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NCLA Appeals Flawed ALJ Ruling on ‘Salt Mine’ Tweet to the National Labor Relations Board

Joel Fleming v. FDRLST Media, LLC

Washington, DC (June 19, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, today filed [exceptions](#) and a supporting [brief](#) to the April 22nd [decision](#) issued by a National Labor Relations Board (NLRB) Administrative Law Judge (ALJ) in *Joel Fleming v. FDRLST Media, LLC*.

NCLA takes exception to multiple erroneous conclusions reached by ALJ Kenneth W. Chu, but specifically those related to subject-matter jurisdiction, personal jurisdiction, venue, and what counts as an unfair labor practice.

On June 6, 2019, Mr. Ben Domenech, co-founder and publisher of *The Federalist*, an online magazine published by NCLA client FDRLST Media, jokingly [commented](#) on his personal Twitter account regarding a current event: “FYI@fdrlst first one of you tries to unionize I swear I’ll send you back to the salt mine.” Joel Fleming, a random Tweeter, filed a complaint with NLRB the next day claiming the post constituted an “unfair” labor practice.

NLRB then pursued the case without conducting a proper investigation. The general counsel and Joel Fleming failed to establish subject-matter jurisdiction. The National Labor Relations Act (NLRA) does not empower random people like Mr. Fleming, who was not “aggrieved” by an alleged unfair labor practice, to sick NLRB on an employer to whom he has no relationship.

The general counsel and Mr. Fleming also failed to establish personal jurisdiction over FDRLST. The company is not based in New York, and the alleged unfair labor practice did not occur in and was not directed at anyone residing in New York. Yet NLRB dragged the defendant into that jurisdiction anyway. Therefore, NLRB has subjected FDRLST to an onerous enforcement action where the agency lacks both subject-matter jurisdiction and personal jurisdiction under the Constitution and under NLRB’s own established practice regarding proper venue.

Even if NLRB had proper jurisdiction, NCLA also takes exception to the ALJ’s conclusion that FDRLST violated Section 8(a)(1) of the NLRA with a tweet that “threatened” employees. NCLA maintains that ALJ Chu erred in his decision because the charging party and the Board’s prosecuting attorney failed to prove that FDRLST engaged in an unfair labor practice. The prosecuting attorney offered only his own speculations to prove his case against FDRLST. Such evidence fails to prove the case, and the First Amendment protects Mr. Domenech’s satirical speech.

NCLA requests that the Board schedule oral argument in this case.

NCLA released the following statement:

“This case was never lawfully opened in the first place. Mr. Fleming’s personal crusade against Mr. Domenech’s satirical Twitter commentary on a topic of public conversation has no business being a federal case. This egregious attempt to employ NLRB’s administrative apparatus to silence and punish FDRLST with administrative process and great costs on the basis of an ideological disagreement is entirely unlawful. The Board has a vital opportunity to get its house in order and send a message that it will not tolerate attempts by random people to harass third-party employers for their employees’ personal speech.”

— **Adi Dynar, Litigation Counsel, NCLA**

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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