From: (b) (6), (b) (7)(C)
To: Marshall, Sean R.; Colangelo, David A; MacIntyre, David
Cc: Rajapakse, Milakshmi V.; Szapiro, Miriam; Bock, Richard; Shorter, LaDonna; Goldstein, Dawn
Subject: UFCW 1994 MCGEO, 05-CA-261825 (case-closing email)
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The Region submitted this case for advice as to whether to defer or dismiss the instant charge, which alleges the Employer violated Section 8(a)(1) of the Act by discharging the Charging Party "for working on police transparency and accountability legislation . . . in [redacted] capacity as a state legislator." As the Region noted in its submission, a finding of arguable merit would make deferral to the parties' contractual grievance procedure appropriate under *Dubo Manufacturing Corporation*, 142 NLRB 431 (1963), because the Charging Party has an active grievance pending over [redacted] discharge. *See* GC Memo 19-03, Deferral Under *Dubo Manufacturing Company*, pp. 1, 3. However, we conclude, in agreement with the Region, that the charge lacks merit and accordingly dismissal, rather than deferral, is appropriate absent withdrawal of the charge. *See* GC Memo 79-36, Procedures for Application of the *Dubo* Policy to Pending Charges, p. 3 n.8.

In *Eastex, Inc. v. NLRB*, the Supreme Court held that the "mutual aid or protection" clause of Section 7 of the Act protects employees when they act "in support of employees of employers other than their own," or to "improve their lot as employees through channels outside the immediate employee-employer relationship." 437 U.S. 556, 564-65 (1978). Consistent with this holding, the Board considers employee activity before a political body protected if it relates in some demonstrable way to employee concerns over wages, hours, or working conditions. *See GHR Energy Corp.*, 294 NLRB 1011, 1014 (1989) (employee's testimony before the U.S. Senate and a state environmental agency was protected, because the testimony was in support of "environmental safety laws that have a direct impact on the working conditions of employees handling toxic materials"), *enfd. mem.*, 924 F.2d 1055 (5th Cir. 1991); *cf. Tradesmen Int'l, Inc. v. NLRB*, 275 F.3d 1137, 1142 (D.C. Cir. 2002) (union agent's testimony before a local administrative board was unprotected because "there was no evidence to support a nexus" between his testimony "and any employee-related matters"). Although the Board has used varying language to describe its approach to cases involving political advocacy, the test for protection, at bottom, requires the presence of a nexus between what is being advocated and employee terms and conditions of employment. *See Five Star Transportation*, 349 NLRB 42, 45 (2007), *enfd.*, 522 F.3d 46 (1st Cir. 2008); *see also Eastex*, 437 U.S. at 567-568 (recognizing that "at some point" the relationship between employee activity before third parties and their interests as employees "becomes so attenuated that [their] activity cannot fairly be deemed to come within the 'mutual aid or protection' clause" of Section 7).

Here, the evidence establishes that the Charging Party's advocacy for police reform—in [redacted] capacity as a Maryland state delegate testifying before a local county council and otherwise—had nothing to do with [redacted] employment with the Employer, as a union representative working for a labor organization representing, among others, uniformed police officers. Nor has [redacted] identified its connection to any employment concern of any employee. Instead, the evidence shows that the Charging Party acted in the interest of the community at large and in furtherance of [redacted] own political agenda when [redacted] advocated for reforms that might bring about greater transparency and accountability in law enforcement.

Because the Act does not protect employee political advocacy that has no nexus to a specifically identified employment concern, the Region should dismiss the charge, absent withdrawal.

This email closes the case in Advice. Please contact us with any questions or concerns. Thank you.

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