

NLRB: Bosses Shouldnt be Anti-Union Tweeting

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A recent National Labor Relations Board ruling - one that has garnered backlash from some celebrities - gives further proof that social media posts are not to be taken lightly, even if they have humorous intent.

The November ruling from the NLRB ordered Ben Domenech, the publisher of the conservative online magazine *The Federalist*, to remove a Tweet in which he warned the magazine's employees that if they unionized, he would send them "back to the salt mines."

FDRLST Media, *The Federalist's* parent company, appealed the decision and it now sits in the hands of the U.S. Court of Appeals for the Third Circuit. Last week, libertarian think tank the Cato Institute [filed a brief with the court](#) in support of FDRLST, saying the NLRB needs to learn "[to take a joke](#)." Celebrity comedians and magicians Penn Jillette and Teller are listed as supporting authors of the brief.

Cato's filing comes days after the NLRB [ordered billionaire Elon Musk to delete a 2018 Tweet](#) that the board found threatening to workers at his Tesla plants.

Whether the Tweets from either person were threatening workers or not, or whether there was a humorous intent or not, it's a clear warning from the NLRB for employers to watch what they say on social media. The Cato Institute's brief even says that the NLRB ignored statements from *Federalist* employees that said they took the Tweet as a joke, a clear signal that intent won't be the biggest factor for future NLRB decisions.

Employers should have a clear social media policy for employees, and should include regular training for *all* employees. In our current labor environment, senior management should be informed about the labor impact of their statements and be careful what they say. Senior management should especially avoid using social media for any kind of union-busting talk, because it's obvious the NLRB is watching.

If you have any questions on these recent cases, or if you have questions about your company's social media policies, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).