Verizon Wireless *and* Communications Workers of America, AFL–CIO

Verizon New York Inc., Empire City Subway Company (Limited), Verizon Avenue Corp., Verizon Advanced Data Inc., Verizon Corporate Services Corp., Verizon New England Inc., Verizon Services Corp. and Verizon New Jersey, Inc. *and* Communications Workers of America (CWA)

Verizon Pennsylvania Inc., Verizon Services Corp., and Verizon Corporate Services Corp. *and* Communications Workers of America, District 2-13, AFL–CIO, CLC

Verizon Washington, D.C. Inc., Verizon Maryland Inc., Verizon Virginia Inc., Verizon Services Corp., Verizon Advanced Data Inc., Verizon South Inc. (Virginia), Verizon Corporate Services Corp. and Verizon Delaware Inc. *and* Communications Workers of America, District 2-13, AFL–CIO, CLC

Verizon California Inc. and Verizon Federal Inc., Verizon Florida Inc., Verizon North LLC, Verizon Southwest Inc., Verizon Connected Solutions Inc., Verizon Select Services Inc. and MCI International, Inc. *and* Communications Workers of America, AFL–CIO, District 9. Cases 02–CA–156761, 02–CA–157403, 04–CA–156043, 05–CA–156053, and 31–CA–161472

June 24, 2020

DECISION AND ORDER AND NOTICE TO SHOW CAUSE

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

In this case, we review two decisions (or rather, one decision and one order) issued by Administrative Law Judge Donna N. Dawson. On May 25, 2017, Judge Dawson issued the attached decision (Appendix A), addressing the lawfulness of 11 work rules maintained by Verizon Wireless and the various Verizon Wireless Entities (the Respondents) in their 2015 Code of Conduct. The judge found 10 of the rules to be unlawful and the 11th to be lawful. The Respondents filed exceptions and a supporting brief, and the Charging Parties filed cross-exceptions and a supporting brief. The General Counsel and the Charging Parties filed answering briefs to the Respondents' exceptions, and the Respondents filed an answering brief to the Charging Parties' cross-exceptions. The Respondents filed reply briefs to the General Counsel's and Charging Parties' answering briefs.[1]

After the judge issued her decision, the Board decided *Boeing Co.*, 365 NLRB No. 154 (2017), which changed the standard for analyzing the lawfulness of facially neutral employer rules. Consequently, on March 22, 2019, the Board remanded most of the complaint's allegations—8 of the 11 rules at issue—to the judge to give the parties the opportunity to supplement the record, while severing and retaining the three remaining allegations for future action by the Board. Before the judge on remand, the General Counsel moved to withdraw the remanded complaint allegations based on the General Counsel's conclusion that the rules challenged in those allegations are lawful under *Boeing*. On September 27, 2019, in the attached order (Appendix B), the judge granted the General Counsel's motion to withdraw. The Charging Parties filed "exceptions" and a supporting brief, and the General Counsel and the Respondents filed answering briefs.[2]

The Board has considered the judge's original decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order and Notice to Show Cause.[3] Further, having duly considered the Charging Parties' appeal of the judge's September 27, 2019 order, we deny it in most respects because we find that the judge did not act arbitrarily or capriciously or otherwise abuse her discretion in

[1] As explained below, only 3 of the 11 rules addressed by the judge in Appendix A are currently still before the Board on exceptions to the judge's decision.

[2] We shall construe the Charging Parties' filings as a request for special permission to appeal the judge's order granting the General Counsel's motion to withdraw complaint allegations under Sec. 102.26 of the Board's Rules and Regulations, and the General Counsel's and Respondents' filings as oppositions thereto. See *Pueblo Sheet Metal Workers*, 292 NLRB 855, 855 (1989); *Consumers Distributing*, 274 NLRB 346, 346 (1985).

We reject the General Counsel's suggestion that the Charging Parties' request for special permission to appeal was not filed "promptly," as required by Sec. 102.26. The Charging Parties filed their request within 26 days of the judge's ruling. There is no indication that any party has suffered prejudice due to the 26 days that elapsed between the judge's ruling and the Charging Parties' filing. In the absence of any showing of prejudice, we regard the submission as having been filed within the requirements of the rule. See *Excel DPM of Arkansas, Inc.*, 324 NLRB 880, 880 fn. 1 (1997) (rejecting a respondent's argument that the General Counsel's Motion for Summary Judgment was untimely because it was not filed "promptly," where the respondent did not show that it suffered prejudice due to the lapse of 5 months between the General Counsel's receipt of its answer to the complaint and the filing of the motion).

[3] On November 13, 2017, the Charging Parties filed a motion requesting that Member Emanuel recuse himself from participating in this case because of his former affiliation with the law firm of Littler Mendelson

granting the General Counsel's motion. As discussed more fully below, however, we shall grant in part the Charging Parties' appeal to the extent the judge's order purported to rule on the three complaint allegations that were not before her and to the extent it required the Regional Director to *dismiss* the withdrawn allegations.

I. PROCEDURAL HISTORY

In her May 25, 2017 decision, the judge found that eight of the challenged rules were unlawful under the "reasonably construe" prong of the Board's decision in *Lutheran Heritage Village–Livonia*, 343 NLRB 646 (2004),[4] and that two additional rules were unlawful under *Purple Communications, Inc.*, 361 NLRB 1050 (2014).[5] The judge dismissed the allegations as to an 11th rule,[6] which the Board had previously found lawful in *Cellco Partnership d/b/a Verizon Wireless*, 365 NLRB No. 38, slip op. at 2 (2017).[7]

After the issuance of the judge's decision, the Board decided *Boeing*, 365 NLRB No. 154, which overruled the *Lutheran Heritage* "reasonably construe" prong.[8] In its place, *Boeing* set forth a new standard for determining whether an employer's maintenance of a facially neutral work rule unlawfully interferes with employees' Section 7 rights. 365 NLRB No. 154, slip op. at 3–5. Under *Boeing*, the Board first determines whether a challenged rule, reasonably interpreted, would potentially interfere with the exercise of NLRA rights. If it does not, then the Board will find the rule lawful without further analysis. Id., slip op. at 3, 16; accord *LA Specialty Produce Co.*, 368 NLRB No. 93, slip op. at 2 (2019).[9] But if the rule would reasonably be read to restrict Section 7 rights, then the Board will go on to evaluate two factors: "(i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule." *Boeing*, 365 NLRB No. 154, slip op. at 3. In conducting this evaluation, the Board will strike a proper balance between the asserted justifications and the invasion of employee rights in light of the Act and its policies, viewing the rule or policy from the employees' perspective. Id.[10]

Because *Boeing* applies retroactively, and the parties had not had the opportunity to address the lawfulness of the rules under the new standard, the Board issued a

and his participation in the Jones Day defined-benefit plan. In consultation with the Board's Designated Agency Ethics Official (DAEO), Member Emanuel has determined not to recuse himself. Under par. 6 of the Trump Ethics Pledge, which Member Emanuel signed as required by Executive Order 13770, Member Emanuel could not participate for the first 2 years of his term in cases in which his former firm, Littler Mendelson, represented a party, or in which one of his former clients was or represented a party. Member Emanuel's 2-year recusal period ended on September 26, 2019. Moreover, even before that date, recusal was not required in this case. The Respondents are not former clients of Member Emanuel, and Littler Mendelson does not represent any party to this case. With respect to Jones Day, which is counsel of record for the Respondents, Member Emanuel's employment ended in 2004 and is therefore outside the scope of par. 6 of the Pledge, and his participation in his former employer's defined-benefit plan does not require his disqualification from this case under 18 U.S.C. § 208. Nor does Member Emanuel believe that his participation would "cause a reasonable person with knowledge of the relevant facts to question his impartiality." 5 C.F.R. § 2635.502.

Additionally, on December 21, 2018, in its response to the Notice to Show Cause discussed below, the Charging Parties stated that they "d[id] not waive [their] position that . . . [Chairman] Ring should be recused." And the Charging Parties except to the "failure of . . . [Chairman] Ring to recuse [himself] from the Board's Notice to Show Cause and Order Remanding." However, the Charging Parties never moved for Chairman Ring's recusal and identify no reason for him to do so, nor is any such reason apparent. Thus, even if Chairman Ring were to construe the Charging Parties' filings as a motion for recusal, he would not recuse himself.

[4] Specifically, the Respondents' Code of Conduct provisions entitled, "Speak Up" and "Conclusion," footnote 1 of the Code of Conduct, and Code of Conduct secs. 1.8.1, 1.8.2, 2.1.3, 3.2.1, and 4.6.

[5] Code of Conduct secs. 1.6 and 3.4.1.

[6] Code of Conduct sec. 1.8.

[7] On March 20, 2017, the judge approved the General Counsel's motion to withdraw the allegation related to sec. 1.8. In their subsequently submitted brief, the Charging Parties asked for reconsideration of the judge's approval of the General Counsel's motion. In her May 25 decision, however, the judge dismissed the allegation.

[8] In *Lutheran Heritage*, the Board held that an employer violates Sec. 8(a)(1) of the Act "when it maintains a work rule that reasonably tends to chill employees in the exercise of their Sec[.] 7 rights." 343 NLRB at 646. The maintenance of a rule is unlawful if the rule explicitly restricts activities protected by Sec. 7. Ibid. If a rule does not constitute such an explicit restriction, its maintenance remained unlawful under *Lutheran Heritage* if "(1) employees would reasonably construe the language to prohibit Sec[.] 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Sec[.] 7 rights." Id. at 647.

[9] The Board has designated such rules as Category 1(a). Placement of a rule or policy in Category 1(a) does not result from balancing NLRA rights and legitimate justifications because, by definition, this category encompasses employer rules that do not tend to chill protected activity and hence require no justification. See *Anderson Enterprises, Inc. d/b/a Royal Motor Sales*, 369 NLRB No. 70, slip op. at 2 fn. 3 (2020).

[10] As a result of this balancing, the Board places a challenged rule into one of three categories. Category 1(b) consists of rules that are lawful to maintain because, although the rule, reasonably interpreted, potentially interferes with the exercise of Sec. 7 rights, the potential adverse impact is outweighed by legitimate employer interests. Category 3, in contrast, consists of rules that are unlawful to maintain because their potential to interfere with the exercise of Sec. 7 rights outweighs the legitimate interests they serve. Categories 1(a), 1(b), and 3 designate *types* of rules; once a rule is placed in one of these categories, rules of the same type are categorized accordingly without further case-by-case balancing (for Category 1(b) and 3 rules; balancing is never required for rules in Category 1(a)). Some rules, however, resist designation as either always lawful or always unlawful and instead require case-by-case analysis under *Boeing*'s balancing framework. These rules are placed in Category 2. To be clear, these categories "will represent a classification of *results* from the Board's application of the new test. The categories are not part of the test itself." See *Boeing*, 365 NLRB No. 154, slip op. at 3–4; *LA Specialty Produce*, 368 NLRB No. 93, slip op. at 2–3.

Notice to Show Cause why the allegations should not be remanded. On March 22, 2019, the Board remanded the allegations related to eight of the rules,[11] and severed and retained those related to the rules the judge had analyzed under *Purple Communications*.[12]

Before the judge on remand, the General Counsel filed a motion to withdraw the complaint allegations related to the "Speak Up" and "Conclusion" provisions, footnote 1, and sections 1.8.2, 2.1.3, 3.2.1, and 4.6,[13] based on the General Counsel's conclusion that the rules are lawful under *Boeing*. On September 27, 2019, the judge granted the General Counsel's motion.[14]

II. THE CHARGING PARTIES' APPEAL OF THE JUDGE'S APPROVAL OF THE GENERAL COUNSEL'S MOTION TO WITHDRAW

An administrative law judge's approval of the General Counsel's motion to withdraw complaint allegations is reviewed for abuse of discretion. E.g., *Pueblo Sheet Metal Workers*, 292 NLRB 855, 855 & fn. 3 (1989). Where, as here, a motion to approve withdrawal is based on a change in the law, the Board does not "pass[] on the correctness" of the judge's interpretation of the new precedent. *Graphic Arts International Union (Mueller Color)*, 230 NLRB 1219, 1219 (1978); see also *Greyhound Lines, Inc.*, 235 NLRB 1100, 1100 fn. 1 (1978). Under our limited scope of review, we are not passing on whether these policies are unlawful under *Boeing*. Instead, we are only finding that the judge did not act arbitrarily or capriciously or otherwise abuse her discretion by granting the motion to withdraw the complaint allegations related to the "Speak Up" and "Conclusion" provisions, footnote 1, and sections 1.8, 1.8.2, 2.1.3, 3.2.1, and 4.6. Although we are not passing on whether these policies are unlawful under *Boeing*, we observe that none of these rules is comparable to rules that the Board has previously found unlawful under *Boeing*. Because the General Counsel is not declining to prosecute an obvious violation of the Act, the judge's decision to allow the General Counsel to withdraw these complaint allegations was reasonable and within her discretion. Accordingly, we shall deny the Charging Parties' appeal of the judge's approval of the General Counsel's motion to withdraw those complaint allegations.[15]

III. THE ALLEGATIONS RETAINED BY THE BOARD

As discussed above, the Board severed and retained allegations related to the work rules that the judge analyzed under *Purple Communications.* Under *Purple Communications*, the Board held that, absent special circumstances, employees who had rightful access to their employer's email system had a right to use it to engage in Section 7–protected communications on nonworking time. *Purple Communications*, 361 NLRB at 1063–1064. Recently, in *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, 368 NLRB No. 143 (2019), the Board overruled *Purple Communications* and announced a new standard that applies retroactively to all pending cases alleging, as here, that an employer unlawfully maintained a rule restricting the use of its email system. In *Caesars Entertainment*, the Board held, in relevant part, that "an employer does not violate the Act by restricting the nonbusiness use of its IT resources absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other." Id., slip op. at 8. Under *Caesars Entertainment*, then, employees do not have a right under the Act to use their employer's IT resources to engage in Section 7–related communications unless the above-stated exception is established.[16]

A. The Allegations Related to Code of Conduct Sections 1.6 and 3.4.1 are Severed, and the Parties are Given Notice to Show Cause Why They Should not be Remanded

The judge found that sections 1.6 and 3.4.1, set forth in the margin below,[17] were unlawful under *Purple*

[11] Specifically, the remanded allegations include those challenging the "Speak Up" and "Conclusion" provisions, footnote 1, secs. 1.8, 1.8.2, 2.1.3, 3.2.1, and 4.6.

[12] Specifically, secs. 1.6, 1.8.1, and 3.4.1. The judge found that the portion of sec. 1.8.1 regarding monitoring of the Respondents' IT equipment and systems was lawful under *Purple Communications*, but that other portions of the rule were unlawful under *Lutheran Heritage*.

[13] Additionally, the General Counsel noted that, on May 25, 2017, the judge had approved his motion to withdraw the allegation related to sec. 1.8.

[14] The judge likewise noted that she had previously approved the General Counsel's motion to withdraw the allegation related to sec. 1.8. We shall treat the judge's Order as reaffirming her prior approval of the General Counsel's motion to withdraw the allegation.

[15] The Charging Parties additionally argue that the judge abused her discretion insofar as she ordered "that the *entire* consolidated complaint be remanded to the appropriate Regional Director for *DISMISSAL*" (first emphasis added). We find merit in this contention, and accordingly, we shall vacate the judge's order to the extent that it applies to the complaint allegations that had not been remanded to the judge and to the extent that it requires the Regional Director to dismiss the allegations upon remand. See *Consumers Distributing*, 274 NLRB at 346 fn. 1 (explaining that approval of motion to withdraw complaint allegations does "not result in the case being closed because the underlying charge is still alive").

[16] The second exception to *Caesars Entertainment*—proof of discrimination in restricting employees' access to an employer's IT resources—is not applicable here. See id. There is no contention that the Respondents discriminatorily applied their rules in this case.

[17] Section 1.6 Solicitation and Fundraising

> Solicitation and fundraising distract from work time productivity, may be perceived as coercive and may be unlawful.
>
> Solicitation during work time (defined as the work time of either the employee making or receiving the solicitation), the distribution of nonbusiness literature in work areas at any time or *the use of company resources at any time (emails, fax machines, computers, telephones, etc.)*

Communications. The parties to this proceeding have not had an opportunity to address whether the exception to the rule of *Caesars Entertainment* applies to the facts of this case. Consequently, we shall issue a Notice to Show Cause why these allegations should not be remanded to the judge for further proceedings in light of *Caesars Entertainment*.

B. The Allegation Related to Code of Conduct Section 1.8.1 is Dismissed

Applying *Purple Communications*, the judge found that a specific portion of section 1.8.1, informing employees that the Respondents monitor employees use of company communications devices, computer systems and networks,[18] did not violate the Act. Under *Purple Communications,* employers may lawfully "monitor their computers and email systems for legitimate management reasons." 361 NLRB at 1064. Because *Caesars Entertainment* did not disturb this principle, there is no need to afford the parties an opportunity to address whether the holding in that case affects this complaint allegation. Rather, we shall adopt the judge's finding that this aspect of section 1.8.1 is lawful on its face. Because an employer lawfully may monitor its employees' company-issued computers and devices for legitimate management reasons, it does not violate the Act to maintain a policy informing employees that their company computers and devices are subject to employer monitoring.

The judge found that another portion of section 1.8.1, informing employees that the Respondents reserve the right to search or monitor their personal property (including vehicles) on company premises, was facially unlawful. The judge reasoned that this portion of the rule was unlawful under *Lutheran Heritage* because it

> would reasonably be construed to permit unlawful search and surveillance of employees' organizing or other protected activities such as employees' maintenance of authorization cards, organizing literature or lawfully collected evidence of unfair labor practices in their vehicles or in/on other of their personal property. The rule would also be reasonably read to restrict or interfere with discussions with other employees about protected activity in their personal vehicles.

We disagree and reverse.[19]

Under *Boeing*, as clarified by *LA Specialty Produce*, the inquiry into whether an employer's rule reasonably tends to interfere with Section 7 rights "should be determined by reference to the perspective of an objectively reasonable

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to solicit or distribute, is prohibited. Non-employees may not engage in solicitation or distribution of literature on company premises. The only exception of this policy is where the company has authorized communications relating to benefits or services made available to employees by the company, company-sponsored charitable organizations or other company-sponsored events or activities. To determine whether a particular activity is authorized by the company, contact the VZ Compliance Guideline.

Fundraising and philanthropic initiatives that refer to or use the Verizon name, or that are organized by or directed to Verizon employees in the workplace, must be conducted by the Verizon Foundation, and must conform to all company standards, including this Code.

This section does not apply to political activities (addressed separately in Section 2.2 of this Code) undertaken on Verizon's behalf in coordination with the Public Policy, Law and Security Department or activities conducted pursuant to the Employee Resource Group Guidelines.

(Emphasis added.)

Section 3.4.1 Prohibited Activities

You may never use company systems (such as e-mail, instant messaging, the Intranet or Internet) to engage in activities that are unlawful, violate company policies or result in Verizon's liability or embarrassment. Some examples of inappropriate uses of the Internet and e-mail include:

- Pornographic, obscene, offensive, harassing or discriminatory content;
- Chain letters, pyramid schemes or unauthorized mass distributions;
- Communications on behalf of commercial ventures;
- Communications primarily directed to a group of employees inside the company on behalf of an outside organization;
- Gambling, auction-related materials or games;
- Large personal files containing graphic or audio material;
- Violation of others' intellectual property rights; and
- Malicious software or instructions for compromising the company's security.

Also, you may not send e-mail containing non-public company information to any personal e-mail or messaging service unless authorized to do so by your supervisor and you comply with company requirements relating to the encryption of information.

[18] Section 1.8.1 Monitoring On the Job

In order to protect company assets, provide excellent service, ensure a safe workplace, and to investigate improper use or access, Verizon monitors employees' use of Verizon's communications devices, computer systems and networks (including the use of the Internet and corporate and personal web-based email accessed from Verizon devices or systems), as permitted by law. In addition, and as permitted by law, Verizon reserves the right to inspect, monitor and record the use of all company property, company provided communications devices, vehicles, systems and facilities - with or without notice - and to search or monitor at any time any and all company property and any other personal property (including vehicles) on company premises.

[19] Because this portion of sec. 1.8.1 does not involve computer usage, there is no reason to remand this allegation for consideration under *Caesars Entertainment*. We also find it unnecessary to remand this allegation for consideration under *Boeing* as such a remand would only further delay resolving this long-pending issue.

employee who is aware of his legal rights but who also interprets work rules as they apply to the everydayness of his job. The reasonable employee does not view every employer policy through the prism of the NLRA." *LA Specialty Produce*, 368 NLRB No. 93, slip op. at 2 (internal quotations omitted). Consistent with this principle, we reject the judge's unsupported speculation that employees would refrain from engaging in Section 7 activity merely because evidence of such activity might be detected if their personal property or personal vehicle were searched. To the contrary, a reasonable employee would understand that the purpose of the rule is, as it states, "to protect company assets, provide excellent service, ensure a safe workplace, and to investigate improper use or access." Moreover, the rule on its face merely "reserves the right" to search employees' personal property or vehicles; nothing in its text suggests that such searches will take place, let alone that they will occur routinely or frequently. We do not believe that the remote prospect that a search might someday occur would have any material impact on the exercise of Section 7 rights. See *LA Specialty Produce*, 368 NLRB No. 93, slip op. at 2 ("[A] challenged rule may not be found unlawful merely because it could be interpreted, under some hypothetical scenario, as potentially limiting some type of Sec[.] 7 activity . . . ."). And we do not share the judge's speculation that this rule might be interpreted to expose Section 7–related discussions *inside employees' vehicles* to employer eavesdropping.

Assuming the rule would be reasonably interpreted to interfere with the exercise of Section 7 rights, the Board must still consider the legitimate justifications for the rule and "strike the proper balance between . . . asserted business justifications and the invasion of employee rights in light of the Act and its policy." *Boeing*, 365 NLRB No. 154, slip op. at 3 (quoting *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26, 33–34 (1967)) (emphasis omitted). Here, any minimal impact on Section 7 activity would be far outweighed by the obviously legitimate interest employers have in conducting such searches, when necessary, to prevent theft or other loss of assets and to ensure a safe workplace. In light of the legal liability employers may face in the event of a workplace injury and the economic consequences of theft, we find that these interests are compelling.[20] We therefore find that a rule notifying employees that their employer may search their personal property on its premises is a Category 1(b) rule under *Boeing*.

[20] See 29 U.S.C. § 654(a)(1) (employer "shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees"); 2018 National Retail Security Survey, https://cdn.nrf.com/sites/default/files/2018-10/NRF-NRSS-Industry-Research-Survey-2018.pdf (last visited May 28, 2020) (shrinkage cost retailers $46.8 billion in 2017, with 33.2 % of shrinkage due to employees).

ORDER

IT IS ORDERED that the Charging Parties' appeal of the judge's approval of the General Counsel's motions to withdraw the complaint allegations related to the Code of Conduct provisions entitled "Speak Up" and "Conclusion," footnote 1 of the Code of Conduct, and Code of Conduct sections 1.8, 1.8.2, 2.1.3, 3.2.1, and 4.6 is denied.

IT IS FURTHER ORDERED that the Charging Parties' appeal of the judge's order is granted to the extent the judge's order purports to approve the withdrawal of the complaint allegations related to Code of Conduct sections 1.6, 1.8.1, and 3.4.1 and/or requires the dismissal of complaint allegations upon remand to the regional director.

IT IS FURTHER ORDERED that the complaint allegations involving sections 1.6 and 3.4.1 of the Respondents' Code of Conduct shall be severed and retained.

Further, NOTICE IS GIVEN that cause be shown, in writing, filed with the Board in Washington, D.C., on or July 8, 2020 [14 days from the date of this notice] (with affidavit of service on the parties to this proceeding), why the complaint allegations involving sections 1.6 and 3.4.1 of the Respondents' Code of Conduct should not be remanded to the administrative law judge for further proceedings consistent with the Board's decision in *Caesars Entertainment*, including reopening the record if necessary. Any response should also address whether remand to the judge would be appropriate for further proceedings in light of *Boeing*, including reopening the record if necessary. Any briefs or statements in support of the response shall be filed on the same date.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically remanded to the regional director or severed and retained.

Dated, Washington, D.C. June 24, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

Julie Polakoski-Rennie, Esq., for the General Counsel.
E. Michael Rossman, Esq. and *Elizabeth L. Dicus, Esq., for the Respondents.*
David A. Rosenfeld, Esq., for the Charging Parties.

DECISION

STATEMENT OF THE CASE

DONNA N. DAWSON, Administrative Law Judge. The Charging Parties, consisting of Communication Workers of American and its named Districts (the Union) filed charges and amendments thereto on various dates ranging from July 15, 2015 through October 20, 2016. Pursuant to those charges, the General Counsel ultimately issued an order consolidating cases, consolidated complaint and notice of hearing (on Oct. 31, 2016) and an order further consolidating cases (on Nov. 4, 2016) against Verizon Wireless and the various Verizon Wireless Entities (referred to collectively as Respondents or Verizon). The consolidated complaint alleges that since on about April 29, 2015, Respondents have maintained various rules in their Code of Conduct employee manual which interfere with, restrain, and coerce employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act. Respondents have denied the allegations; however, I have found that they have violated the Act, as alleged, regarding most of the challenged rules.

I issued an order granting the General Counsel's and Respondents' joint motion to submit these cases for a decision on stipulation of facts, thus waiving a hearing under Section 102.35(a)(9) of the NLRB's Rules and Regulations.[1] In doing so, I concluded that the Union's objections to deciding these consolidated cases on a stipulated record were without merit because the Union sought to present testimonial evidence on issues not raised in the complaint or not in dispute.

On the entire record, including the stipulated facts and exhibits, as well as objections thereto, and after considering the briefs filed by the parties,[2] I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondents are corporations with offices and places of business in varying locations throughout the United States, and have been engaged in the business of providing wireless telecommunication services in their facilities throughout the United States. In conducting their business operations, they (individually and collectively) annually derive gross revenues in excess of $500,000, and purchase and receive at their facilities goods valued in excess of $5000 directly from points outside of the respective states in which they operate. Respondents admit, and I find, that at all material times, they have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is further admitted, and I find, that each of the named Charging Party Unions have been labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Stipulated Facts and Challenged Rules

Since about April 29, 2015, and continuing to date, Respondents have maintained (but not enforced) the same Code of Conduct applicable to their employees. The Code of Conduct is made available to Respondents' employees, and maintained in electronic format.[3] The Code of Conduct provisions at issue include the "Speak Up" (reporting section); footnote 1 on page 10 (compliance language); section 1.6 Solicitation and Fundraising; section 1.8 Employee Privacy; section 1.8.1 Monitoring on the Job; section 1.8.2 Use of Recording Devices; section 2.1.3 Activities Outside of Verizon; section 3.2.1 Protecting Non-public Company Information; section 3.4.1 Prohibited Activities; section 4.6 Relationships with and Obligations of Departing and Former Employees; and two of the examples of actions considered illegal or unacceptable by Respondents in the Conclusion. They will each be set forth fully as alleged and addressed below in the analysis.

III. DISCUSSION AND ANALYSIS

A. Legal Standards

Section 7 of the Act provides that:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities.

Under Section 8(a)(1) of the Act, it is unlawful for an employer to interfere with, restrain or coerce employees in the exercise of their Section 7 rights. The Board has long recognized the right of employees to communicate in the workplace, which includes the right to discuss with each other hours, wages and other work place terms and conditions of employment. *Parexel Inernational*, *LLC*, 356 NLRB 516, 518 (2011), citing *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218, 220 (1995), enfd. in part 81 F.3d 209 (D.C. Cir. 1996). As such, the Board has held that "[a]n employer violates Section 8(a)(1) of the Act when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights." *Hyundai America Shipping Agency*, 357 NLRB 860, 861 (2011), enfd. in relevant part 805 F.3d 309 (D.C. Cir. 2015); *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). Where this is the case, maintenance of the rule may be deemed unlawful even absent any evidence of enforcement.

[1] On January 23, 2017, I opened the record telephonically, heard the parties' various arguments for and against a stipulated record, considered all written submissions and granted the joint motion over the Union's objections. (Tr. 6–24; 25–28.)

[2] On April 7, 2017, Respondents filed a Motion for Leave to File Reply Briefs in Support of their Posthearing Brief. Absent objections by the other parties, and within my discretion, I have read and considered those submissions in making this decision.

[3] A complete copy of the Code of Conduct is contained in Jt. Exh. KK.

Lafayette Park Hotel, above at 825.

Under the framework in *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004), a work rule that explicitly limits Section 7 rights is unlawful. Id. at 646–647. If the rule does not explicitly restrict Section 7 protected activity, the General Counsel may establish a violation by showing one of the following: "(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." Id. A rule must be given a reasonable reading, however, and particular phrases must not be read in isolation. *Lafayette Park Hotel*, above at 825, 827. The Board has explained that where an employer does not intend for a rule to extend to or prohibit protected activity, the employer's lawful intent must be "clearly communicated to the employees." Id. at 828. Further, it is well settled that "any ambiguity in a rule must be construed against the Respondent as the promulgator of the rule." Id., citing *Norris/O'Bannon*, 307 NLRB 1236, 1245 (1992).

In the instant case, the General Counsel has mostly alleged that the challenged rules are unduly ambiguous and/or overly broad such that they would chill employees in the exercise of their Section 7 rights.[4] Therefore, the primary inquiry is whether employees would reasonably construe the language in them to prohibit Section 7 activity.

B. Alleged Unlawful Code of Conduct Provisions[5]

a. Speak Up
Do the Right Thing Because it's the Right Thing to Do

. . .

You must report suspected and actual violations of this Code, company policy and the law. Verizon will investigate reported instances of questionable or unethical behavior.

In deciding whether a violation of the Code has occurred or is about to occur, you should first ask yourself:

- Could this conduct be viewed as dishonest, unethical or unlawful?
- Could this conduct hurt Verizon? Could it cause Verizon to lose credibility with its customers, business providers or investors?
- Could this conduct hurt other people, such as other employees, investors or customers?

If the answer to any of these questions is 'yes' or even 'maybe,' you have identified a potential issue that you must report.

These are essentially the reporting and compliance requirements of the Code. Contrary to Respondents' argument that this part of the Code is not a "substantive" rule and therefore is lawful, I find that it is unlawful even when read in context with other parts of the Code that Respondents believe to be "substantive." The General Counsel and the Union allege that the "Speak Up" provision is overbroad and infringes upon employees' Section 7 right "to criticize or protest" the employer's labor practices. Respondents also argue that this part of the Code is lawful, relying on the Board's Division of Advice guidance on such matters. Respondents claim that the entire Code provides context to this section by mentioning several types of prohibited conduct that the "Speak Up" provision addresses such as discrimination and harassment, workplace violence, insider trading, violation of others' intellectual property rights and bribes, kickbacks and unlawful loans.

These requirements are unlawful, as they would reasonably be understood as precluding employee participation in union or other protected activities. Respondents demand that employees report suspected and actual violations of the Code. However, the employer has not defined what it would consider to be "dishonest, unethical or unlawful" conduct. Further, under the second bullet, conduct which could potentially hurt Verizon or cause it "to lose credibility with its customers, business providers or investors" would also reasonably include protected activity, including employees discussing among themselves wages and other terms and conditions of their employment, or complaining about allegedly discriminatory treatment by a supervisor. This overly broad language "fails to explain what would be permissible conduct, leaving it up to the employees to guess," even "at their own peril." *Roomstores of Phoenix, LLC*, 347 NLRB 1690, 1704 (2011). Employees with Section 7 rights to engage in protected activities, "whose activities may potentially 'conflict' with the Employer, should not have to fear running afoul of the rules of conduct and being subject to discipline." Id. This rule would also reasonably be construed to include protected statements made without a reckless disregard for the truth or malicious intent to be untruthful. See *Chipotle Services, LLC d/b/a Chipotle Mexican Grill,* 364 NLRB No. 72, slip op. at 1 fn. 3 and 9 (2016) (finding non-disparagement rule unlawful); *Grill Concepts Services*, 364 NLRB No. 36, slip op. at 23–24 (2016); *William Beaumont Hospital*, 363 NLRB No. 162, slip op. at 2 (2016) (restrictions on negative or disparaging comments would reasonably be construed to limit Section 7 protected activities); *Roomstores of Phoenix, LLC*, above at 1704 (employee conduct disparaging management officials or the business is protected if related to employee interests or working conditions and not egregious in nature).

Similarly, the requirement to report behavior which would hurt others, without qualifications, is unlawful. The Board has held that when a rule fails to provide "accompanying language that would tend to restrict its application," employees would reasonably assume that their protected activities (such as those examples set forth above) are included in the prohibition. *Lily Transportation Corp.*, 362 NLRB 406, 406 fn. 3 (2015).

As stated, other parts of the Code do not bring this provision into context. Other of the Code sections do speak to conduct that is unlawful or in violation of company policies, such as 1.2 (anti-discrimination and harassment zero tolerance policy); 1.3 (zero tolerance workplace violence and abusive behavior policy); 2.3 (policy against insider trading of "material inside information" about Verizon or companies with which Verizon does business, including "a company's [non-public] business, financial

[4] There is no allegation that the rules were promulgated in response to union activity.

[5] See Jt. Exh. 1, pp. 14–19 (pars. 9(a)–(k)); GC Exh. 1 (bb) (pars. 5(a)–(k)).

prospects, regulatory or legal matters, or management issues . . .”); 3.6 (policy to safeguard Verizon’s intellectual property); and 4.5 (anti-bribe, kickback and loan policy). (Jt. Exh. KK, pp. 11, 17, 23, and 29). However, there is nothing in the “Speak Up” provision that limits what employees must consider in deciding to report or that leads employees to those other sections. In other words, Respondents have not sufficiently explained their lawful intent for this rule, and any ambiguity must be construed against them. *Lafayette Park Hotel*, above at 828 and *Norris/O’Bannon*, above at 1245.

Finally, regarding the reporting requirement, when a rule interferes with employees’ Section 7 activities, a requirement to report violations also violates the Act. See generally *UMPC*, 362 NLRB 1704, 1708 (2015). Therefore, I find that this section of Respondents’ Code of Conduct is so broadly written such that it violates Section 8(a)(1) of the Act.

b. Footnote 1 located on page 10 of the Code, which states:

> You are required to comply with this Code as a condition of continued employment. This Code does not give you rights of any kind, and may be changed by the company at any time without notice to you.
>
> . . .

I agree with the General Counsel that this footnote violates the Act because Respondents’ employees would reasonably read it to permit Respondents to unilaterally change this Code without notice to the Union, and “undermine the Union’s bargaining representative status.” (GC Br. at 18.) In addition, I find the language in this footnote, even when read in context with other sections, tells employees that they have no rights, which would reasonably lead them to believe, without further qualification, that they would not have any Section 7 protected rights under the Act. The General Counsel asserts that the Board found unlawful a similar handbook provision in *Heck’s, Inc.*, 293 NLRB 1111 (1989). In *Heck’s*, the Board determined that the employer unilaterally issued an employee handbook and, “[m]oreover,” included terms which reserved its right to make future unilateral changes to the provisions therein, “including those that are mandatory subjects of bargaining.” Thus, the Board concluded that such conduct violated Section 8(a)(5) and (1) of the Act, as alleged, because it “disparages the collective-bargaining process and improperly undermines the status of the Union as the designated and recognized collective-bargaining representative of [its] employees.” *Heck’s*, above at 1118.

Respondents, on the other hand, argue that this footnote language does not in any way circumvent the collective-bargaining process, but simply informs employees that they will not provide each one with “personalized notice” before changing the Code. They further describe this footnote as a “boilerplate disclaimer,” and a lawful at-will statement and feature of almost any handbook. They rely on the Board’s Division of Advice memoranda (declining to find that employment-at-will provisions violate the Act) and the Board’s decision in *T-Mobile USA, Inc.* 365 NLRB No. 23 (2017) to support their position. In *T-Mobile USA*, the Board affirmed the judge’s finding that a company’s modification in its handbook, to include a statement that its employees were at-will employees who could be terminated at any time, would not reasonably be read to restrict Section 7 activity. Id. Similarly, the Board found that such language did not communicate to the union or employees that the revision intended to nullify any terms of the existing collective-bargaining agreement. Id. at 9.

However, the footnote provision here is not an employment-at-will policy such as those at issue in the Board’s advice memoranda cited in Respondents’ brief or at issue in *T-Mobile USA*.[6] Rather, it includes overly broad, unqualified, ambiguous language that employees would tend to reasonably construe to circumvent the Union’s representational rights, and chill them in the exercise of their basic Section 7 rights, such as being able to freely and effectively communicate with each other at work regarding self-organization and other terms and conditions of employment. Therefore, this provision violates Section 8(a)(1) of the Act.

c. Section 1.6 Solicitation and Fundraising

> Solicitation and fundraising distract from work time productivity, may be perceived as coercive and may be unlawful.
>
> Solicitation during work time (defined as the work time of either the employee making or receiving the solicitation), the distribution of non-business literature in work areas at any time or the use of company resources at any time (emails, fax machines, computers, telephones, etc.) to solicit or distribute, is prohibited. Non-employees may not engage in solicitation or distribution of literature on company premises. The only exception of this policy is where the company has authorized communications relating to benefits or services made available to employees by the company, company-sponsored charitable organizations or other company-sponsored charitable organizations or other company-sponsored events or activities. To determine whether a particular activity is authorized by the company, contact the VZ Compliance Guideline.
>
> Fundraising and philanthropic initiatives that refer to or use the Verizon name, or that are organized by or directed to Verizon employees in the workplace, must be conducted by the Verizon Foundation, and must conform to all company standards, including this Code.
>
> This section does not apply to political activities (addressed separately in Section 2.2 of this Code) undertaken on Verizon’s behalf in coordination with the Public Policy, Law and Security Department or activities conducted pursuant to the Employee Resource Group Guidelines.

I find that this provision is unlawful, ambiguous and overly broad. Recently, the Board established a standard for determining the lawfulness of an employer’s rule restricting employee use of a company’s email system. See *Purple Communications, Inc. (I)*, 361 NLRB 1050, 1063 (2014); *Purple Communications (II)*, 365 NLRB No. 50 (2017). In *Purple Communications I*, the

[6] See R. Br. at 17–18, citing several Board Division of Advice memoranda.

Board held that:

> [W]e will presume that employees who have rightful access to their employer's email system in the course of their work have a right to use the email system to engage in Section 7-protected communications on nonworking time. An employer may rebut the presumption by demonstrating that special circumstances necessary to maintain production or discipline justify restricting its employees' rights.

Id. Thus, the Board overruled *Register Guard*, 351 NLRB 1110 (2007) (permitting a complete ban on employee use of a company's email systems for Section 7 activities, provided employers did not discriminatorily apply the ban), enfd. in relevant part and remanded sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009).[7] The Board in *Purple Communications I* adopted their presumption from that set forth in *Republic Aviation*, 324 U.S. 793 (1945).[8]

Further, the *Purple Communications* Board described email communications and systems as follows:

> [A]n email system is a forum for communication, and the individual messages sent and received via email may, depending on their content and context, constitute solicitation, literature (i.e., information) distribution, or--as we expect would most often be true--merely communications that are neither solicitation nor distribution, but that nevertheless constitute protected activity . . . In the vast majority of cases, an employer's email system will amount to a mixed-use area, in which the work-area restrictions permitted on literature distribution generally will not apply.

Purple Communications I, above at 1062, citing e.g., *United Parcel Service*, 327 NLRB 317, 317 (1998). In sum, the Board concluded that the "*Register Guard* analysis' failure to 'adapt the Act to changing patterns of industrial life' was unsupported by the legal precedents on which it relied. *Purple Communications*, above at 1050 fn. 6 (quoting *Hudgens v. NLRB*, 424 U.S. 507, 523 (1976), and citing *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, at 266 (1975)).[9] The Board's analysis in *Purple Communications I* applies only to employers' email systems, employees who have access to those systems during the course of their work, and the employees' right to use those systems for protected activities during nonworking time. I agree with the Union's assertion that the employees' right to use these email systems to engage in protected activity should naturally extend to the computer or cellular devices that the employees use at work to access the systems, and the communications transmitted through them.

Moreover, the Board affirmed its position in *Purple Communications I* and applied it to the Respondents' same section 1.6 solicitation and fundraising policy at issue here. In doing so, it affirmed the judge's finding that this policy was unlawfully overly broad as it would reasonably be understood by Respondents' employees to chill the exercise of their Section 7 rights. See *Cellco Partnership d/b/a Verizon Wireless*, 365 NLRB No. 38 (2017), slip op. at 1, 13 and 14. Respondents' rule in this case expressly prohibits use of all company resources, including email systems, to solicit or distribute at any time. It is undisputed that Respondents permitted their employees to use their email systems in the course of their work in order to receive or access information such as the Code of Conduct. Therefore, I find that in this case, as in *Verizon Wireless*, above, employees presumably have a right to use Respondents' email systems for Section 7 activities during nonworking time. I further find that Respondents have not provided any special circumstances to rebut this presumption. Respondents adopt the dissenting opinion and argue that *Purple Communications* should be overruled, and that *Register-Guard* should be reinstated. However, I am bound to follow current Board law unless or until it has been reversed by the Supreme Court. See *Pathmark Stores*, 342 NLRB 378, 378 fn. 1 (2004); *Hebert Industrial Insulation Corp.*, 312 NLRB 602, 608 (1993); *Lumber & Mill Employers Assn.*, 265 NLRB 199, 199 fn. 2 (1982), enfd. 736 F.2d 507 (9th Cir. 1984), cert. denied 469 U.S. 934 (1984).

Further, this rule which implicates both solicitation and distribution fails to sufficiently define or describe them or work areas in which they might occur. As such, an employee would reasonably understand this rule to preclude him or her from merely asking a fellow employee to attend a meeting about wages, hours or other terms and conditions of employment, or even discussing such matters, or distributing authorization cards during nonworking times in a break area. While an employer may ban solicitation in work areas during actual worktime, an employer may not extend the ban to work areas during nonworking time. *UPS Supply Chain Solutions, Inc.*, 357 NLRB 1295, 1296 (2011); *Our Way*, 268 NLRB 394, 394–395 (1983). There is no evidence that Respondents defined work areas or made it clear to employees that this rule does not extend to solicitation and distribution in nonworking areas (e.g. break rooms, cafeteria, etc.) during their own time. Therefore, this rule against solicitation and distribution unlawfully prohibits Section 7 activity and violates Section 8(a)(1) of the Act. See *Verizon Wireless*, above.

d. Section 1.8 Employee Privacy

> You must take appropriate steps to protect confidential personal employee information, including social security numbers, identification numbers, passwords, bank account information and medical information. You should never access or

[7] In doing so, the Board determined that the *Register Guard* decision gave too much weight to employers' property rights and too little to "the importance of email as a means by which employees engage in protected [workplace] communications." *Purple Communications I*, above, at 1054.

[8] In *Republic Aviation*, the Supreme Court found that an employer's "ban on oral solicitation on employees' nonworking time was 'an unreasonable impediment to self-organization,' and that a restriction on such activity must be justified by 'special circumstances' making the restriction necessary in order to 'maintain production or discipline.'" *Purple Communications I*, above 1055–1056, quoting in part *Republic Aviation*, above at 803–804.

[9] The Board also emphasized how in the workplace, "email has effectively become a 'natural gathering place,' pervasively used for employee-to-employee conversations." *Purple Communications I*, above at 1057, citing *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 505 (1978), and Martin H. Malin & Henry H. Perritt Jr., *The National Labor Relations Act in Cyberspace: Union Organizing in Electronic Workplaces*, 49 U. Kan. L. Rev. 1, 17 (Nov. 2000).

> obtain, and may not disclose outside of Verizon, another employee's personal information obtained from Verizon business records or systems unless you are acting for legitimate business purposes and in accordance with applicable laws, legal process and company policies, including obtaining any approvals necessary under those policies.

Over the Union's objection, I granted the General Counsel's motion to dismiss the allegations concerning this rule, relying on the Board's finding in *Verizon Wireless*, above slip op. at 2, which affirmed the judge's determination that this provision in Respondents' 2015 Code of Conduct was lawful.[10][10] In this instance, the Charging Party argues that the Board's finding was misplaced. However, as stated above, I am bound to follow Board precedent that has not been overturned by the Supreme Court. *Pathmark Stores*, 342 NLRB 378. Therefore, the allegations pertaining to this rule (pars. 6(d), initial complaint, and par. 5(d), consolidated complaint) are dismissed. (GC Exhs. 1(w), 1(bb).)

e. Section 1.8.1 Monitoring On the Job

> In order to protect company assets, provide excellent service, ensure a safe workplace, and to investigate improper use or access, Verizon monitors employees' use of Verizon's communications devices, computer systems and networks (including the use of the Internet and corporate and personal web-based email accessed from Verizon devices or systems), as permitted by law. In addition, and as permitted by law, Verizon reserves the right to inspect, monitor and record the use of all company property, company provided communications devices, vehicles, systems and facilities—with or without notice—and to search or monitor at any time any and all company property and any other personal property (including vehicles) on company premises.

In *Purple Communications I*, 361 NLRB 1050, the majority explained that their decision "does not prevent employers from continuing . . . to monitor their computers and email systems for legitimate management reasons, such as ensuring productivity and preventing email use for purposes of harassment or other activities that could give rise to employer liability." Id. at 1050, 1060. However, this rule's language permitting the employers to search employees' personal property, including vehicles, on company property with or without notice, and apparently with or without cause, is overly broad and far reaching. Therefore, I agree with the General Counsel and the Union that the rule fails to provide any qualification in this regard and would reasonably be understood by employees to restrict protected activity. More specifically, it would reasonably be construed to permit unlawful search and surveillance of employees' organizing or other protected activities such as employees' maintenance of authorization cards, organizing literature or lawfully collected evidence of unfair labor practices in their vehicles or in/on other of their personal property. The rule would also be reasonably read to restrict or interfere with discussions with other employees about protected activity in their personal vehicles. Therefore, due to the chilling effects of this rule on protected Section 7 activity, I find that it violates Section 8(a)(1) of the Act. See *Lutheran Heritage Village-Livonia*, 343 NLRB 646 at 646.

I find that Respondents' arguments in this regard, relying on various Division of Advice memoranda, etc. are without merit.

f. Section 1.8.2 Use of Recording Devices

> In many jurisdictions, use of recording devices without the consent of both parties is unlawful. Unless you are participating in an approved observation program or you have obtained prior approval from Security or the Legal Department, you may not record, photograph, or videotape another employee while the employee is at work or engaged in business activities or access another employee's systems, records or equipment without that employee's knowledge and approval. In addition, unless you receive prior approval from the Legal Department, you may never record, photograph or videotape any customer, business provider or competitor without that person's knowledge and approval.

I also agree with the General Counsel's contention that this rule, which precludes employees from engaging in unauthorized recording, photographing or videotaping of other employees without their knowledge and approval, restricts them in the furtherance of their Section 7 protected activity. It does so, as the General Counsel and Union argue, by interfering with employees' ability to obtain evidence of and document unfair labor practices at work or during nonworking time. Thus, I find Respondents' argument that the other parties have "missed the mark," has missed the mark. (R. Br.)

In recent decisions, the Board has found that employer rules broadly prohibiting employees from recording in the work place (which would include "at work") on their own time and in nonworking areas would reasonably be construed to limit Section 7 activity in violation of Section 8(a)(1) of the Act. See *T-Mobile USA, Inc.*, 363 NLRB No. 171, slip op. at 3 (2016), citing *Caesars Entertainment Corp. d/b/a Rio All-Suites Hotel & Casino*, 362 NLRB 1690, 1693 (2015), and *Whole Foods Market*, 363 NLRB No. 87, slip op. at 4 fn. 11 (2015).[11] The Board has held that a rule prohibiting the recording of conversations, phone calls, images or company meetings with a camera or recording device without prior management authorization is unlawful. *Whole Foods Market*, above, slip op. at 3, citing *Rio All-Suites Hotel & Casino*, above at 1693. In *Whole Foods Market*, the Board concluded that "[p]hotography and audio or video recording in the workplace, as well as the posting of photographs and recordings on social media, are protected by Section 7 if employees are acting in concert for their mutual aid and protection and no overriding employer interest is present." *Whole Foods Market*, slip op. at 3. The Board listed several examples of protected conduct, including but not limited to documenting unsafe and

[10] The Board reasoned that this provision was sufficiently narrow, relying on the fact that it "specifically lists the type of confidential information covered to include social security numbers, identification numbers, passwords, bank account information, and medical information," and excluded language pertaining to "personal employee contact information, such as residential telephone numbers and addresses, or any personal or other documents pertaining to employees' terms and conditions of employment." *Verizon Wireless*, above, slip op. at 2 fn. 5.

[11] Also see *Rio All-Suites Hotel & Casino*, above (photographing and videotaping in the workplace can be Sec. 7 protected activity).

hazardous working conditions, "documenting and publicizing discussions about terms and conditions of employment," documenting discriminatory implementation of work rules or "recording it for later use in administrative or judicial forums in employment-related actions." Id. Further, the Board recognized that unauthorized recordings or videotapes, including those recorded without knowledge and consent, are generally acceptable and often "essential . . . in vindicating the underlying Section 7 right . . . under certain circumstances." Id. The Board pointed out that an employer's policies against recordings violate the Act when they "do not differentiate between recordings protected by Section 7 and those that are unprotected;" it rejected the employer's defenses that it intended the rule to "promote open communication and dialogue" and to protect Section 7 activity. Id. Finally, the *Whole Foods Market* Board distinguished the employer's rationale from that posited in *Flagstaff Medical Center*, 357 NLRB 659 (2011), enfd. in relevant part 715 F.3d 928 (D.C. Cir. 2013), as the reasons for privacy protection were "based on relatively narrow circumstances," and "not nearly as pervasive or compelling as the hospital patient privacy interests in *Flagstaff*."[12] Id. at 3–4.

Although the rule in the instant case appears to allow recording and videotaping of other employees with their consent, I find that this limitation does make it lawful. Nor does the language, "while the employee is at work or engaged in business activities," sufficiently qualify the rule to make it lawful. In *Whole Foods Market* and *Rio All-Suites Hotel & Casino*, above, the rules were not similarly qualified, but rather prohibited all workplace audio or video recording without prior authorization. However, the Board's primary concern with the rules in those cases centered on employees not being able to document potential unfair labor practices, and the fact that the rules broadly prohibited all such activity whether or not it was protected and concerted. Similarly, in this case, Respondents have broadly prohibited unauthorized recordings, without consent of the individual(s) being recorded, without making any distinction between activity which is protected and that which is not. As stated, the Board acknowledged that "our case law is replete with examples where photography or recording, often covert, was an essential element in vindicating the underlying Section 7 right." *Whole Foods Market*, above slip op. at 3.[13]

Respondents attempt to distinguish the findings in recent Board cases, such as those cited above, from the instant case in that the rules in those cases did not expressly state that their purpose was compliance with state law. I reject this argument and find that if this was in fact Respondents' intent in the instant case, then they would not have limited the use of the devices in all states since it is in fact lawful in many states in which they do business to record or videotape individuals without their consent.[14] Further, it is not clear from a reasonable reading of the rule that its purpose is to maintain compliance with state law. Therefore, I find that this rule violates Section 8(a)(1) of the Act.

> g. Section 2.1.3 Activities Outside of Verizon
>
> Many employees participate in an individual capacity in outside organizations (such as their local school board or homeowners' association). Memberships in these associations can cause conflicts if they require decisions regarding Verizon or its products. If you are a member of an outside organization, you must remove yourself from discussing or voting on any matter that involves the interests of Verizon or its competitors. You must also disclose this conflict to your outside organization without discussing non-public company information and you must disclose any such potential conflict to the VZ Compliance Guideline. Participation in any outside organization should not interfere with your work for Verizon. To the extent that your participation infringes on company time or involves the use of Verizon resources, your supervisor's approval is required.
>
> If you serve or are seeking to serve as a representative of Verizon on a board or committee of any outside organization, you must obtain the prior approval of your vice president level or above supervisor, and the Ethics Office.
>
> If you serve on a Board of Directors of a public corporation, you must obtain prior approval from both your vice president level or above supervisor and your organization's president or executive vice president, and the Ethics Office. Service on the Board of Directors of a non-public corporation must be approved by the Ethics Office.

The Board has already spoken on this specific rule, and concluded that it is "unlawfully overbroad" such that employees would reasonably understand it to restrict their protected activity, in violation of Section 8(a)(1) of the Act. See *Verizon Wireless*, above, slip op. at 2. In doing so, the Board found that the rule provided no qualifications as to the type of outside organizations covered such that employees would reasonably interpret the examples of prohibited outside organizations to include labor unions. Id. The Board further determined that "employees would reasonably fear that the broad language in the rule prohibits them from engaging in any conduct the Respondent may consider detrimental to its image or reputation or as presenting a

[12] In *Flagstaff Medical Center*, above, the Board found lawful an employer rule prohibiting the use of cameras in a hospital setting since the patient privacy interests and obligations would lead employees to reasonably interpret the policy as a legitimate method to protect those interests rather than a means of restricting protective activity.

[13] *Whole Foods Market*, above slip op. at 4 fn. 8 and cited cases, e.g., *Times-Herald Record*, 334 NLRB 350, 354 (2001) ("surreptitious audio recording of meeting at which employer unlawfully threatened employees admissible in Board proceeding"), enfd. 27 Fed.Appx. 64 (2d Cir. 2001); *Painting Co*., 330 NLRB 1000, 1003 (2000) ("covert recording supported allegation that employer unlawfully threatened to close the company"), enfd. 298 F.3d 492 (6th Cir. 2002); *Arrow Flint Electric Co*., 321 NLRB 1208, 1219 (1996) ("surreptitious recording was admitted in support of unlawful closure threat and discharge allegations"); and *Wellstream Corp.*, 313 NLRB 698, 711 (1994) ("surreptitious recording admissible in support of allegations that employer unlawfully solicited grievances and threatened employee").

[14] See R. Br. at 21 where Respondents list 10 state laws that prohibit the use of recording devices without consent. See also CP Br. at 16, citing Matthiesen, Wickert & Lehrer, S.C., Laws on Recording Conversations in All 50 States, https://www.mwl-law.com/wp-content/uploads/2013/03/LAWS-ON-RECORDING-CONVERSATIONS-CHART.pdf (last updated Mar. 10, 2017).

'conflict' with its interests, such as engaging in picketing, strikes or other economic pressure." Id., citing *Sheraton Anchorage*, 362 NLRB 1038, 1038 fn. 4 (2015) (rule prohibiting a 'conflict of interest' with the employer would reasonably be understood by employees to include protected activity) and *First Transit, Inc.*, 360 NLRB 619, 619 fn. 5 (2014) (rule prohibiting outside activity participation where a conflict of interest exists is unlawful). Next, the Board concluded that this rule was overly broad "in barring employees when reporting a 'conflict' to an outside organization, from disclosing 'nonpublic company information,' which in the absence of any limiting language clearly implicates terms and conditions of employment." Id., citing *Rio All-Suites Hotel & Casino*, above at 1690. Finally, the Board declared this rule's reporting requirement "unlawful because employees would reasonably read it as requiring them, in certain circumstances, to inform the Respondent of their union and other protected activity." Id., citing *Casino San Pablo*, 361 NLRB No. 148, slip op. at 4 fn. 6 (2014) (requiring employees to disclose "their intent to engage in protected activity" is unlawful). Therefore, I find that this Section 2.1.3 Activities Outside of Verizon Wireless violates Section 8(a)(1) of the Act.

h. Section 3.2.1 Protecting Non-public Company Information

> You must safeguard non-public company information by following company policies and procedures and contractual agreements for identifying, using, retaining, protecting and disclosing this information.
>
> You may not release non-public company financial information to the public or third parties unless specifically authorized by Verizon's Controller.
>
> You may not release other non-public company information to the public, third parties or Internet forums (including blogs or chat rooms) unless you are specifically authorized to do so by a vice president level or above supervisor, and the Public Policy, Law and Security Department.
>
> You may only disclose non-public company information to employees who have demonstrated a legitimate, business-related need for information.
>
> Even after the company releases information, you should be mindful that related information may still be non-public and must be protected.
>
> Your obligation to safeguard non-public information continues after your employment with the company terminates. Without Verizon's specific written prior authorization, you may never disclose or use non-public company information.
>
> If you suspect or are aware of any improper disclosure of non-public company information, you must immediately report it to Security or the VZ Compliance Guideline.

This rule is essentially a confidentiality policy, and as such an employer has a duty to minimize its impact on protected activity. See *Boeing Co.*, 362 NLRB 1789, 1789 (2015). Respondents argue that this rule when read in context with other sections of the Code would lead to the conclusion that the rule does not unlawfully restrict employees' Section 7 rights, but rather is meant to protect inside information. I disagree with this argument. I find that even when read together with other sections such as Section 3.2 (safeguarding company information), this challenged rule would not lead employees to understand it to pertain only to "inside information." It goes way beyond that to include all company information, as it does not contain any examples of nonpublic information except "company financial information," which Respondents fail to sufficiently define. See *Cintas Corp. v. NLRB*, 482 F.3d 463, 467 (D.C. Cir. 2007). In *Cintas Corp.*, the Board determined that the employer violated the Act when it promulgated an overly broad rule prohibiting the unauthorized release of "'any information.'" The Board also concluded that the confidentiality rule violated the Act even though its terms did not specifically include employee wages or working conditions or make reference to such information. Id. That decision is applicable in this case where Respondents' rule forbids their employees from releasing not only nonpublic company financial information, but any "other non-public company information to the public, third parties or Internet forums (including blogs or chat rooms)" unless "specifically authorized." Therefore, employees would reasonably interpret this to mean that they are restricted from disclosing information or communications with third parties, such as unions, about wages, hours and other terms and conditions of employment while they are employed and after they leave Respondents' employment.

Respondents' reliance on cases supporting the lawfulness of this rule is misplaced. For example, in *Super K-Mart*, 330 NLRB 263, 263–264 (1999), the Board found that the company's rule prohibiting disclosure of "company and business documents" was lawful since it did not include language restricting wages or working condition. However, in this case, Respondents' policy is much broader in prohibiting the release of all non-public company information. See also *Roomstores of Phoenix*, 357 NLRB 1690 at 1704.

Further, employees must not be required to obtain prior authorization from the employer in order to engage in protected activity. See *Schwan's Home Service*, 364 NLRB No. 20, slip op. at 4 (2016), citing *Brunswick Corp.*, 282 NLRB 794, 795 (1987). Also see *G4S Secure Solutions (USA) Inc.*, 364 NLRB No. 92, slip op. at 4–5 (2016). Thus, I find that this overly broad rule restricts employees' Section 7 rights and violates Section 8(a)(1) of the Act.[15]

i. Section 3.4.1 Prohibited Activities

> You may never use company systems (such as e-mail, instant messaging, the Intranet or Internet) to engage in activities that are unlawful, violate company policies or result in Verizon's liability or embarrassment. Some examples of inappropriate uses of the Internet and e-mail include:
>
> - Pornographic, obscene, offensive, harassing or discriminatory content;
> - Chain letters, pyramid schemes or unauthorized mass distributions;

[15] Respondents rely on an administrative law judge ruling that this particular rule, when read in conjunction with Code rule 3.2 (safeguarding company information), is lawful. However, that opinion is not legal precedent here. (R. Br.)

- Communications on behalf of commercial ventures;
- Communications primarily directed to a group of employees inside the company on behalf of an outside organization;
- Gambling, auction-related materials or games;
- Large personal files containing graphic or audio material;
- Violation of others' intellectual property rights; and
- Malicious software or instructions for compromising the company's security.

Also, you may not send e-mail containing non-public company information to any personal email or messaging service unless authorized to do so by your supervisor and you comply with company requirements relating to the encryption of information.

The Board in *Verizon Wireless*, 365 NLRB No. 38, adopted the judge's finding and rationale that this same policy violated the Act. As discussed above, the Board in *Purple Communications I* held that "employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email." I agree with the Board's affirmation of the judge's conclusion that "[a] reasonable reading of Section 3.4.1 is that employees will be disciplined for using company email to communicate with a group of employees inside the company on behalf of a labor organization or employees engaged in protected, concerted activity if such use will result in Verizon's 'embarrassment.'" *Verizon Wireless*, above slip op. at 18. I also agree with the determination that the very use of language prohibiting employees from use of email, instant messaging intranet or internet use that would result in Respondents' "embarrassment" is overly broad, and chills Section 7 activity in violation of Section 8(a)(1). Id.

j. Section 4.6 Relationships with and Obligations of Departing and Former Employees

Your obligation to abide by company standards exists even after your employment with Verizon ends. The following requirements apply to all current, departing and former Verizon employees:

- When leaving or retiring, you must ensure that you return all Verizon property in your possession, including all records and equipment.
- You may not breach any employment condition or agreement you have with Verizon. You may not use or disclose Verizon non-public information in any subsequent employment, unless you receive written permission in advance from a Verizon vice president level or above supervisor and the Legal Department.
- You may not provide any Verizon non-public company information to former employees, unless authorized. If a former employee solicits non-public information from you, you must immediately notify Security or the Legal Department.
- Except as authorized below, you may not rehire a former employee, engage a former employee as an independent contractor or contingent worker, or purchase products or services on Verizon's behalf from a former employee unless that former employee has been separated from the company for at least six months.

I agree with the General Counsel that this rule is similar to the one at section 3.2.1 discussed above and found to be overly broad and unlawful in that it prohibits employees from disclosing nonpublic information to former employees without prior authorization of the employers. Therefore, for the reasons discussed above, I find that employees would also reasonably construe this policy, in context, to unlawfully restrict their Section 7 activity in violation of Section 8(a)(1) of the Act. I have considered all arguments presented by Respondents regarding this policy and find that they are without merit.

k. Conclusion

. . .

The following are examples of actions considered illegal or unacceptable:

- Theft or unauthorized access, use or disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary);

. . .

- Disparaging or misrepresenting the company's products or services or its employees;

. . .

In *Verizon Wireless*, above, the Board affirmed the judge's finding that these two examples are unlawfully overbroad. When read in context, these two provisions prohibiting "use or disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary)" would reasonably be construed to preclude communications involving concerns to coworkers or others about work conditions, criticism of management or sharing of employee information such as names and telephone numbers—in furtherance of mutual aid and protection and other protected activity.

The second provision at issue similarly reads too broadly and would be reasonably interpreted by employees to mean that they could not communicate their concerns to coworkers or to third parties such as a union about their work terms or conditions. Therefore, I find that these provisions under the Conclusion of the Respondents' Code of Conduct would tend to chill employees in the exercise of their protected Section 7 activity in violation of Section 8(a)(1) of the Act.

The General Counsel relies on Board cases such as *Fresh & Easy Neighborhood Market*, 361 NLRB 72, 73–74 (2014) (employees would reasonably understand a prohibition on disclosing employee information to constrain discussion of terms and conditions of employment). Regarding the disparaging or

misrepresentation of company products, services or employees, the General Counsel contends that the rule is overbroad, citing cases such as *Lily Transportation Corp.*, 362 NLRB 406 (2015) (finding unlawful a rule precluding posting of "disparaging, negative, false, or misleading information or comments" about the 1352, 1356 (rule prohibiting false, misleading or malicious statements unlawful); *Beverly Health & Rehabilitation Services*, 332 NLRB 347, 347–348, 356–357 (2000) (finding unlawful a policy forbidding "false or misleading work-related statements concerning the company, the facility, or fellow associates"); *Lafayette Park Hotel*, above 326 NLRB at 828.

Respondents argue that these rules, as well as other challenged policies in their Code of Conduct, should be lawful under the "*Beaumont Hospital* balancing test." Based on this test and argument, they assert that the Board should reverse the *Lutheran Heritage* standard, and replace it with a balancing test that evaluates "(i) the legitimate justifications associated with the disputed rule and (ii) any adverse impact the rule may have on NLRA-protected activity." (R. Br. at 25–27, 33–34, citing Chairman Miscimarra's dissenting opinions in *William Beaumont Hospital*, 363 NLRB No. 162, slip op. at 7–24 and *Verizon Wireless*, above, slip op. at 4–5). For different reasons, the Union advocates for the reversal of *Lutheran Heritage* to the extent that the Board modified the previous rule in *Lafayette Park Hotel* such that it allowed employers to implement and maintain rules where there is "any reasonable interpretation that [they are] not unlawful." (CP Br. at 2–7.) The Union believes that this would make many of the challenged rules unlawful. However, for reasons stated above, I must apply the current Board standards and law.

Relying on *NLRB v. Electrical Workers Local 1229*, 346 U.S. 464, 475–477 (1953), Respondents assert that the Act does not preclude rules prohibiting disparagement of products and services. A prohibition against disparaging statements, without sufficient qualifications, such as in the case here, could easily be construed to encompass Section 7 protected activity. Thus, the Board has found such prohibitions on them to be unlawful. See *Southern Maryland Hospital Center*, 293 NLRB 1209, 1222 (1989), enfd. in relevant part 916 F.2d 932 (4th Cir. 1990).

In summary, I have considered all of the parties' arguments and case law in support thereof as set forth in their briefs, including those asserted by Respondents in their reply brief.[16]

CONCLUSIONS OF LAW

1. Respondents, Verizon Wireless and the various Verizon Entities, are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and have engaged in the unfair labor practices set forth below affecting commerce within the meaning of those sections of the Act and in violation of Section 8(a)(1) of the Act.

2. Since about April 29, 2015, by promulgation and maintenance of the following 2015 Code of Conduct rules, described above, which would reasonably be understood by employees to prohibit their Section 7 protected activity in violation of Section 8(a)(1) of the Act:

(a) "Speak Up Do the Right Thing Because it's the Right Thing to Do" reporting section, which requires employees to report "suspected and actual violations" of the Code by determining whether conduct is dishonest, unethical, unlawful, would hurt Verizon or cause Verizon to lose credibility with its customers or others or hurt others.

(b) "Footnote 1" located on page 10 of the Code, which instructs that the Code does not give employees any rights and may be unilaterally changed at any time without notice to employees.

(c) "Section 1.6 Solicitation and Fundraising" rule, which prohibits employees' "use of company resources at any time (emails, fax machines, computers, telephones, etc.) to solicit or distribute" information.

(d) "Section 1.8.1 Monitoring On the Job," to the extent that it permits Verizon to monitor, record and inspect and/or search at any time, with or without consent, any of their employees' personal property, including vehicles, on company premises.

(e) "Section 1.8.2 Use of Recording Devices," which prohibits all unauthorized audio recording, videotaping and photographing of employees while at work or working, or any customer, business provider or competitor, without their knowledge and approval.

(f) "Section 2.1.3 Activities Outside of Verizon," which prohibits conflict of interest discussions, participation and activity in outside organizations or associations regarding Verizon or its products or interests or its competitors, and requiring disclosure of any such conflicts to the outside organizations, without disclosing non-public company information, and to Verizon.

(g) "Section 3.2.1 Protecting Non-public Company Information," which prohibits disclosure of all non-public company financial and other information.

(h) "Section 3.4.1 Prohibited Activities," which prohibits employees' use of company systems (such as email, instant messaging, the Intranet or Internet) to engage in activities that result in Respondents' "embarrassment" and for "unauthorized mass distribution" and "[c]ommunications primarily directed to a group of employees inside the company on behalf of an outside organization."

(i) "Section 4.6 Relationships with and Obligations of Departing and Former Employees," which prohibits employees who are leaving the company or who have left the company from disclosing any and all non-public company information unless authorized.

(j) The "Conclusion" sections, which prohibit "use or disclosure of company, customer or employee records, data, funds, property, or information (whether or not it is proprietary)" and disparagement or misrepresentation of company products or services or its employees.

3. The provision, "Section 1.8 Employee Privacy," would not reasonably be read by employees to restrict Section 7 protected activity or to chill employees from engaging in such activity. Therefore, allegations pertaining to that section do not violate the Act and are dismissed.

[16] I have also considered and find no merit in Respondents' various affirmative defenses set forth in their answers. In addition, I have considered the Union's various other arguments, such as that involving the Religious Freedom Restoration Act governing the Board's application of Sec. 7 to protect "the core religious right to help fellow workers," and find it inapplicable here. (CP Br. at 2.)

REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I shall order them to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Respondents shall further be ordered to refrain from, in any like or related manner, abridging any of the rights guaranteed to employees by Section 7 of the Act. Given that their policies are maintained on a companywide basis, they shall be ordered to post a notice at all of their facilities where the unlawful policies have been, or are, in effect. See *Longs Drug Stores California*, 347 NLRB 500, 501 (2006); *Guardsmark, LLC*, 344 NLRB 809, 812 (2005). Respondents' duty to rescind or modify the unlawful policies is governed by *Guardsmark LLC*, supra.[17] They shall nationally distribute remedial notices via email, intranet, internet, or other appropriate electronic means to its employees, in addition to the traditional physical posting of paper notices, if they customarily communicate with workers in this manner. See *J. Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

Respondents Verizon Wireless and the various Verizon Entities involved in this case, conducting business in their various facilities throughout the United States, and their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining the "Speak Up Do the Right Thing Because it's the Right Thing to Do" section in the 2015 Code of Conduct requiring employees to report "suspected and actual violations" of the Code by determining whether conduct is dishonest, unethical, unlawful, would hurt Verizon or cause Verizon to lose credibility with its customers or others or hurt others.

(b) Maintaining "Footnote 1" located on page 10 of the Code, instructing that the Code does not give employees any rights and may be unilaterally changed at any time without notice to employees.

(c) Maintaining "Section 1.6 Solicitation and Fundraising" in the 2015 Code of Conduct prohibiting employees from "the use of company resources at any time (emails, fax machines, computers, telephones, etc.) to solicit or distribute" information.

(d) Maintaining "Section 1.8.1 Monitoring On the Job" in the 2015 Code of Conduct to the extent that it permits Verizon to monitor, record and inspect and/or search at any time, with or without consent, any of their employees' personal property, including vehicles, on company premises.

(e) Maintaining "Section 1.8.2 Use of Recording Devices" in the 2015 Code of Conduct prohibiting all unauthorized audio recording, videotaping and photographing of employees while at work or working, or any customer, business provider or competitor, without their knowledge and approval.

(f) Maintaining "Section 2.1.3 Activities Outside of Verizon Wireless" in the 2015 Code of Conduct prohibiting conflict of interest discussions, participation and activity in outside organizations or associations regarding Verizon or its products or interests or its competitors, and requiring disclosure of any such conflicts to the outside organizations, without disclosing nonpublic company information, and to Verizon.

(g) Maintaining "Section 3.2.1 Protecting Non-public Company Information" in the 2015 Code of Conduct prohibiting disclosure of all non-public company information.

(h) Maintaining "Section 3.4.1 Prohibited Activities" in the 2015 Code of Conduct prohibiting employees' use of company systems (such as email, instant messaging, the Intranet or Internet) to engage in activities that result in Respondents' "embarrassment" and for "unauthorized mass distribution" and "[c]ommunications primarily directed to a group of employees inside the company on behalf of an outside organization."

(i) Maintaining "Section 4.6 Relationships with and Obligations of departing and Former Employees" in the 2015 Code of Conduct prohibiting those employees who are leaving the company or who have left the Company from disclosing any and all nonpublic company information unless authorized.

(j) Maintaining the "Conclusion" in the 2015 Code of Conduct prohibiting the "[t]heft or unauthorized access, use or disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary)" and the disparagement or misrepresentation of company products, services or its employees.

(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the following sections of the 2015 Code of Conduct: "Speak Up Do the Right Thing Because it's the Right Thing to Do," "Footnote 1" located on page 10 of the Code, section 1.6 Solicitation and Fundraising, section 1.8.1 Monitoring on the Job, section 1.8.2 Use of Recording Devices, section 2.1.3 Activities Outside of Verizon Wireless, section 3.2.1 Protecting Non-public Company Information, section 3.4.1 Prohibited Activities, section 4.6 Relationships with and Obligations of Departing and Former Employees and "Conclusion," stating the following examples of actions considered illegal or unacceptable: "Theft or unauthorized access, use or disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary)"; and "Disparaging or misrepresenting the company's products or services or its employees."

[17] "The Respondent may comply with our Order by rescinding the unlawful provisions and republishing its employee handbook without them. We recognize, however, that republishing the handbook could entail significant costs. Accordingly, the Respondent may supply the employees either with handbook inserts stating that the unlawful rules have been rescinded, or with new and lawfully worded rules on adhesive backing which will cover the old and unlawfully broad rules, until it republishes the handbook without the unlawful provisions. Thereafter, any copies of the handbook that are printed with the unlawful rules must include the new inserts before being distributed to employees." *Guardsmark,* supra at 812 fn. 8.

[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Furnish all employees with inserts for the 2015 Code of Conduct presently in effect at their respective offices and places of business that (1) advise that the above rules have been rescinded, or (2) publish and distribute revised 2015 Codes of Conduct that do not include the above rules.

(c) Within 14 days after service by the Region, post at all of their facilities nationwide where the unlawful policies have been in effect or are currently in effect copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since April 29, 2015.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

IT IS FURTHER ORDERED that the complaint allegations involving Code of Conduct provision "Section 1.8 Employee Privacy," are dismissed insofar as they allege violations of the Act not specifically found.

Dated, Washington, D.C. May 25, 2017

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain the "Speak Up Do the Right Thing Because it's the Right Thing to Do" section in the 2015 Code of Conduct requiring employees to report "suspected and actual violations" of the Code by determining whether conduct is dishonest, unethical, unlawful, would hurt Verizon or cause Verizon to lose credibility with its customers or others or hurt others.

WE WILL NOT maintain "Footnote 1" located on page 10 of the Code, instructing that the Code does not give employees any rights and may be unilaterally changed without notice to employees.

WE WILL NOT maintain "Section 1.6 Solicitation and Fundraising" in the 2015 Code of Conduct prohibiting employees from "the use of company resources at any time (emails, fax machines, computers, telephones, etc.) to solicit or distribute" information.

WE WILL NOT maintain "Section 1.8.1 Monitoring On the Job" in the 2015 Code of Conduct permitting Respondents to the extent that it permits Verizon to monitor, record and inspect and/or search at any time, with or without consent, any of their employees' personal property, including vehicles, on company premises.

WE WILL NOT maintain "Section 1.8.2 Use of Recording Devices" in the 2015 Code of Conduct prohibiting all unauthorized audio recording, videotaping and photographing of employees while at work or working, or any customer, business provider or competitor, without their knowledge and approval.

WE WILL NOT maintain "Section 2.1.3 Activities Outside of Verizon Wireless" in the 2015 Code of Conduct prohibiting conflict of interest discussions, participation and activity in outside organizations or associations regarding Verizon or its products or interests or its competitors, and requiring disclosure of any such conflicts to the outside organizations, without disclosing non-public company information, and to Verizon.

WE WILL NOT maintain "Section 3.2.1 Protecting Non-public Company Information" in the 2015 Code of Conduct prohibiting disclosure of all non-public company information.

WE WILL NOT maintain "Section 3.4.1 Prohibited Activities" in the 2015 Code of Conduct prohibiting employees' use of company systems (such as email, instant messaging, the Intranet or Internet) to engage in activities that result in Respondents' "embarrassment" and for "unauthorized mass distribution" and "[c]ommunications primarily directed to a group of employees inside the company on behalf of an outside organization."

WE WILL NOT maintain "Section 4.6 Relationships with and Obligations of Departing and Former Employees" in the 2015 Code of Conduct prohibiting those employees who are leaving the company or who have left the company from disclosing any and all non-public company information unless authorized.

WE WILL NOT maintain the "Conclusion" in the 2015 Code of Conduct prohibiting the "[t]heft or unauthorized access, use or disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary)" and the disparagement or misrepresentation of company products, services or its employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL rescind the language in the following 2015 Code of Conduct provisions:

1. "Speak Up Do the Right Thing Because it's the Right Thing to Do,"
2. "Footnote 1" located on page 10 of the Code,
3. Section 1.6 Solicitation and Fundraising,
4. Section 1.8.1 Monitoring On the Job,
5. Section 1.8.2 Use of Recording Devises,
6. Section 2.1.3 Activities Outside of Verizon Wireless,
7. Section 3.2.1 Protecting Non-public Company Information,
8. Section 3.4.1 Prohibited Activities,
9. Section 4.6 Relationships with and Obligations of Departing and Former Employees, and
10. "Conclusion" that states that the following are examples of actions considered illegal or unacceptable: "Theft or unauthorized access, use or disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary)"; and "Disparaging or misrepresenting the company's products or services or its employees."

WE WILL furnish all employees at all of our facilities within the United States and its territories where the 2015 Code of Conduct has existed and currently exists with inserts for the current Code of Conduct that advise that the unlawful provisions above have been rescinded, or distribute a revised Code of Conduct that does not contain the unlawful provisions.

VERIZON WIRELESS AND VERIZON WIRELESS ENTITIES

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-156043 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

APPENDIX B

. . . .

DECISION GRANTING THE GENERAL COUNSEL'S MOTION TO WITHDRAW COMPLAINT ALLEGATIONS IN LIGHT OF THE BOEING CO. AND ORDER WITHDRAWING CONSOLIDATED COMPLAINT

On November 19, 2018, the Board issued a Notice to Show Cause why this case should be remanded for further consideration under *The Boeing Co.*, 365 NLRB No. 154 (2017). Respondents filed their response opposing remand, while the Charging Parties filed their response favoring remand. The General Counsel did not respond. After consideration, the Board remanded the case, in part, to me, to consider the following challenged sections of Respondent's Code of Conduct (Code), under the new standards set forth in *Boeing*: "Speak Up" reporting section; Footnote 1 on page 10 containing compliance language 1.8 (Employee Privacy); 1.8.2 (use of Recording Devices); 2.1.3 (Activities Outside of Verizon); 3.2.1(Protecting Non-public Company Information); and 4.6 (Relationships with Obligations of Departing and Former Employees). The Board further remanded these sections to me "for the purpose of reopening the record, if necessary, and preparation of a supplemental decision addressing the complaint allegations affected by *Boeing* and setting forth credibility resolutions, findings of fact, conclusions of law, and recommended Order."

The Board severed and retained for future consideration the complaint allegations that Sections 1.6, 1.8.1, and 3.4.1 of the Respondent's Code are unlawful. Therefore, I will not address these provisions.

The complaint in this matter alleges, inter alia, that certain rules and policies maintained by Respondent violate Section 8(a)(1) of the Act based on the recently overruled (by *Boeing*) analytical framework set forth in *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004). On December 14, 2017, in *Boeing,* the Board overruled relevant parts of *Lutheran Heritage* and announced new standards by which facially neutral rules should be analyzed to determine whether they violate the Act. Th Board made these standards retroactive and thus applicable to the instant case.

Based on the Board's remand, I issued an order on May 21, 2019 directing the parties to file position statements addressing whether the remand in this case should include a re-opening of the record, and if so, to provide a summary of eh evidence they would introduce , number of witnesses, if any, and an estimate of the time it would take to present their evidence.

All parties filed position statements. Both the General Counsel and Respondents opposed the re-opening of the record, asserting that the record as it stands sufficiently permits an analysis of whether Respondents maintain unlawful facially neutral rules under the *Boeing* standards. On the other hand, the Charging Parties argued that this case should be reopened to accept additional evidence, including witness testimony, to allow them to prove under the *Boeing* standards that Respondents failed to sufficiently demonstrate justification for its rules. After reviewing the various positions and arguments, I issued an order on August 2, 2019, that there was no need for a hearing in this case. The complaint allegations related only to Respondents' maintenance of the rules and Respondents relied on the record and the rules as set forth in their Code for justification of maintenance. I also permitted the parties if they so desired to file supplemental briefs on or before August 26, 2019. The Charging Parties submitted their supplemental brief on August 19, 2019, reasserting their contention that they cannot prove lack of justification for the rules without testimony and record evidence. That request is DENIED.

Thereafter, On August 21, 2019, the General Counsel filed a Motion to Withdraw Complaint Allegations, paragraphs 5(a), 5(b), 5(f), 5(g), 5(h), 5(j), and 5(k) of consolidated complaint in cases 02–CA–156761, 04–CA–156043, 05–CA–156053, and

31–CA–161472, issued on October 31, 2016, and paragraphs 6(a), 6(b), 6(f), 6(g), 6(h), 6(j), and 6(k) in cases 02–CA–157403, also issued on October 31, 2016. These referenced paragraphs correspond with the complaint allegations that Respondents violated the Act by maintaining the following provisions of Respondent's code: the "Speak Up" reporting section; Footnote 1 located on page 10 of the Code containing compliance language; Section 1.8.2 ("Use of Recording Devices"); Section 2.1.3 ("activities Outside of Verizon"); Section 3.2.1 ("Protecting Non-public Company Information"); Section 4.6 ("Relationships with the Obligations of Departing and Former Employees"); and two examples of actions considered illegal or unacceptable in the Conclusion section of the Code. The General Counsel applied the new *Boeing* standards to these code provisions and determined that in "in the interest of maintaining consistency with the current Board law," it was requesting withdrawal.

On March 20, 2017, prior to May 25, 2017 issuance of my decision on the record, I granted the General Counsel's motion to withdraw Section 1.8 (Employee Privacy) of Respondent's Code (corresponding with pars. 5(d) in consolidated complaint in Consolidated Complaint Cases No. 02–CA–156761, 04–CA–156043, 05–CA–156053, 31–CA–161472 and paragraph 6(d) in complaint Case No. 02–CA–157403). That motion and order were based on the Board's decision in *Cellco Partnership d/b/a Verizon Wireless*, 365 NLRB No. 38 (2017).

Pursuant to the Board's Rules and Regulations, Section 102.25-102.27, it is within the administrative law judge's discretion to approve, upon motion, the withdrawal of a complaint when the case is before him or her for decision. I find that the Board's remand order has placed these consolidated cases before back before me. The General Counsel brought this complaint and has determined that these remaining provisions in Respondents' Code no longer violate the Act under the new *Boeing* standards. After review of all submissions, I agree. Therefore, I hereby DENY Respondents' request to reconsider my decision to forgo a hearing and GRANT the General Counsel's Motion to withdraw all remaining consolidated complaint allegations set forth above.

Therefore, I order that these remaining allegations in this above-numbered consolidated complaint before me are Withdrawn and that the entire consolidated complaint be remanded to the appropriate Regional Director DISMISSAL.

IT IS SO ORDERED.

Dated at Washington, D.C. this 27th day of September 2019.