

# Employee Advocacy for Nonemployee, Unpaid Interns Is Not Protected by National Labor Relations Act

Article By:

Catherine A. Cano

Laura A. Pierson-Scheinberg

Howard M. Bloom

Philip B. Rosen

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Unpaid interns are not “employees” as defined by the National Labor Relations Act (NLRA), and employee advocacy on their behalf is not protected concerted activity under Section 7 of the NLRA, the National Labor Relations Board (NLRB) has ruled. *Amnesty International of the USA, Inc.*, 368 NLRB No. 112 (Nov. 12, 2019).

The NLRB also concluded the employer’s expression of frustration and disappointment with its employees’ actions on behalf of the interns was not an unlawful implied threat.

## Background

Amnesty International is a nonprofit advocacy organization that typically hires 15 unpaid interns to volunteer each academic semester.

In February 2018, a group of interns, assisted by an employee, circulated a petition requesting the organization pay them for their volunteer work. Nearly all the organization’s employees signed the petition. At the same time, the organization’s executive team was considering a paid intern program with only three interns.

On April 2, 2018, unaware of the unpaid intern’s petition, the Executive Director of the organization shared the organization’s plans for a paid internship program during an employee meeting. The unpaid interns sent their petition to the Executive Director the next day.

On April 9, 2018, the Executive Director held separate meetings with the current interns and the employees who signed the petition to announce plans to implement the paid internships that fall. The employees reacted negatively and expressed concern about the reduced number of interns. The Executive Director stated that she was disappointed the employees did not take advantage of the

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organization's open-door policy to discuss the matter with management before using a petition. The Executive Director also stated that she viewed the petition as adversarial and felt it threatened litigation.

On May 9, 2018, the employee who assisted the unpaid interns with their petition met privately with the Executive Director. The employee recorded the conversation. The Executive Director stated she was "very embarrassed" that her employees felt unable to approach her about the issue and "disappointed that she did not 'have the kind of relationship with staff' that she thought she had." The Executive Director said that it would have been "really helpful" to know about the intern's interest in paid internships in advance and that the employee could have told the interns to "give me a heads-up to let me know it's coming." The Executive Director indicated that a petition "sets off a more adversarial relationship" and is not effective when the demand could "be met without applying that pressure." She further stated, "you could try talking to us before you do another petition."

## **Administrative Law Judge Decision**

After a trial, ALJ Michael A. Rosas held that the employees had engaged in protected activity under Section 7 of the NLRA by joining the interns' petition. He also determined the organization violated Section 8(a)(1) of the NLRA by: (1) instructing employees to make complaints orally before making them in writing; (2) threatening unspecified reprisals because of the employees' protected concerted activity; (3) equating protected concerted activity with disloyalty; and (4) requesting employees to report to management other employees who are engaging in protected concerted activity. He dismissed the allegation that the Executive Director's statements "impliedly threatened to increase employees' workloads as a result of the petition."

## **NLRB Decision**

The NLRB reversed the ALJ's conclusions and dismissed the complaint.

Holding that "[a]ctivity advocating only for nonemployees is not for 'other mutual aid or protection' within the meaning of Section 7," the NLRB reasoned that the unpaid interns were not employees because they did not "receive or anticipate any economic compensation from [Amnesty International]."

The NLRB also held that the Executive Director's statements did not coerce the employees. It concluded the Executive Director's statements fell within Section 8(c) of the NLRA, which permits employers to express views, arguments, or opinions that are not accompanied by coercion (e.g., threats or promises of benefits). Considering the timing of the petition and the employees' reaction, the NLRB determined that the Executive Director's "opinions about how to handle petitions in the future to be, at most, suggestions, rather than commands or even direct requests." Her statements "clearly expressed her frustration that, as a result of the lack of communication, management's attempt to provide a positive response to the ... petition had instead resulted in a backlash from employees." However, the comments did not rise to the level of conveying anger, threaten reprisal, or accuse the employees of disloyalty, the NLRB ruled. Therefore, it concluded they did not violate Section 8(a)(1) of the NLRA.

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The NLRB has been signaling a hesitancy to impose obligations on employers outside the traditional employment context. It has proposed [exempting paid undergraduate and graduate students from the](#)

[NLRA](#), for example. Over the last several years, as employers are forced by the low employment rate to increase their use of nonemployees, unions have increased their efforts to expand the NLRA's reach by organizing non-traditional workers, including temporary campaign workers and graduate students.

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