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On September 28, 2012, the National Labor Relations Board (NLRB) issued a decision and order, affirming an administrative law judge's decision, requiring an employer car dealership to cease and desist from maintaining a "courtesy rule" in its employee handbook because employees could reasonably interpret the rule as chilling their rights under Section 7 of the Fair Labor Standards Act. (*Karl Knauz Motors, Inc., d/b/a Knauz BMW and Robert Becker*. Case 13-CA-046452).

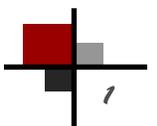
Section 7 of the FLSA gives employees the right to organize, bargain collectively, and "...engage in other concerted activities for the purpose of collective bargaining or other mutual aid...."

The employer's courtesy rule stated:

- (b) Courtesy. Courtesy is the responsibility of every employee. Everyone is expected to be courteous, polite and friendly to our customers, vendors and suppliers, as well as to their fellow employees. No one should be disrespectful or use profanity or any other language which injures the image or reputation of the dealership.

The employer, a BMW dealership, dismissed Becker, a salesman for comments posted on his Facebook page regarding a sales event the dealership had organized and conducted to introduce customers to the newly redesigned BMW Series 5 luxury automobile. Becker had earlier told dealership managers that he did not believe the dealership's plans for a roll-out event were substantial enough to reflect the luxury image of the brand. He objected, for example, to the fact that while a local Mercedes Benz dealership had hosted a similar party with catered food and waiter-served appetizers, Knauz plans were to have a hot dog cart, bags of Doritos, and bowls of apples.

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A few days after the dealership event, Becker posted on Facebook a series of pages with photographs of the event and his own commentary. He wrote, for example:

I was happy to see that Knauz went “ All Out” for the most important launch of a new BMW in years...the new 5 series. A car that will generate millions of dollars in revenue for Knauz over the next few years. The small 8 oz. bag of chips, and the \$2.00 cookie plate from Sam’s Club, and the semi fresh apples and oranges were a nice touch...but to top it all off...the Hot Dog Cart where our clients could obtain an over cooked wiener and a stale bun.

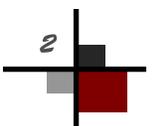
At the same time Becker also posted a description of an incident that occurred at the dealership a few days after the roll out event where a salesperson allowed a customer’s thirteen year old son to sit in the driver’s seat of a running vehicle. Apparently the son stepped on the gas causing the vehicle to drive over the foot of the customer and into a nearby lake. Becker posted a picture of the vehicle in the lake with the salesperson sitting nearby wrapped in a blanket and the customer’s son holding his head and wrote:

This is what happens when a salesperson sitting in the front passenger seat allows a 13 year old boy to get behind the wheel of a 6000 pound truck built and designed to pretty much drive over everything. The kid drives over his father’s foot and into the pond in all about 4 seconds and destroys a \$50,000 truck. OOOPS!

At the dealership’s request Becker took down the postings but the dealership later terminated Becker noting that the dealership had received calls from other dealers and that his actions had embarrassed dealership management, coworkers and “...everybody who works at BMW.” Earlier the dealership had also indicated that the cause of dismissal was the posting of the vehicle accident event.

The administrative law judge found that the language of the courtesy rule was unlawful because employees could reasonably interpret it to restrict speech about working conditions or the effect of the employer’s decision to have only a modest event on their potential future earning’s commissions. The posting related to the accident, however, was not protected speech because it had no connection to any employee’s compensation or conditions of work and was posted by Becker “apparently as a lark.”

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In issuing the cease and desist order to the employer the NLRB noted that an employee could reasonably assume that the language of the courtesy rule's prohibition on image damaging language was intended to limit not the manner of speech but its content. "Reasonable employees would believe that even 'courteous, polite, and friendly' expressions of disagreement with [the dealership's] employment practices and terms and conditions of employment risk being deemed 'disrespectful' or damaging to the [dealership's] reputation....presumably, even if employees shared with third parties information about...unlawful conduct in the most genteel manner, such sharing would be injurious to the [dealership's] image or reputation. A reasonable employee, consequently, would believe that such a communication would expose him or her to sanctions under the [dealership's] rule."

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