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When Is a Protest in the Workplace Not a "Workplace" Protest? NLRB Backs Microsoft's Termination of Employees Who Organized Gaza Demonstration

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Can employees be fired for organizing a protest at work that violates workplace rules if the protest isn't actually *about* work? According to a recently released Advice Memorandum from the National Labor Relations Board ("NLRB"), the answer may be yes. The NLRB's Division of Advice concluded that Microsoft lawfully discharged two employees who organized a protest concerning the war in Gaza at the company's Redmond, Washington headquarters—because the protest's connection to workplace concerns was too tenuous to warrant protection under the National Labor Relations Act (the "Act"). *Microsoft Corporation*, Case 19-CA-364190, Advice Memorandum (July 10, 2026).

The Case

In May 2024, Microsoft employees launched a petition demanding, among other things, that the company sever its Azure contracts with the Israeli government. Months later, two employees organized an on-campus demonstration that included a walkout, vigil, speaker series, and fundraiser. While the event invitation indirectly linked to the earlier petition, it did not identify workplace concerns as a stated objective. Microsoft security explained that the event could not take place on campus, and encouraged the protestors to move to nearby public property. After repeated requests went unheeded, Microsoft terminated the two employees for violating company policy and disregarding security directives.

The Advice Memo

The Advice Memo offers important guidance on a critical question: when does a protest lose its protection under the Act because its connection to workplace demands is too attenuated?

The Division distinguished this case from *Home Depot USA, Inc.*, 373 NLRB No. 25 (2024). As we previously reported, the Board in *Home Depot* held that an employee's refusal to remove a "BLM" message from a work apron was protected activity because it was a "logical outgrowth" of group complaints about racial discrimination at that specific workplace. The Board in *Home Depot* reasoned that activity remains protected when "*an* objective" concerns working conditions—even if other objectives predominate.

The Microsoft protest, however, failed to meet that standard. The Division concluded that "the protest invitation's inclusion of an indirect link to the months-old petition"—which contained one demand related to employee safety tied to free speech and use of Microsoft's internal communications—was insufficient to show that "*an* objective" of the protest itself was "to improve employees' lot as employees."

The Division also rejected the employees' argument—that Microsoft's relationship with Israel could harm its financial performance and thereby indirectly affect employee compensation and benefits. That chain of causation, the Division found, was too attenuated to bring the protest under the Act's protection.

Takeaways

In an era of heightened employee activism, this memo sends a clear signal from the Board's new General Counsel: for a protest to be protected under the Act, a genuine workplace demand must be *an* objective of the protest—not merely an afterthought incorporated indirectly into an otherwise unprotected workplace campaign.

But, this area of law may be in further flux. The Advice Memorandum notes that General Counsel Crystal Carey disagrees with *Home Depot* and "will urge the Board to overturn it in an appropriate case."

We will continue to track developments as the Board and courts refine the scope of protection for employee protests under the Act.

Related Professionals

- **Joshua S. Fox**
  Partner
- **Yonatan Grossman-Boder**

Special Labor Relations Counsel

- **Cooper Halpern**
  Associate