

## **Second ‘Day Without Immigrants’ Protest, Protected Concerted Activity, NLRB: union kNOw - April 2017**

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### **Second ‘Day Without Immigrants’ Protests and Strikes to Take Place on May 1**

Building off of what organizers see as a successful February 16 ‘Day Without Immigrants,’ a second series of protests and strikes has been scheduled for May 1.

For more information on similar recent activities and strategies on how to respond lawfully to the protest and strike, see our articles, [‘A Day Without Immigrants’ National Strike Planned – What Can Employers Do?](#) and [‘A Day Without a Woman’ Demonstrations Planned for March 8](#).

According to the website Portside.org, “By striking, we make it clear that this country cannot function without immigrants. We build confidence that through non-cooperation, we can force this country to recognize us and realize that it depends on us. It is not until the United States accepts that it cannot sustain itself without immigrant labor that we will be able to win permanent protection, dignity, and respect.”

### **Talk Radio Call Is Protected Concerted Activity**

An employee’s call to a talk radio program, during which he criticized staffing and the outcomes of management decisions, was protected concerted activity under the National Labor Relations Act, according to the National Labor Relations Board’s Division of Advice. *Trinity Technology Group*, Case 12-CA-165643 (June 9, 2016) (released Mar. 27, 2017). The Division decided the employee’s comments were a “logical outgrowth” of prior common coworker complaints about working conditions

and in furtherance of the group's goals, even though the employee was not deputized to speak for others. The Division determined he spoke without knowledge the statements were false or with a reckless disregard for their truth and that the statements were not so "disloyal" as to lose the protection of the NLRA. A broadcast is transitory, but the words spoken can be lasting.

## **Disposition of Unfair Labor Practices Cases Taking Up to 14 Weeks, Few 'Overage' Cases, NLRB General Counsel Reports**

The National Labor Relations Board's General Counsel has reported that for Categories III, II, and I unfair labor practice cases, disposition takes 7, 11, and 14 weeks, respectively. ("Disposition" for NLRB case tracking purposes is when the case is "dismissed, deferred, withdrawn, or settled; a complaint is issued; or a 10(k) notice of hearing is issued.") Memorandum GC 17-02 *Report on the Midwinter Meeting of the ABA* (Mar. 10, 2017). Under the GC's Impact Analysis system, cases are prioritized based on public impact and assigned to a category from Category III (highest) to Category I (lowest). For example, a bargaining order investigation (Category III) commands more Board resources than a single allegation of unlawful interrogation (Category I). When a charge is filed, the Region assigns the case an Impact Analysis category. Any case still pending disposition on the last day of the month in which the time target is exceeded is reported as "overage." Such a case may be excused by the Division of Operations-Management. The Report notes that, in Fiscal Year 2016, only 1.62% of cases in Category I, 1.95% of cases in Category II, and 3.46% of cases in Category III were "overage" without excuse.

## **Insufficient Funding Hampers Mission, NLRB General Counsel Says**

The NLRB is not sufficiently funded to meet its mission, its General Counsel Richard Griffin has admitted. In a March 10, 2017, Memorandum, Griffin wrote to management personnel in the NLRB's regional offices that "years" of "flat fund[ing]" has had a "detrimental effect on the public." Memorandum GC 17-02. Ever hopeful, however, in its Fiscal Year 2017 OMB Budget Submission, the NLRB seeks additional funding to "efficiently and effectively" process "comprehensive and complex cases" such as "nationwide efforts to improve the wages ... of retail and fast food workers," "expanded use of mandatory arbitration clauses in employment" agreements, and the expanded use of technology and social media by employees to discuss employment outside the workplace, among other things.

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