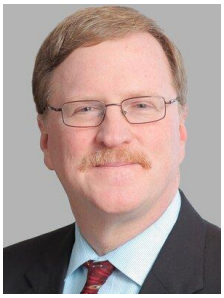
Motorola Case Shows Reach Of NLRA Dishonesty Protections

By **Gabriel Trujillo-Lederer, Patrick Muldowney and Christian White** (April 1, 2026)



Gabriel Trujillo-Lederer



Patrick Muldowney



Christian White

As the newly reconstituted National Labor Relations Board begins clearing its backlog of cases, employers are watching closely to see how far the board may go in reshaping long-standing precedent. One issue drawing renewed attention is whether an employer may lawfully terminate an employee who lies during a workplace investigation, particularly when the underlying subject matter involves protected activity.

A recent case illustrates the broad reach of the National Labor Relations Act's protections for inherently concerted activity in wage-related investigations, a theme that may take on new significance as the general counsel signals a shift toward more restrained enforcement.

Inherently Concerted Activity Under the NLRA

Section 7 of the NLRA protects employees' rights to engage in concerted activity for the purpose of improving working conditions for a group of employees. These rights apply equally in union and nonunion workplaces. Wage discussions, benefits, hours and safety issues have long been treated as core protected categories.

Board decisions from President Joe Biden's era further expanded the scope of protected conduct. In 2023, in Miller Plastic Products Inc., the board stated that even solo protests may qualify as protected if they can reasonably be viewed as an attempt to spur group action.[1] The same year, in Lion Elastomers LLC II, the board held that even profane or offensive remarks may remain protected if they are made during the course of Section 7 activity.[2] Under this approach, conduct is evaluated in the context of the protected activity itself, not as an isolated workplace incident.

The Motorola Case and Inherently Concerted Activity

The Motorola Solutions Inc. case, decided on Dec. 18, highlights an important doctrine under the NLRA: inherently concerted activity.[3] Under this doctrine, certain subjects — especially wages — are treated as concerted by their very nature.

Therefore, an employee need not act with co-workers, attempt to spark group action or participate in a broader workplace dispute in order for Section 7 protections to apply. The topic alone can trigger NLRA coverage.

In this case, Motorola employee Elisa Sheley told her co-workers that she thought a certain co-worker, Robert Rivera, was overpaid. After Rivera complained to management, the company questioned Sheley about the wage discussions. Sheley denied having talked about Rivera's pay, an answer that was untruthful. Motorola terminated her for dishonesty under a neutral workplace policy governing internal investigations.

NLRB Administrative Law Judge Charles Muhl, however, concluded that the underlying conversations involved wages — an inherently concerted topic. The judge further concluded that when an employer poses coercive questions seeking to elicit information about an inherently concerted topic, employees are under no obligation to disclose that information.

As Sheley engaged in protected concerted activity by discussing wages with other employees, Sheley's denial remained closely connected to protected activity. As a result, the judge found that Motorola could not lawfully rely on the dishonesty policy to justify her termination.

The case is now on appeal before the board. While the newly constituted board may approach some issues more favorably for employers, wage-related conversations continue to receive some of the strongest protections under the NLRA, especially when analyzed through the lens of inherently concerted activity.

The New Guidance: A More Employer-Friendly Enforcement Approach?

As to how the board will address allegations such as those raised in Motorola, the newly appointed NLRB general counsel, Crystal Carey, issued guidance on Feb. 27 that signals a shift away from the more aggressive enforcement posture of recent years.[4]

The guidance encourages regions to move away from the approach of pursing allegations on the mere maintenance of potentially unlawful rules, rather than any demonstrated impact.

The guidance also discourages the routine use of enhanced remedies, such as notice readings, apology letters and nationwide postings.

Investigators are instructed to require charging parties to present supporting evidence within two weeks of filing a charge, and regional offices are advised to request information from employers only when that evidence suggests a potential violation.

The memo also limits the practice of requesting entire employee handbooks when only a single rule is at issue, and it restricts the use of Section 10(j) injunctions — which are considered extraordinary remedies — to truly exceptional cases.

To be clear, this guidance reflects a shift in prosecutorial discretion rather than a change in substantive law, and it does not alter the board's existing analytical framework. However, this guidance may signal a more lenient approach by the board toward potentially unlawful workplace rules, such as the one at issue in Motorola.

What This Means for Employers

Despite positive signals from Carey as to how charges will be processed, until the board resolves the issues raised in Motorola, employers should remain cautious when navigating discipline connected to discussions of wages or workplace conditions. The NLRA continues to protect a broad range of employee conduct, particularly comments related to wages, health and safety.

The Rule for Now

Existing precedent remains binding unless and until it is expressly overturned by this increasingly employer-friendly board. And that precedent may protect employee

misstatements when they are closely connected to inherently concerted topics, such as wages.

These protections apply equally in both union and nonunion workplaces, meaning that nonunion employers face the same risks under the act.

Given that wages and workplace safety are considered inherently concerted topics, employers must exercise heightened caution when contemplating discipline, even for alleged dishonesty, where the conduct is tied to those subjects. As a result, for employers asking if they can fire an employee for lying to them, the answer, for now, is often no if the discussion involves wages or other protected workplace concerns.

What Employers Should Do

Employers should carefully review workplace investigation protocols, handbooks and disciplinary policies to ensure that enforcement does not inadvertently interfere with employees' Section 7 rights. In particular, employers that have policies addressing employee truthfulness must remain mindful that discipline imposed under such rules may give rise to unfair labor practice charges.

However, if a charge is filed, the board's handling of the matter may be less adversarial than in the past. As Carey has explained, a mere allegation that the maintenance of a rule presents a potential violation, standing alone, is less likely to attract board attention. The greater risk lies in the rule's application.

For example, if an employer enforces a policy disciplining employees for dishonesty, and does so in a context involving inherently protected activity, such as discussions about wages, the employer may be exposed to liability under the act. Given the current state of the doctrine, this is a particularly risky position for employers.

Accordingly, any disciplinary action that is taken pursuant to such policies should be carefully assessed to ensure that the employee is not engaged in protected conduct.

Conclusion

The intersection of employee dishonesty and protected activity under the NLRA remains a legally fraught area for employers that are trying to navigate the inherently concerted activity doctrine. As the Motorola case illustrates, even conduct that could ordinarily justify discipline may remain protected when it is closely connected to inherently concerted activity.

While recent guidance from Carey suggests a more restrained enforcement approach, it does not alter binding precedent or diminish the robust protections afforded to wage and safety discussions. Until the board provides clearer direction, employers should proceed with caution and scrutinize disciplinary decisions arising from investigations that touch on protected workplace concerns.

Gabriel L. Trujillo-Lederer is an associate, Patrick M. Muldowney is a partner and Christian R. White is counsel at BakerHostetler.

The opinions expressed are those of the author(s) and do not necessarily reflect the views

of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] https://apps.nlrb.gov/link/document.aspx/09031d4583b2981e.

[2] https://apps.nlrb.gov/link/document.aspx/09031d4583a42c17.

[3] https://apps.nlrb.gov/link/document.aspx/09031d4584161ca8.

[4] https://apps.nlrb.gov/link/document.aspx/09031d45841ea072.