THE ILLEGALITY OF BAD GRAMMAR

Although it is commonplace to decry the growing illiteracy of the American population and to view the law as an instrument capable of remedying a variety of social ills, no one has heretofore attempted to use the law to deter and punish bad grammar. This omission is now being corrected by the National Labor Relations Board (NLRB) in its caselaw interpreting the National Labor Relations Act (NLRA).

Section 7 of the NLRA guarantees the right of employees to join labor organizations and participate in collective bargaining. In addition, in language not well known to the general public, it also protects employees, acting with or without a union, who "engage in other concerted activities for the purpose of . . . mutual aid or protection."[1] For example, if one employee comes to the employer and demands a raise, the employer violates no law by firing the employee for such insolence. If, however, two employees jointly approach the employer seeking a raise and the employer discharges them for their conduct, the employer has committed an unfair labor practice because the employees engaged in "concerted activity" for their mutual protection. In order to demonstrate that an employer has interfered with this right, the General Counsel of the NLRB is required to prove that the employer believed that the conduct which gave rise to the employer's threat or discharge was the act of more than one employee.

In two recent cases, the NLRB found satisfactory proof of the employer's belief that conduct was concerted in the employer's use of plural pronouns, even though the context suggested that the employer's fault was not one of labor relations but rather one of grammar. In *Certified Service, Inc.*,[2] an employer was concerned about a inspection by the Occupational Safety and Health Administration (OSHA), which had uncovered several safety violations in the plant. The employer's foreman hollered onto the shop floor that if he heard who called OSHA, "they was gone." The NLRB found that this language could reasonably be perceived as a "threat to retaliate against employees for jointly filing complaints with OSHA" and that it was therefore an unfair labor practice even though only one

1. National Labor Relations Act, § 7, 29 U.S.C. § 157 (1982).
2. 270 NLRB 360 (1984).

employee had submitted the complaint.[3]

In *Oakes Machine Corp.*,[4] an employee had sent a letter to the parent company of his employer asking that the president of his company be removed from office for incompetence and mismanagement. The employee who sent the letter was discharged. At issue was whether the employer believed that the employee who sent the letter was acting with fellow employees in making the complaint. The Board concluded that the employer had such a belief because he stated that "he wanted to learn who sent it so he could 'get them out of the building.' "[5]

One must conclude from these cases that the National Labor Relations Board has determined that employers must take care to assure proper noun-verb agreement in their communications with employees. Poor grammar has now become an unfair labor practice.

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3. *Id.* at 360.
4. 288 NLRB No. 52, 128 LRRM 1065 (1988).
5. *Id.*, Slip Op. at 2.
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