

Steve Bernstein Offers Insight In *Arsovski v. 200 East 81st Restaurant Corp.* Case

News

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Steve Bernstein was featured in the *Corporate Counsel* article “Waiter, Acting Alone, Engaged in ‘Concerted Activity’.”

A restaurant on the Upper East Side of Manhattan recently received a rather unwelcome order from a National Labor Relations Board administrative law judge. The judge ruled in favor of a waiter who claimed he was fired in retaliation for a lawsuit he filed alleging the restaurant violated overtime provisions of the Fair Labor Standards Act.

The ALJ in the New York branch office of the NLRB determined that in the 200 East 81st Street Restaurant Corp. case, the waiter, Marjan Arsovski, qualified for Section 7 protections under the National Labor Relations Act, deeming his lawsuit to be “protected concerted activity.”

Although the FLSA suit was a class action, and there was a possibility of other employees opting in, Arsovski was the only person involved in the suit as a plaintiff when it was filed, and he didn’t act in concert with other restaurant workers to file it.

Steven told *Corporate Counsel* that the ALJ’s decision is “troubling” for employers, as it involves the board putting the perceptions of the employer before the actual actions of the employees.

“We’re now at risk of expanding the concerted protected activity doctrine,” he said.

[Corporate Counsel](#) subscribers can read the full article here.

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