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NLRB Majority Makes Clear That Individual Employee Gripes Are Not Protected by Federal Labor Law

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The National Labor Relations Act protects employees when they are engaged in protected concerted activity for the purpose of mutual aid and protection. What constitutes concerted activity for mutual aid and protection has been a subject of debate within the NLRB with Democratic boards viewing those terms broadly and Republican boards having a more restrictive bent. In *Alstate Maintenance*, 367 NLRB No. 68, the NLRB in a 3-1 ruling, held that individual gripes even if made in a group setting are not concerted activities and thus are not protected by the Act.

Alstate provides ground services at JFK Airport. The skycaps employed by Alstate rely on passenger tips to make up the bulk of their compensation. One of the skycaps was approached by his supervisor and was told he was to assist with a soccer team's equipment along with other skycaps. One of the skycaps said to the supervisor in front of the other skycaps "We did a similar job a year prior and we didn't receive a tip for it." The skycaps walked away and didn't assist in the loading of the equipment until later. The skycap who made the comment was subsequently discharged because of it.

The Board, applying the standard set forth in *Meyer's Industries*, found the comment made by the skycap not to be concerted. Under *Meyer's*, an action by an individual employee is only concerted if the individual employee is bringing group complaints to the attention of management or if the individual was trying to induce group action. The Board reasoned that there was a lack of evidence that the skycap was voicing a group complaint to management and the use of "we" in his comment to the supervisor did not indicate that the group had discussed the prior incident but only that the group had previously been "stiffed." Also, there was no evidence that the individual skycap was trying to induce group action. Finally, the Board overturned a previous case, *WoodMark by Wyndham*, because it did not properly apply the *Meyer's* standard, but instead announced as a rule of law that an employee who protests publicly in a group meeting is engaged in initiating group action.

In *Alstate*, the Trump Board has served notice that, in deciding whether employee action is concerted, they will faithfully apply the *Meyer's* standard and not expand on it. This is a departure from the direction of the Board over the last decade. The Board also pointed out, although not an issue in *Alstate*, that there were other cases that arguably conflicted with *Meyer's*, including such cases where the Board found statements by individual employees concerning wage, work schedules, and job security to be "inherently" concerted. The Board expressed an interest in reconsidering these cases as well.

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