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Fake News—If Only It Were So

Bill McCurry



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In New Jersey, my adopted state, it's illegal for a man to knit during fishing season. In Trenton, the capitol city, it's illegal to eat pickles on Sunday. In Haddon Township, it's illegal to annoy a person of the opposite sex. In California, my native state, it's illegal to own a motor vehicle traveling over 60 MPH without a driver.

In the horticulture industry, potentially crazy laws aren't always "potential." Sometimes they do become law. What we need is calm reflection on which laws will impact us and what we can do about them.

When a reader first alerted me to this situation, I called it "Fake News." I couldn't believe it would be "illegal" to require your employees to show courtesy to customers and fellow employees. Nor did I believe Boeing couldn't prohibit employees from taking pictures of top secret Department of

Defense manufacturing.

After reading numerous legal journals (highly recommended for curing insomnia), I must report back to my reader he was correct. Banning courtesy wasn't fake news. It turns out, however, that under the prior administration, the National Labor Relations Board (NLRB) was declaring things like this an "unfair trade practice."

How did we get to that point? My investigation shows well-meaning people, with minimal understanding of the whole picture, make decisions based solely on their focus. People in power make decisions with a one-sided view of what should be more important over everything else.

In the NLRB case (Karl Knauz Motors, Inc., d/b/a Knauz BMW and Robert Becker—Case 13—CA—046452 September 28, 2012), the NLRB didn't like the employer saying, "Courtesy is the responsibility of every employee. Everyone is expected to be courteous, polite and friendly to our customers, vendors and suppliers, as well as to their fellow employees. No one should be disrespectful or use profanity or any other language which injures the image or reputation of the Dealership."

This case got in front of the NLRB solely because an employee was fired for posting Facebook pictures of a Land Rover inadvertently driven into a pond by a customer's 13-year old son. The NLRB ruled the employee was properly discharged. They then took the opportunity to go further and rule that the courtesy section of the employee handbook wasn't permissible.

Before you criticize the NLRB, understand their focus/priority. It's to foster the ability for fair and impartial union elections. The NLRB felt by requiring courtesy to the extent Knauz did would prohibit employees from lawfully agitating for a union. I'm not asking you to agree with the NLRB, I'm advocating you understand their perspective and orientation. Only by understanding both sides of a situation can we readily find the best solution.

In the fanfare over things the current administration has overturned, the change at the NLRB has escaped most news stories. In December, in a 3-2 decision, the new NLRB overruled the prior board and established new standards. The NLRB must now take into consideration "(i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule."

What's the takeaway from this?

From 2012 to 2017, what did you do, as employer or employee, to influence your legislators on similar issues? Like greenhouse insect infestations, this is an area requiring your immediate attention. Do you belong to trade associations that represent you in front of legislative bodies? We can't all get to Congress weekly, but we can send professionals in our place to make sure our side of the story is heard.

Call your Congressperson/Senator or send a check to an organization that will legislate laws you feel are reasonable for your business and your employees. Your best approach? Do both—today! **GP**

Bill would love to hear from you with questions, comments or ideas for future columns. Please contact him at wmccurry@mccurryassoc.com or (609) 688-1169.