

From: (b) (6), (b) (7)(C)
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Subject: Microsoft Corporation, 19-CA-364190 (Advice closing email)
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The Region submitted this case for advice on whether the termination of two employees for holding a protest on Employer property violated Section 8(a)(1). We conclude that the protest was not protected activity and, thus, the discharges were lawful.

Beginning in (b) (6), (b) (7)(C) 2023, Charging Party (b) (6), (b) (7)(C) regularly emailed senior leadership and posted on the Employer's internal communication platform about the war in Gaza. The vast majority of (b) (6), (b) (7)(C) many communications did not reference workplace concerns. The Employer disciplined (b) (6), (b) (7)(C) for two offensive comments that did not reference working conditions, but it did not otherwise penalize these communications. On May 15, 2024, the organization No Tech for Apartheid, along with (b) (6), (b) (7)(C) other employees, launched the No Azure for Apartheid campaign. Azure is the Employer's cloud computing platform. The campaign's petition demanded, among other things, that the Employer terminate its Azure contracts with the Israeli government and ensure "the safety of Palestinian, Arab, Muslim and allied employees" by protecting pro-Palestinian speech and fundraising on Employer platforms. The Employer took no action against the Charging Party based on (b) (6), (b) (7)(C) involvement in launching the No Azure campaign or distributing the petition.

On (b) (6), (b) (7)(C) 2024, (b) (6), (b) (7)(C) sent a calendar invite to all employees for an (b) (6), (b) (7)(C) event titled (b) (6), (b) (7)(C). Timed to coincide with an international day of action organized by No Tech for Apartheid, the invitation encouraged individuals to participate in a walkout, vigil, speaker series, and fundraiser at the Employer's Redmond campus to oppose the industry's purported support for "Israel's apartheid and genocide." The invitation linked to the campaign's digital toolkit, which in turn linked to the May petition, but did not otherwise indicate that the event's purpose was to address workplace concerns. The protest was also advertised publicly on social media. On (b) (6), (b) (7)(C) 2024, security personnel notified (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that they could not hold the event on Employer property, encouraging them to relocate it to nearby public property. In an email exchange, security explained that the event could not be held on campus because it was advertised to non-employees, was not authorized by the Employer, and was sponsored by an outside organization. Despite repeated requests to move the event offsite as organizers were setting up, the protest took place as planned with amplification and a large crowd. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were terminated (b) (6), (b) (7)(C) for violating company policy and failing to comply with security directives.

We conclude that the Employer's termination of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) for holding the protest did not violate the Act because the event was not for mutual aid or protection. This element focuses on whether employees seek to improve terms and conditions of employment or otherwise improve their lot as employees. *See, e.g., Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978). As the Supreme Court has made clear, "at some point the relationship" between employees' concerted activity and their "interests as employees . . . becomes so attenuated that an activity cannot fairly be deemed to come within the 'mutual aid or protection' clause." *Id.* at 567-68. Here, the protest's objectives were to pressure the Employer to cut ties with the Israeli government, raise awareness of conditions in Gaza, and raise funds for humanitarian

relief—not to improve employees’ working conditions. Although extant Board law recognizes that concerted activity remains protected even when “other objectives may predominate,” the protest invitation’s inclusion of an indirect link to the months-old petition—which encompassed one demand related to employee safety that was tied to protecting free speech and use of Employer communications systems—is insufficient to establish that “an objective” of the protest itself was to improve employees’ lot as employees. *Home Depot, USA*, 373 NLRB No. 25, slip op. at 10 n.26 (2024), *enf. denied on other grounds*, 158 F.4th 910 (8th Cir. 2025).¹ Cf. *Ampersand Publ’g, LLC v. NLRB*, 702 F.3d 51, 58 (D.C. Cir. 2012) (employees cannot “extend [Section] 7’s protections by wrapping an unprotected goal in a protected one,” such as by “tossing a wage claim in with their [otherwise unprotected] quest”).

We reject the Charging Party’s argument that the protest was for mutual aid because the Employer’s relationship with Israel could harm public perception and thus the company’s financial performance, thereby affecting employees’ compensation and benefits. Such a link to terms and conditions is too attenuated to satisfy this element. Moreover, such an argument is inconsistent with precedent holding that efforts to affect the ultimate direction and managerial policies of the business or influence the product fall outside the clause’s scope, notwithstanding that those activities might also have an ancillary effect on a business’s finances. See, e.g., *National Dance Institute–New Mexico, Inc.*, 364 NLRB 342, 349-50 (2016) (pressing employer to better address “needs and desires” of constituent community not protected); *Lutheran Social Service of Minnesota*, 250 NLRB 35, 41-42 (1980).²

Finally, there is insufficient evidence to establish that the Employer’s reasons for the discharges are pretextual. In this regard, there is no evidence of animus toward the (b) (6), (b) (7)(C) month-old petition or (b) (6), (b) (7)(C) prior arguably protected communications and (b) (6) earlier disciplines only concerned unprotected posts.

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

¹ The General Counsel disagrees with the Board’s decision in *Home Depot* and will urge the Board to overturn it in an appropriate case.

² We likewise note that the Employer’s requirement that employees participate in diversity and inclusion initiatives cannot convert the protest into protected activity inasmuch as nothing indicates the event aimed to change this performance expectation.

(b) (6), (b) (7)(C)

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