



Joseph J. Pass
Edward H. Walter
James A. Welker
Joseph Santino Pass*
Steven E. Winslow
Patrick K. Lemon

Ben Paul Jubelirer (1904–1983)
Frank P. G. Intrieri (1942–1976)

*also admitted in Ohio

of counsel
Neal R. Cramer

**ALLEGHENY COUNTY LABOR COUNCIL
REPORT OF LEGAL COUNSEL
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**Protected Concerted Activity via Social Media:
The NLRA Recognizes Protection**

On November 25, 2016, a National Labor Relations judge ruled that the United Parcel Service, Inc., (“UPS”) violated national labor law when it fired a driver for his union activities and criticism on social media. The ruling stems from UPS' repeated efforts to remove Robert Atkinson, who was a driver stationed at the company's New Kensington package delivery center in North Apollo, Pennsylvania. UPS discharged Mr. Atkinson twice in June 2014, once for not working as quickly unsupervised as when supervised and again a day later for not following procedures during a supervised ride. He continued working while challenging the dismissals in the union grievance process. In October 2014, UPS terminated Mr. Atkinson a third time for failing to download his assigned route into his onboard delivery system. He also filed a grievance to fight the third dismissal.

Specifically, the judge rejected UPS' argument that it would have fired Mr. Atkinson for his poor performance in the absence of his organizing and criticism, finding that the company's decisions were “tainted” by its unlawful goal of removing a vocal leader and union activist from the workplace. United Parcel Serv., Inc. & Robert C. Atkinson, Jr. an Individual, 6-CA-143062, 2016 WL 6947141 (Nov. 25, 2016). The judge also found that Atkinson, a union steward prior to his termination, was targeted for removal after he campaigned against a collective bargaining agreement between the company and the International Brotherhood of Teamsters and had emerged as a "ringleader among employees who used social media to voice (often sarcastically) their frustrations with UPS's extensive rules and procedures for package car drivers." In addition, the judge recognized that Mr. Atkinson's Facebook posts that voiced his frustration and disagreement with UPS's procedural methods and decisions to discipline drivers, which did not violate UPS' anti-harassment media policy, were protected under the NLRA.

Although the judge awarded Atkinson some backpay for the unlawful termination, he ruled that Atkinson was not entitled to full backpay or to reinstatement because the former driver made comments about management after he left UPS that would have triggered termination for violating UPS' anti-harassment media policy if he had still worked there. Specifically, Mr.



Atkinson posted on Facebook that one of his managers was impotent, and called him a "knuckle dragger" who speaks "like he's chewing on cotton balls and marbles."

This decision is exciting for two reasons. First, it shows the NLRB's willingness to extend the protections of the NLRA to social media usage. Second, it shows the NLRB's willingness to take on challenging cases in order to protect an employee who engages in protected concerted activities, even under circumstances where the employee's actions are imperfect. As always, we will keep the Allegheny County Labor Council updated as these issues progress.

Respectfully submitted,

STEVEN E. WINSLOW, ESQUIRE
