

**From:** (b) (6), (b) (7)(C)  
**To:** [Watson, Timothy](#); [Long, Zachary](#); [Martinez, Steve](#); [SM-Region 16, Fort Worth](#)  
**Cc:** [Bock, Richard](#); [Szapiro, Miriam](#); [Dodds, Amy L.](#); [Shorter, LaDonna](#); [Weth, Patricia](#)  
**Subject:** Larry Peel Co., 16-CA-259403 (COVID case closing email)  
**Date:** Monday, June 15, 2020 10:47:27 AM

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The Region submitted this case for advice as to whether the Employer lawfully discharged an employee following (b) (6), (b) (7)(C) request to work at home due to COVID. As a threshold matter, we agree that the employee was not engaged in protected concerted activity by texting with the controller about COVID-related health and safety concerns on their personal cell phones if the controller was, in fact, a supervisor and/or manager. *See Capital Times Co.*, 234 NLRB 309, 309-10 (1978) (employee lawfully disciplined for individually refusing to cross a picket line established by nonstatutory employees because concerted activity must involve more than one statutory employee). Even if the controller was an “employee” under the Act, we agree that the charge lacks merit. Knowledge of protected concerted activity cannot be established because the Employer was unaware of their texts and the employee’s work-at-home request was individual in nature. Furthermore, there is insufficient evidence of animus and the Employer will likely be able to show that the decision was made before the employee requested a change in work location.

This email closes this case in Advice. Please contact us with questions or concerns.

(b) (6), (b) (7)(C)