



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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November 13, 2009

Lester A. Heltzer, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W., Room 11602
Washington, D.C. 20570

Re: Stephens Media LLC
d/b/a Hawaii Tribune-Herald
Case Nos. 37-CA-7043 et al.

Dear Executive Secretary Heltzer:

I am writing in response to the November 3, 2009, submission of Stephens Media LLC d/b/a Hawaii Tribune-Herald ("HTH"), regarding new cases "concerning secret taping in the workplace," received by this office on November 9. The cases cited by HTH are irrelevant to the above-captioned matter because they do not concern protected concerted activity and for the reasons set forth below:

The unpublished decision in *Douglas v. Dekalb County*, 2009 WL 154389 (C.A. 11), is a First Amendment case in which the tape recordings were made in violation of Dekalb County policy. *Douglas v. Dekalb County*, 2007 WL 4373970 *3 (N.D. Ga.). The District Court, affirmed by the Circuit Court, found that the plaintiffs "were punished for violating DeKalb County policies." *Id.* at *3.

Argyropoulos v. City of Alton, 539 F.3d 724 (7th Cir. 2008), involved a claim of sexual harassment and retaliation under Title VII. Argyropoulos secretly taped a meeting with two of her supervisors, which caused her arrest for felony eavesdropping charges pursuant to an Illinois statute that requires the consent of "all of the parties to such conversation" prior to recording a conversation. *Id.* at 731 (citing 720 Ill. Comp. Stat. 5/14-2). Argyropoulos taped the meeting for her own benefit.

Chapman v. NYK Line North America, Inc., 147 Idaho 178, 207 P.3d 154 (2009), a case out of the Supreme Court of Idaho, concerns a state unemployment claim in which the individual who did the taping acted alone and on her own behalf. This case does not involve protected concerted activity or the National Labor Relations Act.

In this case, HTH had no policy against taping in the workplace, Hawaii law permits such taping, and in making the recording Dave Smith acted in concert with his coworkers to guard against a violation of *Weingarten*.

Respectfully submitted,



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