

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

G4S SECURE SOLUTIONS (USA), INC.

and

Case 28-CA-023380

**INTERNATIONAL UNION, SECURITY,
POLICE AND FIRE PROFESSIONALS OF
AMERICA (SPFPA)**

ACTING GENERAL COUNSEL'S REPLY BRIEF

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I. INTRODUCTION

On May 10, 2012, Counsel for the Acting General Counsel (General Counsel) filed Cross-Exceptions, and a Brief in Support, to the decision of Administrative Law Judge (ALJ) [JD(SF)-14-12] (ALJD), issued on March 29, 2012, in the above captioned case.¹ On May 14, 2012, Respondent filed an Answering Brief to the General Counsel’s Cross-Exceptions. Pursuant to Section 102.46(h) of the Board’s Rules and Regulations, the General Counsel files this Reply Brief to Respondent’s Answering Brief.

Respondent’s argues that its social networking policy is proper because it posts employee rights notices that outline employees’ rights under the Act to engage in protected, concerted activities at some of its jobsites and, therefore, its overly-broad social networking policy could not be construed by a reasonable employee to prohibit protected, concerted activities. Respondent further argues that, because its human resources manager testified she was only concerned about the possibility that confidential records had been compromised

¹ G4S Secure Solutions (USA), Inc. is referred to as Respondent. The International Union, Security, Police and Fire Professionals of America (SPFPA) is referred to as Union. References to the ALJD show the applicable page number. “Tr. ___” refers to pages of the transcript from the hearing held between October 18 through October 20, 2011. “GCX ___” refers to exhibits introduced by General Counsel at the hearing. “RX___” refers to exhibits introduced by Respondent at the hearing. “UX___” refers to exhibits introduced by the Union at the hearing.

when she informed employees that discipline issued to coworkers discipline was confidential, her prohibitive comments should be disregarded. Respondent's assertions are baseless, not supported by the record evidence, and should be rejected by the Board.

II. THE GENERAL COUNSEL CROSS-EXCEPTIONS AND RESPONDENT'S ARGUMENTS

A. Cross-Exceptions Regarding the Social Networking Policy.

The General Counsel argued in its cross-exceptions that the ALJ erred in failing to find that Respondent's Social Networking Policy, regarding photographs, images and videos, violated Section 8(a)(1) of the Act. Respondent has offered nothing new in its Answering Brief to the General Counsel's Cross-Exceptions.

The rule at issue reads as follows:

Social Networking Policy, November 22, 2010:

Photographs, images and videos of G4S employees in uniform, (whether yourself or a colleague) or at a G4S place of work, must not be placed on any social networking site, unless express permission has been given by G4S Secure Solutions (USA) Inc.

In its Answering Brief, Respondent's sole argument is that, because at some unknown locations it has government contracts which required the posting of NLRA rights notices, no employee could possibly believe that its social networking policy prohibited employees from engaging in protected, concerted activities. Respondent's argument is absurd and is not supported by any record evidence.

First, the record is devoid of any information that Respondent posts notices at all of its jobsites informing employees of their rights under the NLRA. Respondent presented Human Relations Manager Janelle Kercher (Kercher) who testified that posted in her office in Phoenix was RX13, a US Department of Labor posting regarding the NLRA. Respondent provided no evidence that employees in Arizona have ever been to the Human Resources

office, that employees ever saw this Notice, or whether the Notice was placed at any other location throughout the State. There is no evidence that this notice is posted in any of the hundreds of job locations throughout the country where Respondent's employees work.

Second, Respondent argues that because the Board believes that employees are "generally uninformed of their rights under the Act," it instituted a notice posting rule on August 30, 2011.² Respondent argues that the language preceding the notice posting rule regarding "limited circumstances where employees are informed of their NLRA rights" applies to its employees because at some unknown location, they may have government contracts requiring such a posting. (29 C.F.R. Part 104) Respondent's argument lacks logic, is unsupported by the evidence, and should be soundly rejected.

There is absolutely no evidence that at every location throughout the nation, Respondent is required to post a Notice regarding employees NLRA rights. Respondent does not solely have contracts with the government to provide security officers. Respondent has security officers at private bank buildings, meat packing plants, waste water treatment facilities, retail stores, hotels, and transit stations. (Tr. 25-35; GCX 2)

Moreover, even if Respondent posted a notice concerning NLRA rights at each of its locations, this does not absolve it from maintaining an overly-broad and discriminatory rule that prohibits employees from engaging in protected, concerted, activities. Employers are required to post information about employee rights regarding workman's compensation, Equal Employment Opportunity rights, workplace safety, etc., yet those notice postings do not absolve an employer from prosecution when they engage in violations of various workplace laws.

² That rule is currently enjoined by the United States Court of Appeals, DC District.

Finally, Respondent failed to address any of the General Counsel's arguments, as set forth in its cross-exceptions. Instead, Respondent only relies upon the above argument regarding some phantom notice posting that is unsupported by the record evidence.

Respondent's Answering brief is devoid of any meaningful analysis addressing the merits of the arguments set forth in the General Counsel's cross-exceptions. Accordingly, it is respectfully submitted that the Board should conclude that the ALJ erred by failing to find that Respondent's social networking rule prohibiting photographs, images, and videos of employees in uniform or at a place of work on social networking sites violated Section 8(a)(1) of the Act.

B. Cross-Exceptions Regarding Kercher's Statements of February 11, 2011.

The General Counsel filed Cross-Exceptions to the ALJ's finding that Respondent did not violate Section 8(a)(1) of the Act when Kercher informed employee Donald Wickham (Wickham) during an unemployment hearing that information concerning other employees' discipline was confidential and could not be brought up. Respondent argues that the General Counsel mischaracterized Kercher's testimony in its cross-exceptions, and that Kercher's testimony about why she made certain statements during the unfair labor practice hearing justifies the statements she made. Respondent's arguments are without merit.

On April 7, 2011, an unemployment hearing was held at the State of Arizona Department of Economic Security. (Tr. 161). Wickham had been terminated for allegedly sleeping on duty. (GCX 18) During the hearing, Wickham brought up the names of two other employees who had been caught sleeping on duty but had not been terminated. (Tr. 161) When Wickham brought forth that information during the hearing and during his testimony, Kercher immediately stated that that information was confidential. (Tr. 162-163) She testified in the unfair labor practice hearing that she said the information was confidential

because she was concerned that information from personnel files had been given to Wickham, although that is not what she said to Wickham during the unemployment hearing. In fact, her testimony is that she thought that but did not make that statement to Wickham. (Tr. 162-163) Her only statement to Wickham was that the information was confidential.

Respondent's argument falls short. It is immaterial what Kercher thought when she made the statement. What is relevant is what she said in response to Wickham's statements concerning other employees' discipline—that that information was confidential. This statement would give any employee the belief that they could not discuss the discipline of other employees because that information was confidential. Kercher did not say "documentation regarding employee discipline is confidential". She said "that information is confidential."

Employees have the right to discuss terms and conditions of employment and that includes employee discipline. Wickham was fighting for his unemployment benefits. He certainly had a right to mention, and have knowledge of, whether other employees received a lesser punishment for the same offense for which he was terminated, allegedly sleeping on duty. Kercher's statements show a complete misunderstanding and disregard for employees Section 7 rights to discuss employee discipline. *Double Eagle Hotel & Casino*, 341 NLRB 112 (2004) enfd. 414 F. 3d 1249 (10th Cir. 2005); *Intermet Stevensville*, 350 NLRB 1359 (2007); *University Medical Center*, 355 NLRB 1318, 1322 (2001) (rule prohibiting disclosure of information about employees "is unlawfully broad because it could reasonably be construed by employees to prohibiting them from discussing information concerning terms and conditions of employment, including wages"). Respondent fails to address any case law

regarding this cross-exception, choosing to rely solely on Kercher's "state of mind" at the time she made the statement.

III. CONCLUSION

It is respectfully requested that the Board accept the General Counsel's cross-exceptions and find the additional violations of the Act, as alleged, and provide the appropriate remedy.

Dated at Phoenix, Arizona, this 7th day of June 2012.

/s/ Sandra L. Lyons

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CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S REPLY BRIEF in G4S SECURE SOLUTIONS (USA), INC., Case 28-CA-023380 were served by E-Gov, E-Filing and by E-mail, on this 7th day of June 2012, on the following:

Via E-Gov, E-Filing

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