From: (b) (6), (b) (7)(C)
To: Marshall, Sean R.; Colangelo, David A; Heltzer, Daniel M.; Eitzen, Stephanie C.
Cc: Ghatan, Jeanette; Walters, Kimberly; Dodds, Amy L.; Compton, Kayce R.; Shorter, LaDonna
Subject: Sutherland Global Services, Inc., 05-CA-313962 (case-closing email)
Date: Thursday, May 28, 2026 11:43:13 AM

This case was submitted for advice regarding whether the Employer violated the Act by: (1) changing its overtime policies in response to protected concerted activity; and (2) terminating an employee for recording a meeting with a supervisor. We conclude that there is insufficient evidence to support either allegation; thus, the Region should dismiss the charge, absent withdrawal.

Briefly, the Employer is a business process outsourcing company that, among other things, provides call center support for various clients. Charging Party (b) (6), (b) (7)(C) worked from home as a (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) until (b) (6), (b) termination in (b) (6), (b) (7)(C) 2023. When (b) (6), (b) was first hired, employees freely worked overtime on a daily basis without prior approval. On April 9, 2022, the Employer announced that (b) (6), (b) (7)(C) could earn additional incentive pay for working weekend overtime in April and May. Despite doing so, (b) (6), (b) (7)(C) did not receive the promised incentive pay. Over the subsequent months, (b) (6), (b) (7)(C) sought the incentive pay (b) (6), (b) was owed by repeatedly emailing (b) (6), (b) (7)(C) supervisor, (b) (6), (b) (7)(C). In one email, from (b) (6), (b) (7)(C) 2022, (b) (6), (b) (7)(C) stated that (b) (6), (b) would work on getting "you guys" the money owed. In (b) (6), (b) (7)(C) 2023, (b) (6), (b) (7)(C) began communicating with at least five of (b) (6), (b) coworkers about wage issues generally and with one coworker, (b) (6), (b) (7)(C), about the owed pay specifically. (All dates hereafter are in 2023.) On (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) emailed human resources complaining about the owed pay and requesting payroll documents; (b) (6), (b) also requested those documents from Supervisor (b) (6), (b) (7)(C) and two higher level officials. Supervisor (b) (6), (b) (7)(C) responded to the group saying (b) (6), (b) would connect with (b) (6), (b) (7)(C) about the issue. (b) (6), (b) (7)(C) Supervisor (b) (6), (b) (7)(C) informed the (b) (6), (b) (7)(C) team that prior approval would now be required for overtime. Charging Party (b) (6), (b) (7)(C) claims that (b) (6), (b) was disparately excluded from overtime opportunities going forward, but admits being offered overtime at least once in the short period before (b) (6), (b) termination.

On (b) (6), (b) (7)(C), Supervisor (b) (6), (b) (7)(C) scheduled a meeting with (b) (6), (b) (7)(C) who recorded it on (b) (6), (b) cell phone. After discussing an unrelated issue, they turned to the missing incentive pay, with (b) (6), (b) (7)(C) assuring (b) (6), (b) (7)(C) (b) (6), (b) was working on getting "you guys" the incentive pay. During the meeting, (b) (6), (b) (7)(C) stated that (b) (6), (b) was only speaking on behalf of (b) (6), (b) (7)(C) with respect to the unpaid incentives. Afterward, Charging Party (b) (6), (b) (7)(C) emailed the recording to several coworkers, but did not include any commentary explaining why (b) (6), (b) was sharing it. A few coworkers responded agreeing that Supervisor (b) (6), (b) (7)(C) was

gaslighting [redacted] and that [redacted] was getting the run-around. A coworker informed the Employer about [redacted] recording and forwarded [redacted] email with the recording upon request. On [redacted], Charging Party [redacted] learned from coworkers that Supervisor [redacted] had started a secret text chat supposedly requesting any information about [redacted] speaking negatively about the Employer. The Region has been unable to obtain copies of the chat. On [redacted], the Employer informed Charging Party [redacted] that [redacted] was terminated for recording the [redacted] meeting with Supervisor [redacted] in violation of the Employer's Clean Desk Policy, which requires personal effects such as cell phones to be stored outside of employees' work area to protect clients' confidential information.

Analysis

We conclude that there is insufficient evidence to show that the [redacted], 2023 changes to the Employer's overtime policy violated Section 8(a)(1) under *Wright Line*. Charging Party [redacted] discussed concerns about owed incentive pay with at least one coworker, and [redacted] [redacted] 2023 escalation to management officials was therefore arguably protected as the logical outgrowth of prior concerted activity. *See, e.g., Maine Coast Regional Health Facilities, d/b/a Maine Coast Memorial Hospital*, 369 NLRB No. 51, slip op. at 1, 13 (2020), *enforced in relevant part*, 999 F.3d 1, 10-11 (1st Cir. 2021), *overruled on other grounds by Stericycle, Inc.*, 372 NLRB No. 113 (2023). However, given that [redacted] communication with higher level officials did not mention any coworkers, the only evidence supporting Employer knowledge that [redacted] complaint was group-related is supervisor [redacted] statement, during the [redacted] meeting, that [redacted] would work on getting "you guys" the incentive pay. This phrase alone is insufficient to establish knowledge of concert, as [redacted] used the same phase in the prior [redacted] email, before the commencement of group activity. Furthermore, there is insufficient evidence that the Employer's decision to change the overtime policy was retaliatory. The change applied to the entire team, and [redacted] has not provided any evidence demonstrating that [redacted] was disparately excluded from overtime opportunities. Indeed, [redacted] admits being offered overtime at least once. Thus, the only evidence of animus against [redacted] advocacy around incentive pay is the timing of the overtime change—[redacted] after [redacted] requested payroll information. For all these reasons, it would be difficult to prove that the overtime change was retaliation against protected concerted activity.

We also conclude that the Employer did not violate Section 8(a)(1) by terminating Charging Party [redacted] for recording the [redacted] meeting with Supervisor [redacted] In this regard, there is insufficient evidence that Charging Party [redacted] recording was protected concerted activity. The Employer asserts that it terminated [redacted] for violating

its Clean Desk Policy by recording the meeting with Supervisor (b) (6), (b) (7)(C) [1] Recording in the workplace is protected by Section 7 if employees are engaged in concerted activities for their mutual aid or protection and "no overriding employer interest is present." *Whole Foods Market, Inc.*, 363 NLRB 800, 802 (2015), *enforced mem.*, 691 F. App'x 49 (2d Cir. 2017). To be concerted, a recording must have "some relation to group action in the interest of employees." *Meyers Industries*, 281 NLRB 882, 887 (1986), *aff'd sub nom. Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987); *see also Whole Foods*, 363 NLRB at 802 n.9. Here, while Charging Party (b) (6), (b) (7)(C) arguably engaged in protected concerted activity by discussing unpaid incentives with at least one coworker, the evidence is insufficient to show that the recording itself was made to further that purpose. In particular, (b) (6), (b) (7)(C) claims that (b) (6), (b) recorded the meeting for (b) (6), (b) own personal safety, and nothing in (b) (6), (b) communication with coworkers when sharing the recording, or in their responses, suggests that another purpose was to help them collectively obtain the incentive payment. *See, e.g.*, *Mazer Chemicals, Inc.*, 270 NLRB 241, 241 (1984) (employee who acted alone and for his own benefit was not engaged in concerted activities). Moreover, during the meeting, (b) (6), (b) (7)(C) explicitly told Supervisor (b) (6), (b) (7)(C) that (b) (6), (b) was only advocating on (b) (6), (b) own behalf. Therefore, under the circumstances, there is insufficient evidence that making the recording itself was concerted activity.

Finally, given that the Region also considered analyzing the termination under *Wright Line*, we note that there is also insufficient evidence that the Employer terminated Charging Party (b) (6), (b) (7)(C) for prior protected concerted activities instead of (b) (6), (b) violation of the Clean Desk Policy. Though (b) (6), (b) (7)(C) discussed incentive pay and other wage issues with coworkers, there is insufficient evidence that the Employer knew of or had animus against this arguably protected concerted activity. In this regard, the only evidence of the secret text chat purportedly targeting (b) (6), (b) (7)(C) is (b) (6), (b) hearsay report that other employees were included in the chat.

Accordingly, the Region should dismiss the charge, absent withdrawal. Please feel free to reach out with any questions.

[1] There is no allegation that the Clean Desk Policy is unlawful.

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(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C), Division of Advice
(b) (6), (b) (7)(C)

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