United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: June 20, 2016

TO: M. Kathleen McKinney, Regional Director
Region 15

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: H&M Construction Co. & Georgia Pacific, LLC,
as Joint Employers
Case 15-CA-164416

506-0170
506-2001-5000
506-4033-0100
506-6080-0800
512-5012-3317
512-5012-3322
512-5036-0117

The Region submitted this case for advice as to whether the Charging Party, who worked for H&M Construction Co. ("H&M"), engaged in protected concerted activity by posting comments on Facebook regarding how Georgia Pacific, LLC ("GP"), who had contracted out work to H&M, treated its contractors' employees. The Region also requested advice on whether H&M and GP are joint employers, or if GP could be held jointly and severally liable for H&M's unfair labor practices.

We conclude that the Charging Party's Facebook comments constituted concerted activity for mutual aid or protection that did not lose the Act's protection. Thus, H&M violated Section 8(a)(1) by laying [redacted] off for posting those comments. We further conclude that H&M and GP are not joint employers, and that GP is not jointly and severally liable for H&M's unfair labor practice.

FACTS

In August 2010, GP contracted out to H&M the onsite landfill management services for its Alabama River Cellulose ("ARC") paper mill in Perdue Hill, Alabama.[1] H&M and GP have a service agreement outlining H&M's management of the landfill. The agreement requires H&M to maintain qualified personnel at the landfill to

[1] GP also uses other contractors to perform services at the ARC mill.

ensure its continued and smooth operation. It also states that the landfill operator is "responsible for the daily handling of materials and preparation of areas for night-shift hauling Monday through Friday," and that the 24-hour shift crew operator is "responsible for the landfill on weekends." The agreement requires H&M to have a day-shift crew on duty eight hours per day, five days a week, and shift workers operating on two 12-hour shifts, seven days a week. Other than these provisions, the service agreement does not otherwise authorize GP to hire, supervise, discipline, or direct the work of H&M's employees. H&M retains control over its labor policies, including hiring, wages, fringe benefits, discipline, grievances, and daily supervision of employees.

Before late October 2015,[2] the Charging Party worked for H&M as an equipment operator at the ARC landfill. On October 29, the Charging Party saw a sign at the ARC mill announcing a Veterans Day function only for GP's veteran employees, but not for its contractors' veteran employees. The Charging Party mentioned the sign to one of (b) (6), (b) H&M coworkers, who was a former (b) (6), (b) (7)(C) The Charging Party is not a veteran and this coworker was the only H&M employee the Charging Party knew to be a veteran. The coworker responded, "that's bullshit." They did not discuss anything further.

In the following days, GP displayed on its Facebook page posts featuring and praising some of its veteran employees. On November 5, the Charging Party saw on GP's Facebook page a post featuring a veteran employee who worked at a mill near the ARC mill. The Charging Party commented on the post:

> Yeah well I think it's cheesy that at yalls ARC mill in AL y'all are gonna have a little get together for the "mill hand" veterans, but not the in house contractors that work at the mill everyday that are veterans. Yeah that's pretty disgusting if you ask me.

Another commenter (not employed by either H&M or GP) responded: "Remember the famous words of Thumper…." The Charging Party does not know who (b) (6), (b) (7 is or what (b) (6), (b) (7 meant. The Charging Party replied: "Oops well I'm not gonna give special treatment to some veterans just because of where they work. They all deserve equal respect SMFH [shaking my freaking head]." There were no further comments. No one "liked" the comment or any of the replies.

Subsequently, an official in GP's corporate public relations office forwarded the Charging Party's Facebook comments to GP's (b) (6), (b) (7)(C) at the ARC mill. The GP (b) (6), (b) (7)(C) told an H&M Supervisor about the post. The GP (b) (6), (b) (7)(C) and the H&M Supervisor agree that GP did not ask or instruct

[2] All subsequent dates are in 2015.

H&M to take any personnel action against the Charging Party due to the comments.[3] The GP (b) (6), (b) (7)(C) also told the H&M Supervisor that H&M was free to honor any veterans who worked for it at the ARC mill.

The H&M Supervisor then contacted H&M's (b) (6), (b) (7)(C) and told (b) (6), (b) (7) what had happened. The H&M (b) (6), (b) (7)(C) contacted H&M's (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) who determined it would be unwise for the Charging Party to return to the ARC mill and, because there were no openings in the area, that the Charging Party should be laid off. The H&M (b) (6), (b) (7)(C) contacted the H&M Supervisor with the decision and told (b) (6), (b) (7) to relay it to the Charging Party.

On (b) (6), (b) (7)(C) the H&M Supervisor called the Charging Party to (b) (6), (b) office. The Charging Party's Foreman was also present. The H&M Supervisor told the Charging Party that H&M was going to lay (b) (6), (b) (7) off because of (b) (6), (b) Facebook posts. The Charging Party claims that the H&M Supervisor said the order was coming from "higher up," and that GP's (b) (6), (b) (7)(C) wanted the Charging Party discharged, but H&M was going to lay (b) (6), (b) (7) off instead so that (b) (6), (b) could collect unemployment compensation. The Charging Party also asserts that the H&M Supervisor told (b) (6), (b) (7) that (b) (6), (b) was blackballed from every other GP mill. The H&M Supervisor denies making those statements.

In mid-November, the Charging Party filed the current Section 8(a)(1) charge against H&M. During the charge investigation, the Charging Party explained to the Region that (b) (6), (posted the comments because (b) (6), ("was hoping someone would see it and [GP] would change things so everyone could participate" in the Veterans Day function. (b) (6), (b) (also stated that (b) (6), (b) did not know whether other H&M employees ever viewed GP's Facebook page. The Charging Party stated that this was not the only time (b) (6), (b) had observed GP's employees receiving special treatment that H&M's employees did not receive. For example, during mill shutdowns GP has provided its own employees a steak dinner, but not H&M's employees.

ACTION

We conclude that the Charging Party's Facebook comments constituted concerted activity for mutual aid or protection that did not lose the Act's protection. Thus, H&M violated Section 8(a)(1) by laying (b) (6), (b) (7) off for posting those comments. We further conclude that H&M and GP are not joint employers, and that GP is not jointly and severally liable for H&M's unfair labor practice.

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[3] According to the H&M Supervisor, the GP Construction Manager said that GP found the post "upsetting"; however, the GP Construction Manager denies making that statement.

A. The Charging Party's Facebook Comments Constituted Concerted Activity for Mutual Aid or Protection that Did Not Lose the Act's Protection.

Section 7 of the Act provides that employees have the right to engage in "concerted activities" for "mutual aid or protection."[4] Conduct is concerted when it is "engaged in with or on the authority of other employees," or when an individual employee seeks "to initiate or to induce or to prepare for group action" or to bring group complaints to management's attention.[5] The object of inducing group action "need not be express," but instead "may be inferred from the circumstances."[6] Indeed, "it is well established that 'the activity of a single employee in enlisting the support of his fellow employees for their mutual aid and protection is as much concerted activity as is ordinary group activity.'"[7] Furthermore, "employees do not have to accept the individual's invitation to group action before the invitation itself is considered concerted."[8] At the same time, mutual aid or protection "focuses on the *goal* of concerted activity; chiefly, whether the employee or employees involved are seeking to 'improve terms and conditions of employment or otherwise improve their lot as employees.'"[9] "[P]roof that an employee action inures to the benefit of all" is "proof that the action comes within the 'mutual aid or protection' clause of Section 7."[10]

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[4] 29 U.S.C. § 157. *See, e.g., Fresh & Easy Neighborhood Mkt., Inc.*, 361 NLRB No. 12, slip op. at 3 (Aug. 11, 2014).

[5] *Id.*, slip op. at 3 (quoting *Meyers Industries, Inc. (Meyers II)*, 281 NLRB 882, 885, 887 (1986), enfd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988)).

[6] *Whittaker Corp.*, 289 NLRB 933, 934 (1988).

[7] *Fresh & Easy Neighborhood Mkt., Inc.*, 361 NLRB No. 12, slip op. at 3 (citation omitted).

[8] *Whittaker Corp.*, 289 NLRB at 934. *See also Fresh & Easy Neighborhood Mkt., Inc.*, 361 NLRB No. 12, slip op. at 4 ("under Board precedent, concertedness is not dependent on a shared objective or on the agreement of one's coworkers with what is proposed") (citing *El Gran Combo*, 284 NLRB 1115, 1117 (1987) (conduct remained concerted even though employee was unsuccessful in gaining support of other employees to protest wages), enfd. 853 F.2d 996 (1st Cir. 1988)).

[9] *Fresh & Easy Neighborhood Mkt., Inc.*, 361 NLRB No. 12, slip op. at 3 (quoting *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978)).

[10] *Id.*, slip op. at 5 (quoting *Meyers II*, 281 NLRB at 887).

Applying these principles, the Charging Party's Facebook comments were concerted activity because they sought to bring employee complaints to management's attention and to initiate or induce group action. Specifically, the Charging Party posted on GP's Facebook page because [redacted] was upset that GP was treating its contractors' employees differently than its own employees. Indeed, days before posting [redacted] comments on Facebook, [redacted] had pointed out to an H&M coworker who [redacted] knew to be a veteran that GP's Veterans Day function would not include H&M's veteran employees. The coworker responded "that's bullshit." Thus, the Charging Party's Facebook posts raised a shared complaint about how GP treated its contractors' employees.

It is important to recognize that the Charging Party is not a veteran, and therefore [redacted] posts' primary message advocated not on [redacted] own behalf, but on behalf of veterans working for GP's contractors. This negates any inference that the Charging Party was expressing a purely personal gripe. Moreover, the Charging Party's Facebook posts should be read to advocate for better treatment and working conditions on behalf of contractor employees generally. [redacted] comments regarding GP's Veterans Day function were an extension of [redacted] prior concerns about GP's treatment of its contractors' employees, which were based on GP having provided only its own employees with a steak dinner during mill shutdowns.[11] In short, [redacted] expressions of support for immediate coworkers and other contractors' employees by advocating for a positive change to their lot as employees constituted a basic form of concerted activity covered by Section 7.[12]

Further, the Charging Party's comments sought to induce group action because they were made publicly on GP's Facebook page and concerned working conditions.[13]

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[11] *Cf. Salisbury Hotel,* 283 NLRB 685, 686-87 (1987) (holding that when determining if an employee's actions constitute concerted activity, the conduct must not be "considered in isolation" but along with other workplace events; although there was no evidence employees had agreed to act together, they complained among themselves and to the manager about a newly announced lunch hour policy).

[12] *Tyler Bus. Servs., Inc.*, 256 NLRB 567, 567-68 (1981) (finding concerted a full-time employee's advocacy for health benefits for part-time employees because employee's statements were "expressed on behalf of employees other than himself"), enf. denied 680 F.2d 338 (4th Cir. 1982); *see also St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 205 (2007) ("It is axiomatic that discussing terms and conditions of employment with coworkers lies at the heart of protected Section 7 activity."), enfd. 519 F.3d 373 (7th Cir. 2008).

[13] *Whittaker Corp.*, 289 NLRB at 934 (inferring an attempt to induce group action based on employee's statements at a group meeting).

As noted above, the Charging Party already had raised the issue with one H&M coworker and [redacted] then used GP's social media platform to expand the scope of that prior concerted activity. While [redacted] was the only employee who posted a work-related complaint on GP's Facebook page, group action typically begins with one employee raising an employment concern. As the Board has described, "[m]anifestly, the guarantees of Section 7 of the Act extend to concerted activity which in its inception involves only a speaker and a listener, for such activity is an indispensable preliminary step to employee self-organization."[14] The Charging Party's comments were a necessary predicate to any group action, and because they were made in a public forum the necessary inference is that they sought to engender a larger response from coworkers. Moreover, the fact that the Charging Party was not successful in garnering support for the issue [redacted] raised from coworkers or other employees does not affect the analysis. Conduct remains concerted where an employee appeals to others for support, even if that support never materializes.[15]

At the same time, we conclude that the Charging Party's actions were for "mutual aid or protection" because they were aimed at improving employment conditions for [redacted] H&M coworkers, and employees working for other GP contractors at the mill.[16] Namely, the Charging Party's comments were an effort to change how GP treated its contractors' employees. Although [redacted] comments were not directed specifically at [redacted] employer, under Section 7 employees have a right to appeal to the public, employees of other employers, or other employers to attempt to change their employment conditions.[17] Moreover, although [redacted] efforts focused on a work-

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[14] *Meyers II*, 281 NLRB at 887; *see also Staffing Network Holdings, LLC*, 362 NLRB No. 12, slip op. at 8 (Feb. 4, 2015) ("Under Board law, even a single employee's complaint about the treatment or discipline of another constitutes concerted activity.").

[15] *See* the cases cited at footnote 8, *supra*.

[16] *Fresh & Easy Neighborhood Mkt., Inc.*, 361 NLRB No. 12, slip op. at 5; *see also Five Star Transportation*, 349 NLRB 42, 47 (2007) (letters written by individual bus drivers to school board, rather than to new non-union employer, were protected concerted activity for mutual aid or protection where each driver referred to concerns about maintaining the drivers' terms and conditions established under the prior unionized employer).

[17] *See, e.g., NCR Corp.*, 313 NLRB 574, 576 (1993) ("Employees have a statutorily protected right to solicit sympathy, if not support, from the general public, customers, supervisors, or members of other labor organizations."); *Jimmy John's*, 361 NLRB No. 27, slip op. at 3, 4-7 & n.15 (Aug. 21, 2014) (employees may publicly complain about employer unless employees' actions are "shown to be so disloyal, reckless, or maliciously untrue as to lose the Act's protection"), enfd. sub nom. *MikLin*

related issue not directly involving [redacted] immediate employer, the Board has long held that the phrase "mutual aid or protection" includes the right to engage in concerted activity on matters beyond the immediate employment relationship. "Section 7 is not strictly confined to activities which are immediately related to the employment relationship or working conditions, but extends to" other employee concerns that are "close enough in kind and character, and bear such a reasonable connection to matters affecting the interests of employees *qua* employees."[18] In short, the Charging Party permissibly sought to improve the "lot" of GP's contractors' employees "through channels outside the immediate employee-employer relationship."[19]

Enterprises, Inc. v. NLRB, 818 F.3d 397 (8th Cir. 2016); *New York Party Shuttle, LLC,* 359 NLRB No. 112, slip op. at 1 (May 2, 2013) (tour guide's email and Facebook entries appealing to employees of different employers constituted union activity; communications were continuation of known prior organizational activity), enfd. No. 13-60364 (5th Cir. 2013), validity recognized in 2015 WL 8476222, at n.3 (Dec. 8, 2015) (Board order denying employer's petition to revoke subpoena duces tecum). *See also Professional Porter & Window Cleaning Co.*, 263 NLRB 136, 139 (1982) (finding employer unlawfully discharged employee for protected activity of writing letter to employer's client stating that the facility was "deteriorating" because the employer, a cleaning service, was diluting the cleaning products thereby making the employees' jobs more difficult and the building less clean), enfd. mem. 742 F.2d 1438 (2d Cir. 1983); *Richboro Cmty. Mental Health Council*, 242 NLRB 1267, 1267 (1979) (finding concerted activity remained protected where employee wrote letters to federal and state agencies that funded employer, a U.S. Congressman, and a local newspaper on behalf of another employee who had been discharged by the employer).

[18] *G&W Elec. Specialty Co.*, 154 NLRB 1136, 1137-38 (1965) (finding employer unlawfully discharged employee for circulating petition protesting manner in which employee-run credit union was being operated; "mutual aid or protection" extends beyond mandatory subjects of bargaining or "activities directly and immediately involving the employment relationship"), enf. denied 360 F.2d 873 (7th Cir. 1966). Although the Seventh Circuit denied enforcement of the Board's decision in *G&W Elec.*, the Supreme Court in *Eastex*, 437 U.S. 567, n.17, subsequently questioned the validity of the circuit court's decision. *See also General Electric Co.*, 169 NLRB 1101, 1103 (1968) (holding that employees' concerted activity of collecting money to support striking agricultural workers in nearby area constituted mutual aid or protection even though it did not directly affect the employees' terms and conditions of employment), enfd. 411 F.2d 750 (9th Cir. 1969) (per curiam).

[19] *Eastex, Inc. v. NLRB*, 437 U.S. at 565, 569-70 (holding that union officers-employees were engaged in mutual aid or protection in seeking to distribute to coworkers a newsletter that, among other things, urged coworkers to write to their state legislators to oppose a state "right-to-work" constitutional amendment and criticized the presidential veto of a federal minimum wage increase and urged

Finally, the Charging Party's November 5 postings did not lose the protection of the Act. An employee's off-duty, offsite use of social media to communicate with other employees or third parties is protected so long as the "communication is not so disloyal, reckless, or maliciously untrue as to lose the Act's protection."[20] Here, the Charging Party's comments were restricted to [redacted] complaints about employment conditions. [redacted] did not disparage either GP's products or the services being provided by H&M. Moreover, [redacted] did not falsify any information. Accordingly, [redacted] comments remained protected.

B. H&M Violated Section 8(a)(1) By Laying Off the Charging Party Because of [redacted] Facebook Posts.

An employer violates Section 8(a)(1) of the Act by interfering with an employee exercising his or her Section 7 rights.[21] H&M does not dispute that it discharged the Charging Party for [redacted] Facebook postings. Because we have found that the Charging Party's Facebook postings constituted protected concerted activity, we conclude that H&M violated Section 8(a)(1) when it laid off the Charging Party in response to that activity.[22] No motive analysis is necessary in this case because H&M has not offered

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coworkers to vote for labor-friendly political candidates). *See also Kaiser Engineers*, 213 NLRB 752, 755 (1974) (discriminatee engaged in mutual aid or protection by writing letter to U.S. legislators on behalf of in-house employee organization opposing perceived effort by employer's competitor to obtain from Department of Labor eased restrictions on the importation of foreign engineers; letter did not request action from discriminatee's immediate employer and the issue was not one over which the employer had any control), enfd. 538 F.2d 1379, 1384-85 (9th Cir. 1976).

[20] *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 3-4, 5 (Aug. 22, 2014) (citations omitted), enfd. sub nom. *Three D, LLC v. NLRB*, 629 Fed. Appx. 33 (2d Cir. 2015).

[21] 29 U.S.C. § 158(a)(1). *See, e.g., EF Int'l Language School,* 363 NLRB No. 20, slip op. at 1 n.2, 12 (Oct. 1, 2015); *Parexel Int'l, LLC*, 356 NLRB 516, 518 (2011) (finding employer's attempt to prevent future protected concerted activity by discharging an employee for discussing wages violated Section 8(a)(1)).

[22] *See. e.g., Chromalloy Gas Turbine Corp.*, 331 NLRB 858, 863 (2000) (finding employer violated Section 8(a)(1) by discharging employee for speaking out during a group meeting against new break policy and how managers scheduled work), enfd. 262 F.3d 184 (2d Cir. 2001).

a separate and independent basis for the Charging Party's discipline.[23] Again, H&M concedes that it disciplined the Charging Party for [redacted] Facebook comments. Because we have already concluded that the comments did not lose the protection of the Act, the discipline violated Section 8(a)(1)—regardless of H&M's motivations.[24]

C. Georgia Pacific is Not a Joint-Employer with H&M Construction, and is Not Jointly and Severally Liable for H&M's Unfair Labor Practice.

Initially, regarding whether GP and H&M are joint employers, in *BFI Newby Island Recyclery*, the Board reaffirmed that two or more employers are joint employers of the same employees if (1) they are "both employers [of a single workforce] within the meaning of the common law" and (2) they "share or codetermine those matters governing the [employees'] essential terms and conditions of employment."[25] The Board determines if a common law employment relationship exists by examining whether the employees perform services for the putative joint employer and are subject to the putative joint employer's control or right to control how those services are conducted.[26] If the common-law test is satisfied, the Board then determines whether the putative employer "possesses sufficient control over employees' essential terms and conditions of employment to permit meaningful collective-bargaining."[27] In this regard, the Board held that it would no longer require that a joint employer both possess the authority to control employees' terms and conditions of employment and exercise that authority directly, immediately, and "not in a 'limited and routine' manner."[28] Rather, the Board concluded it would find joint employer status where the putative joint employer has the right to control, in the common-law sense, "the means or manner of employees' work and terms of

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[23] *Id.*, 331 NLRB at 864 ("where protected concerted activity is the basis for an employee's discipline, the normal *Wright Line* analysis is not required").

[24] *Phoenix Transit Sys.*, 337 NLRB 510, 510 (2002), enfd. mem. 63 Fed. Appx. 524 (D.C. Cir. 2003).

[25] 362 NLRB No. 186, slip op. at 2, 15 (Aug. 27, 2015).

[26] *Id.*, slip op. at 12-17 & n.65, 18 n.96.

[27] *Id.*, slip op. at 2.

[28] *Id.*, slip op. at 15-16 (overruling Board decisions, including *TLI, Inc.,* 271 NLRB 798 (1984), enfd. mem. sub nom. *Teamsters Local 326 v. NLRB*, 772 F.2d 894 (3d Cir. 1985), and *Laerco Transportation*, 269 NLRB 324 (1984)).

employment, either directly or [indirectly] through an intermediary."[29] However, if a putative joint employer's control over terms and conditions of employment is too limited in scope or significance to permit meaningful collective bargaining, the Board stated that it may decline to find a joint employer relationship.[30]

Here, we conclude that GP is not a joint employer with H&M because GP does not have the requisite authority to control H&M's employees or set their terms and conditions of employment. GP does not supervise H&M's employees on a daily basis, assign them work, or transfer them to different jobs. It also has not established any workplace rules for H&M's employees. GP employees do not perform H&M work, nor do H&M employees regularly perform work done by GP employees. Additionally, H&M owns all the equipment that its employees use. There is virtually no day-to-day interaction between GP management and H&M personnel. Rather, H&M retains control over its labor policies, including hiring, wages, fringe benefits, discipline, grievances, and daily supervision.

The only evidence of GP's ability to control H&M's employees is the service agreement between the two companies that imposes certain staffing and scheduling requirements on H&M for the ARC mill landfill operation. The agreement requires H&M to have sufficient personnel onsite to ensure a smooth operation. It also requires H&M to have a day-shift crew on duty eight hours per day, five days a week, and shift workers operating on two 12-hour shifts, seven days a week. However, those provisions do not dictate the hours that any particular employee must work, and their purpose is to ensure only that H&M adequately provides the services for which it was retained by GP. Thus, these minimal staffing and scheduling requirements are insufficient to establish a joint employer relationship.[31]

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[29] *Id.*, slip op. at 2, 15-16, 18-20 (finding that two statutory employers were joint employers of a single workforce where, per their temporary labor services agreement, the supplier employer recruited, selected, and hired employees for the user employer which could, in turn, reject and discharge employees and exert control over their wages, work shifts, and productivity and safety standards, even though the agreement specified that the supplier was the sole employer).

[30] *Id.*, slip op. at 16.

[31] *See, e.g., S.G. Tilden, Inc.*, 172 NLRB 752, 753 (1968) (finding under Board's traditional test that franchisor was not joint employer despite franchise agreement requiring franchisees to observe pricing and housekeeping standards, have their employees wear prescribed uniforms, and remain open for set hours of business; these requirements did not evidence franchisor's control over the franchisees' labor policies, but maintained the franchisor's brand and eliminated unfair competition among franchisees); *Hychem Constructors, Inc.*, 169 NLRB 274, 276 (1968) (finding under Board's traditional test that general contractor was not joint employer of

Second, regarding whether GP is jointly and severally liable for H&M's unfair labor practice here, "it is well settled that an employer violates the Act when it directs, instructs, or orders another employer with whom it has business dealings to discharge, lay off, transfer or otherwise affect the working conditions of the latter's employees" because of the protected concerted or union activities of those employees.[32] Here, because there is little evidence that GP played any direct role in the Charging Party's layoff, we conclude that GP is not jointly and severally liable for H&M's unlawful lay off of the Charging Party. According to witnesses from both employers, GP's (b) (6), (b) (7)(C) told an H&M Supervisor about the Facebook posts. However, each individual confirms the other's testimony that GP's (b) (6), (b) (7)(C) did not ask or instruct H&M to take any adverse personnel action against the Charging Party. Instead, H&M decided on its own to lay off the Charging Party based on (b) (6), (b) (7)(C) Facebook posts. The only evidence that GP caused H&M's actions is the Charging Party's own statement that the H&M Supervisor told (b) (6), (b) (7)(C) during their meeting on (b) (6), (b) (7)(C) that GP wanted the Charging Party discharged, and that the Charging Party was blackballed from every other GP mill. However, no other evidence corroborates those statements, and the testimony from H&M's and GP's officials indicates that the decision was made solely by H&M

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subcontractor's employees despite subcontract giving it the right to approve wage increases and overtime and have subcontractor's employees follow plant rules; authority general contractor retained merely allowed it to police costs of subcontract and maintain safety and security of its premises).

[32] *Reliant Energy*, 357 NLRB 2098, 2099 (2011) (power plant violated Section 8(a)(3) and (1) by directing subcontractor to remove from its property a well-known union employee who was collecting authorization cards and answering questions about unionization from the power plant's employees). *See also Esmark, Inc.,* 315 NLRB 763, 764, 767-68 (1994); *Int'l Shipping Ass'n*, 297 NLRB 1059, 1059 (1990) (pharmaceutical company held liable for causing the subcontractor operating its warehouse to refuse to hire pro-union employees); *Georgia Pacific Corp.*, 221 NLRB 982, 987 (1975). Although the preceding cases found Section 8(a)(3) violations, the Board has relied on the same rationale to find a Section 8(a)(1) violation. *See Jimmy Kilgore Trucking Co.*, 254 NLRB 935, 935, 947 (1981) (trucking company that leased employees from sole proprietor violated Section 8(a)(1) by causing the sole proprietor to terminate an employee because he had asked for a raise with his coworkers); *Fabric Services*, 190 NLRB 540, 542 (1971) (client company violated Section 8(a)(1) by requiring employee of telephone company to remove his union pocket protector while working on its premises).

management. We therefore conclude that GP may not be held liable for H&M's unlawful lay off of the Charging Party.[33]

Accordingly, the Region should issue complaint, absent settlement, based on the analysis set forth above.

/s/
B.J.K.

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[33] We note that if GP subsequently refuses to allow the Charging Party to work at ARC or another of its mills based on (b) (6), (b) (protected concerted activity in the current case, a charge may be appropriate for that adverse personnel action. *See, e.g., Host Int'l*, 290 NLRB 442, 443 (1988) (employer violated Section 8(a)(1) and (4) by refusing to hire two employees because of their previous protected concerted activities of filing a federal court lawsuit and Board charges against the employer). However, on the existing record we conclude GP has not acted unlawfully in this case.