

NLRA Provides Protections Even to Non-Union Employees



By [Ben Mathis](#) and [Jonathan Kandel](#)

A recent case out of the Fourth Circuit Court of Appeals - which covers South Carolina, North Carolina, West Virginia, and Virginia - highlights how a non-union employer can violate the National Labor Relations Act ("NLRA"). In [Alton H. Piester LLC v. NLRB](#), the court found that the non-union employer violated the NLRA by threatening its employees and subsequently terminating one after several complained about a change in pay. 591 F.3d 332 (4th Cir. 2010).

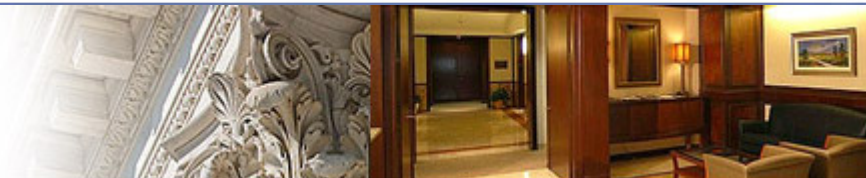
Background of the NLRA

The NLRA is the primary federal statute addressing labor-management relations in the private sector. A common misconception is that the NLRA only protects union employees. In reality, employees working for non-union employers are covered by the NLRA in situations where they engage in "concerted activity."

Section 7 of the NLRA outlines employee rights which include, among other things, the right "to engage in other concerted activities for the purpose of ... mutual aid or protection." 29 U.S.C. § 157. Section 7 applies to "concerted activities," which generally means the actions of more than one employee involving "mutual aid or protection." Any conduct that may reasonably tend to coerce or intimidate employees constitutes a violation of the NLRA. [See](#) § 158(a)(1). An employee subject to an unfair labor practice may file a charge with the NLRB, the entity charged with administering the NLRA.

Piester

In [Piester](#), several non-union truck drivers voiced their opposition to a change in their pay at a company meeting in January 2007. In response, the owner told the drivers "if they didn't like it, they could 'clean out their truck and move to another job.'" [Piester](#), 591 F.3d at 334. The truck drivers continued to complain to each other about the pay change for the next few months. In April 2007, one truck driver met, individually, with the company's owner and a secretary to complain about the pay change. As a result, the truck driver was terminated.



[Sex, Lies, and Academic Studies - Fulton County Adult Entertainment Ordinance Upheld](#)

[Creditors Can Turn Back Time: Potential Recovery from Insolvent Debtor](#)

Learn more about FMG

[Business Liability and Insurance Law](#)

[Commercial and Complex Litigation](#)

[Construction Law](#)

[Government Law](#)

[Labor and Employment Law](#)

Freeman Mathis & Gary, LLP
100 Galleria Parkway
Suite 1600
Atlanta, Georgia 30339-5948

Tel: 770.818.0000 / Fax: 770.937.9900

www.fmglaw.com

The Fourth Circuit held that the company committed an unfair labor practice when it responded to the group of truck drivers at the January meeting. Piester, 591 F.3d at 336. The court rejected the company's argument that its statement, "if they didn't like it, they could clean out their truck and move to another job," was not coercive, and reiterated that it does not matter whether the conduct is actually coercive or intended to be coercive. The court explained that the NLRB "has often found an employer's statement to be unlawfully coercive when they have invited employees to quit their jobs in response to" concerted activities. Id.

The court found that it was also an unfair labor practice to terminate the individual truck driver. The company argued that the individual truck driver could not have been engaged in "concerted activity" because he was the only employee present when he subsequently complained to the owner. The court explained that, because the joint protest at the January meeting was concerted activity and the controversy continued until the meeting in April, the individual meeting "amounted to a continuation of the earlier concerted [activities]." Piester, 591 F.3d at 335. Therefore, even though the individual truck driver was not selected as a spokesman, his individual meeting constituted concerted activity and the company could not terminate him in response.

The Piester case is a reminder to all employers that even if your employees are not members of a union, the NLRA still provides them certain protections. Thus, employers must always be careful in responding to employee concerns, especially when the concern impacts more than one employee.

For more information regarding this article, please contact Mr. Mathis at 770.818.1402 or by email at bmathis@fmglaw.com, or Mr. Kandel at 770.818.1427 or by email at jkandel@fmglaw.com.