were protected, the ALJ found that Walmart violated the NLRA when it disciplined employees for participating in the strikes.

The decision was widely covered by the press and hailed by organized labor as a “huge victory.” However, what I found interesting about the decision was the discussion about the remedies. The ALJ ordered the “traditional” remedies of: 1) a cease and desist order; 2) reinstatement and back-pay; and 3) a notice posting at affected stores. [One interesting note, the NLRB’s traditional remedies now include an order that the employer must file a report with the Social Security Administration allocating back-pay to the appropriate calendar quarters and also compensate the affected employees for the adverse tax consequences, if any, of receiving a lump-sum back-pay award. (See Don Chavas LLC, d/b/a Tortillas Don Chavas, 361 NLRB No. 10 15 (2014).)]

But in addition to the “traditional” remedies, the ALJ also ordered the “extraordinary” remedy of a “Notice Reading” at certain stores. Under NLRB precedent, an employer can be required to read aloud to employees a notice where the employer’s misconduct has been sufficiently serious and widespread. It’s a remedy that the NLRB seems to be utilizing more and more. Here, the ALJ held that:

[A] notice reading remedy is warranted at each store where Respondent disciplined or discharged associates for incurring strike-related absences, because Respondent’s misconduct at those stores was sufficiently serious and widespread to warrant an order requiring the applicable notice to be read aloud to associates in the presence of the store’s manager. The evidentiary record shows that Respondent took swift action against associates after they returned from strike, and thereby sent message to all associates at the store that similar protected activity would lead to disciplinary action. In light of those serious and widespread actions, I agree that a notice reading is necessary to assure associates at the following stores that they may exercise their Section 7 rights free of coercion...

As I mentioned in a post last year, I do not think an order for a Notice Reading would be appropriate under the statues administered by PERB. However, I am certainly encountering union requests for a “notice reading” more and more. To date, the issue has not been addressed by the PERB Board.