

Employee Statement Advising Supervisor to Bring Boxing Gloves is Metaphoric

1 min read

Sep 1, 2011

A construction company issued warnings to its electricians for taking breaks that exceeded a 15-minute limit and told them that future infractions would lead to progressive discipline. One electrician responded that if he was laid off for such an infraction “it’s going to get ugly” and that the supervisor “better bring [his] boxing gloves.” A second electrician echoed the statement that “it’s going to get ugly.” Both electricians were fired for making statements that managers interpreted as physical threats in violation of the company’s zero-tolerance policy for workplace violence. The electricians successfully challenged their terminations as violations of Section 7 of the National Labor Relations Act (NLRA), which protects concerted activity. The U.S. Court of Appeals for the D.C. Circuit upheld the National Labor Relations Board’s decision reinstating the employees. The court held that when viewed objectively, the statements were metaphoric figures of speech that expressed the electrician’s willingness to “fight” for better work conditions. The statements were “single, brief, and spontaneous reactions” of resistance that were not so egregious as to remove them from the NLRA’s protections. Employers encountering similar employee statements are advised to object to them as acts of insubordination, as well as threats of physical violence. Although the court stated that the electricians’ statements were not obscene, it recognized that the NLRA does not tolerate “obscene insubordination” simply because it is not accompanied by physical threats.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm’s national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

National Labor Relations Act (NLRA), National Labor Relations Board (NLRB)