

Starbucks Barista Gets NLRB Backing Second Time Around

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Note to Employers: don't fire a worker who tells his boss to "go f *** " herself in front of customers, then blow it by blaming the termination on his pro-union activities.

Unfortunately, that's what Starbucks did. Between 2004 and 2007, Local 660 of the Industrial Workers of the World (IWW) was trying to organize four stores in New York City. This led to some heated discussions between a barista named Joseph Agins, an open union supporter, and supervisors. While participating in off-duty union activities, Agins uttered profanities at a Starbucks manager in the presence of customers.

Agins was terminated. A memo prepared by the store manager stated that Agins was not eligible for rehire, because "[p]artner was insubordinate and threatened the store manager. Partner strongly support [sic] the IWW union."

In 2010, the National Labor Relations Board (NLRB) issued a finding that Starbucks violated Agins' right to engage in protected organizing activities. Further, the Board held that the barista's outbursts were not so egregious as to lose protection under the National Labor Relations Act.

The U.S. Court of Appeals for the Second Circuit disagreed, holding that the Board's analysis "improperly disregarded the entirely legitimate concern of an employer not to tolerate employee outbursts containing obscenities in the presence of customers." (Apparently it is ok to do so on the factory floor or in a backroom office, just not in front of the customers). The Court remanded the case to the Board.

This week, the Board accepted the Court's ruling, but still found Starbucks' decision to terminate Agins was discriminatory and motivated, in part, by disapproval of his pro-union activities. See the decision on the NLRB web site.

By Diane L. Regan