



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 32  
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Oakland, CA 94612-5224

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March 29, 2017

CHRIS BAKER, ESQ.  
BAKER & SCHWARTZ PC  
44 MONTGOMERY ST STE 3520  
SAN FRANCISCO, CA 94104-4828

Re: Google, Inc. and Nest Labs, Inc.  
Case 32-CA-176462

Dear Mr. BAKER:

We have carefully investigated and considered your charge that Google, Inc. and Nest Labs, Inc., a single employer, (collectively, the Employer) has violated the National Labor Relations Act.

**Decision to Partially Dismiss:** The charge, as elaborated upon during the investigation, alleges that the Employer violated Section 8(a)(1) of the Act by: (1) threatening employees with loss of jobs and benefits; (2) directing employees to report their coworkers if they engage in protected concerted activities; (3) engaging in surveillance of employees' protected concerted activities; (4) interrogating the Charging Party and engaging in surveillance of him; and (5) maintaining unlawful work rules and policies. In addition, the charge alleges that the Employer violated Section 8(a)(1) and (3) of the Act by terminating the Charging Party.

Based on the investigation, I have decided to partially dismiss the allegations that the Employer violated Section 8(a)(1) of the Act by threatening employees with loss with benefits and by interrogating the Charging Party or engaging in unlawful surveillance of him. In addition, I am dismissing the Section 8(a)(1) and (3) allegations that the Employer terminated the Charging Party because he engaged in protected, concerted activity.

With regard to the alleged interrogation, surveillance, and termination of the Charging Party, as a threshold matter, the evidence established that the Charging Party is not an employee because he possesses supervisory authority within the meaning of Section 2(11) of the Act and managerial authority to act in the interest of the Employer. In these circumstances, he lacks standing to invoke the Act's protection, even assuming the Employer engaged in surveillance of, interrogated, and terminated him because of his protected concerted activities. In this regard, the evidence establishes that he possesses supervisory authority to promote and that he has effectively promoted an employee with the use of independent judgment. While Section 7 of the Act protects employees who are engaged in protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, Section 2(3) of the Act excludes supervisors from the definition of "an employee." Moreover, the Charging Party also formulates and effectuates the Employer's policies regarding the production of its products and in so doing he exercises discretion in the interest of the Employer. Thus, even if the Charging Party were not a Section 2(11) supervisor, he is a managerial employee who is also excluded from

coverage under the Act on that basis. See *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). I further note that even if the Charging Party were an employee, there is no evidence that he engaged in any union activities sufficient to establish a Section 8(a)(3) violation of the Act. Accordingly, for all of the above reasons, I am dismissing the allegations that the Employer violated Section 8(a)(1) and (3) of the Act by unlawfully interrogating, engaging in surveillance of, and terminating the Charging Party.

All other portions of the charge remain outstanding and are subject to further proceedings, including that the employer (1) Employer (1) threatened employees with loss of jobs; (2) threatened to retaliate against employees for engaging in protected concerted activities; (3) directed employees to report their coworkers who engaged in protected concerted activities; (4) created an impression that employees' protected concerted activities were under surveillance; and (5) maintained other work rules and policies.

**Your Right to Appeal:** You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at [www.nlr.gov](http://www.nlr.gov). However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

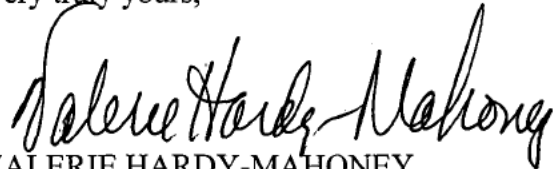
**Means of Filing:** An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

**Appeal Due Date:** The appeal is due on April 12, 2017. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than April 11, 2017. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

**Extension of Time to File Appeal:** The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before** April 12, 2017. The request may be filed electronically through the **E-File Documents** link on our website [www.nlr.gov](http://www.nlr.gov), by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after April 12, 2017, **even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

**Confidentiality:** We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



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Regional Director

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UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**APPEAL FORM**

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

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Case Name(s).

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Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

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