

**JD(ATL)–24–14
Basking Ridge, NJ
Irvine, CA**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE**

**CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS**

and

**CASES: 21-CA-075867
21-CA-098442**

**COMMUNICATIONS WORKERS OF
AMERICA DISTRICT 9, AFL-CIO;
COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO**

AIRTOUCH CELLULAR

and

CASE: 21-CA-115223

**COMMUNICATIONS WORKERS OF
AMERICA DISTRICT 9, AFL-CIO;
COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO**

Lisa E. McNeill, Esq.,¹ for the Government.
E. Michael Rossman, Esq., and
Elizabeth L. Dicus, Esq., for Verizon
and AirTouch.
David A. Rosenfeld, Esq., for the Union.

DECISION

Statement of the Case

WILLIAM NELSON CATES, Administrative Law Judge. The second order

¹ I shall refer to counsel for the General Counsel as counsel for the Government and to the General Counsel as the Government.

consolidating cases and amended consolidated complaint² (complaint)³, issued on January 31, 2014, alleges that Celco Partnership d/b/a Verizon Wireless’ (Verizon) and AirTouch Cellular’s (AirTouch) (jointly the Company) maintenance of certain employee Code of Conduct rules interferes with, restrains, and coerces its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act (the Act) in violation of Section 8(a)(1) of the Act.

On February 14, 2014, Verizon and AirTouch filed timely answers to the complaint in which each company denied violating the Act in any manner alleged in the complaint.

On May 23, 2014, Division of Judges, San Francisco Branch Associate Chief Judge Gerald M. Etchingham, issued an Order granting a joint motion of the Government, Verizon, and AirTouch to submit these cases for decision on a stipulation of facts, thus waiving a hearing under Section 102.35 (a)(9) of the National Labor Relations Board’s (Board) Rules and Regulations.⁴ In his Order, Judge Etchingham established a briefing date for the parties and assigned the matter to me for a decision on the stipulated facts and with consideration of the parties’ briefs.

Based on the entire record in these cases, including the stipulations, agreed upon exhibits, and briefs, I make the following:

FINDINGS OF FACT

I. Jurisdiction and Labor Organization Status

It is stipulated Verizon is a Delaware general partnership, with a principal office and place of business located at One Verizon Way, Basking Ridge, New Jersey, where it has been, and continues to be, in the business of providing wireless telecommunications services throughout the United States of America. Verizon, in conducting its business operations, annually derives gross revenues in excess of \$500,000 and purchases and receives at its California facilities goods valued in excess of \$5000 directly from points outside the State of

² In its post-trial brief, the Company contends that when, on January 6, 2012, Olivia Garcia was appointed Regional Director for Region 21 of the Board the Board acted without a quorum of members. I find the Company’s contention lacks merit. The Board published in the Federal Register (Vol. 76, 229/Nov. 29, 2011/ Notices) an Order (effective November 22, 2011) contingently delegating authority to the Chairman, the General Counsel, and the Chief Administrative Law Judge certain appointment powers. The Order specifically delegated power to the General Counsel over the appointment of Regional Directors whenever the Board membership dropped below a quorum. The only limitation of this power is that a sitting Board Member has the ability to ask for full Board consideration of any particular appointment. Absent such a request, the appointment goes into effect 30 days after notice to the then-sitting Board Members. There is no contention that the delegated procedure was not followed, at least in substantial part. Therefore, I find that Director Garcia was properly and validly appointed Director of Region 21 of the Board.

³ The complaint is based on charges filed by Communications Workers of America District 9, AFL–CIO; Communications Workers of America, AFL–CIO (Union) at various dates from March 5, 2012, through October 21, 2013.

⁴ Judge Etchingham, in his Order, concluded the Union’s objections to deciding this matter on a stipulated record, without an evidentiary hearing, were without merit, because the Union was seeking to present testimonial evidence on issues not raised in the complaint.

California. It is stipulated, and I find, Verizon, has been, and continues to be, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5 It is stipulated AirTouch is a California corporation, with a principal office located at 15505 Sand Canyon Avenue, Irvine, California, with retail facilities throughout Southern California where it has been, and continues to be, engaged in the business of providing wireless telecommunications services throughout Southern California. AirTouch is a wholly owned subsidiary of Verizon. In conducting its business operations AirTouch annually derives gross revenues in excess of \$500,000 and purchases and receives at its California facilities goods 10 valued in excess of \$5000 directly from points outside the State of California. It is stipulated, and I find, AirTouch has been, and continues to be, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

15 I shall refer to both companies collectively as the Company.

It is stipulated, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act.

20 *II. Alleged Unfair Labor Practices*

A. The Challenged Rules

The stipulated facts, which mirror the complaint allegations, are, in pertinent part, as follows:

25 Since at least March 5, 2012, Respondent Verizon has maintained the following rules in its Code of Conduct covering all of its employees, which rules and Code of Conduct have also been maintained during the same period of time by Respondent AirTouch covering all of its employees:

30 (a) Section 1.6 Solicitation and Fundraising- Solicitation and fundraising distract from work time productivity, may be perceived as coercive and may be unlawful.

35 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 40 company premises. The only exception to 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 Compliance 45 Guideline.

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

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This section does not apply to political activities (addressed separately in section 2.2 of this Code) undertaken on Verizon Wireless' behalf in coordination with the Legal Department, or activities conducted pursuant to the Employee Resource Group Guidelines.

10

(b) Section 1.8 Employee Privacy- Verizon Wireless acquires and retains personal information about its employees in the normal course of operations, such as for employee identification purposes and provision of employee benefits. You must take appropriate steps to protect all personal employee information, including social security numbers, identification numbers, passwords, financial information and residential telephone numbers and addresses.

15

You should never access, obtain or disclose another employee's personal information to persons inside or outside of Verizon Wireless 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 polices.

20

Since at least February 13, 2013, Respondent Verizon has maintained the following rules in its Code of Conduct covering all of its employees, which rules and Code of Conduct have also been maintained during the same period of time by Respondent AirTouch covering all of its employees:

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(a) 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 Verizon Wireless Corporate Security or the Legal Department, you may not record, photograph, or videotape another employee 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.

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(b) 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.

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You may not release non-public company financial information to the public or third parties unless specifically authorized by Verizon Wireless' Controller.

5 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 both a vice president responsible for that information and Corporate Communications.

10 You may only disclose non-public company information to employees who have demonstrated a legitimate, business-related need for the information.

15 If you receive a subpoena or court order that requires the disclosure of non-public information, you must coordinate your response with the Legal Department.

Even after the company releases information, you should be mindful that related information may still be non-public and must be protected.

20 Your obligation to safeguard non-public information continues after your employment with the company terminates. Without Verizon Wireless' specific written prior authorization, you may never disclose or use non-public company information.

25 If you suspect or are aware of any improper disclosure of non-public company information, you must immediately report it to Verizon Wireless Corporate Security or the Compliance Guideline.

30 (c) 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 Wireless' liability or embarrassment. Some examples of inappropriate uses of the Internet and e-mail include:

- 35 • 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;
- 40 • 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.

45 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.

5 (d) Section 3.7 Handling External Communications- Unless you receive prior approval, you may never suggest that you are speaking on behalf of Verizon Wireless when presenting your personal views at community, professional or cultural functions or on the Internet.

10 Use of the company brand and logo must adhere to approved corporate identity specifications. To seek guidance or report misuse, contact the Legal Department.

15 Verizon Wireless will generally deny requests for company-sponsored endorsements or testimonials. All requests, including the use of Verizon Wireless' name or an employee endorsement in any business provider's advertising or literature must be coordinated and approved by Corporate Communications.

20 [Specifically identified departments has been omitted]

25 (e) 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 Wireless ends. The following requirements apply to all current, departing and former Verizon Wireless employees:

- 30 • When leaving or retiring, you must ensure that you return all Verizon Wireless property in your possession, including all records and equipment.
- 35 • You may not breach any employment condition or agreement you have with Verizon Wireless. You may not use or disclose Verizon Wireless non-public information in any subsequent employment, unless you receive written permission in advance from a Verizon Wireless vice president level or above supervisor and the Legal Department.
- 40 • You may not provide any Verizon Wireless non-public company information to former employees, unless authorized. If a former employee solicits non-public information from you, you must immediately notify Verizon Wireless Corporate Security or the Legal Department.
- 45 • 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 Wireless' behalf from a former employee unless that former employee has been separated from the company for at least six months.
- In extremely limited circumstances, the Vice President – Human Resources may, in writing prior to the engagement, and upon finding a

compelling reason, approve the rehire of a former employee or the engagement of a former employee as an independent contractor or contingent worker within six months of that person's separation.

- A vice president level or above supervisor may, in writing prior to the purchase, and upon finding a compelling reason, approve the purchase of products or services on Verizon Wireless' behalf from a former employee within six months of that person's separation. When a former employee has been separated from Verizon Wireless for more than six months, authorization from your supervisor must be obtained before products or services are purchased from that former employee.

If you are concerned that a former Verizon Wireless employee is benefiting unfairly from information obtained while employed at Verizon Wireless, or may be inappropriately receiving Verizon Wireless non-public information, you should contact the Compliance Guideline for guidance.

B. Legal Standard for Analyzing Employer Rules

First, in determining whether the maintenance of a work rule violates Section 8(a)(1) of the Act the Board analyzes the rule according to the following framework set forth in *Crowne Plaza Hotel*, 352 NLRB 382, 383 (2008), quoting from *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004):

[A]n employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights. *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998). In determining whether a challenged rule is unlawful, the Board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights. *Id.* at 825, 827. Consistent with the foregoing, our inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule *explicitly* restricts activities protected by Section 7. If it does, we will find the rule unlawful. If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon a showing of 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. *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Where a rule is ambiguous regarding its application to Section 7 activity and no examples of violative conduct or limitation language is set forth that would clarify to employees the rule does not restrict Section 7 rights such a rule is unlawful under the Act.

Board law is settled that ambiguous employer rules are construed against the employer. This principle follows from the Act's goal of preventing employees from being chilled in the exercise of their Section 7 rights' without regard to the intent of the employer, instead of

waiting until that chill is manifest, when the Board must undertake the difficult task of dispelling it. See e.g. *Lafayette Park Hotel*, 326 NLRB 824 at 828 (1998).

C. Discussion Analysis and Conclusions

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1. Rule 1.6 Solicitation and Fundraising

10 This rule essentially bars all solicitation during worktime, defined as either worktime of the employee making or receiving the solicitation. It also bars 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.) to solicit or distribute. Nonemployees cannot engage in solicitation or distribute literature on company premises. There are specific exceptions for company approved solicitations.

15 The government contends this rule is overly broad as it prohibits employees from using the Company’s systems at any time for solicitations. The Government recognizes, the Board in its *Register-Guard* decision 351 NLRB 1110 (2007), held employees have no right to use an employer’s email system for Section 7 communications. However, the Government expresses the desire that the Board revisit that holding and use this case as the vehicle to establish
 20 employees have the right to use an employer’s electronic communications system (email) for Section 7 activities, subject only to the employer’s need to maintain production and discipline citing, *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803 (1945). The Government further urges, the limitation in the rule here violates the Act under *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), and *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646–647 (2004).

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The Company contends its solicitation and fundraising rule complies with the Board’s holding in *Register-Guard* that employees have no statutory right to use employer-owned equipment or media for personal business and cites *Weyerhaeuser Co.*, 359 NLRB No. 138 (2013). I note that as a result of *Noel Canning* 572 U.S. ____ 2014, *Weyerhaeuser Co.*, no
 30 longer has precedential value. *Noel Canning* impacts all Board issued decisions from January 4, 2012, through August 3, 2013. The Company argues the rule simply does not violate the Act.

I find the rule here does not violate the Act. A review of Board case law is informative. Under *Register-Guard*, supra, employees have no statutory right to use their employer’s
 35 equipment, including email systems, for Section 7 purposes. The employer rule in *Register-Guard*, 351 NLRB at 1110, prohibited the use of its email system for “non-job-related solicitations.” The Board concluded such rule did not violate the Act.

The Board in *Register-Guard* treated use of an employer’s email system as falling under
 40 the employer’s property rights, rather than under its management interests, and as such the employer had broad discretion in the creation of its terms of use, so long as, any restrictions are nondiscriminatory. Simply stated, the Board in *Register-Guard*, supra at 1115, found the employer’s rule governing use of its email system is based on property interest, not a managerial interest. As the Board stated in *Register-Guard*, supra at 1114 an employer has a “basic property
 45 right to regulate and restrict the use of company property.” In deciding *Register-Guard* the Board declined to follow *Republic Aviation Corp v. NLRB* 324 U.S. 793 (1945), and held it did

not have to balance employees’ Section 7 rights against the employer’s interest in maintaining discipline because the terms of use did not “entirely deprive” employees of opportunities for solicitation for Section 7 purposes, but just the use of the company’s email system for solicitations. In *Republic Aviation*, the Supreme Court found a company rule prohibiting union solicitation by employees on the company’s premises outside of working hours was an unreasonable impediment to self-organization and therefore unlawful. *Republic Aviation*, at 803 fn. 10. *Republic Aviation* established an analytical framework for balancing “the undisputed right of self-organization assured to employees under the *Wagner Act* and the equally undisputed right of employers to maintain discipline in their establishments” *Id.*, at 797–798. The Board in *Register Guard*, however, interpreted *Republic Aviation* to only “require the employer to yield its property interests to the extent necessary to ensure employees will not be ‘entirely deprived,’ . . . of their ability to engage in Section 7 communications in the workplace on their own time.” *Register Guard* at 1115. Applying this standard, the Board found the employer’s restriction of email communications did not entirely deprive employees of their Section 7 rights, and that employees had “the full panoply of rights to engage in oral solicitation on nonworking time and also to distribute on nonworking time in non work areas.” *Id.* Section 7 of the Act protects organizational rights rather than particular means by which employees may seek to communicate.

In light of the above, this rule only restricts Section 7 activity if *Register Guard* is overturned or evidence of disparate enforcement is shown; neither of which has occurred. Accordingly, I am required to apply Board law, in this case, *Register Guard*, and find that pursuant to *Register Guard* the rule here does not violate the Act. While the government’s contention that the rule here should be subjected to the *Republic Aviation* analytical frame work of balancing employee’s Section 7 rights against the employer’s interest in maintaining discipline may have appeal, it is for the Board, not the judge, to determine whether Board precedent should be varied. I make no recommendations regarding varying precedent, I lack authority to change Board law, and any views I have would not be binding on or beneficial to the Board. See *Austin Fire Equipment, LLC*, 360 NLRB No. 131 fn 6 (2014). I dismiss the complaint allegation set forth at paragraph 5(a) “Section 1.6 Solicitation and Fundraising.”

2. Rule 1.8 Employee Privacy

This rule begins by stating the Company “acquires and retains personal information about its employees in the normal course of operations, such as for employee identification purposes and provision of employee benefits” and admonishes employees to take steps to protect all personal employee information including, in part, financial information, residential telephone numbers, and home addresses. Employees are forbidden to access, obtain, or disclose another employee’s personal information to persons inside or outside the Company unless acting for business purposes, cleared by, and on behalf of, the Company.

The Government contends maintenance of this rule violates Section 8(a)(1) of the Act because the provision prohibiting disclosure of another employees personal information that includes financial information, telephone numbers, and resident addresses is overbroad and employees could reasonably construe the rule as prohibiting he/she from discussing another

employees wages, benefits, or working conditions and forbids disclosure of such information to unions or for other protected concerted activity.

The Company contends the rule is valid when read in its entirety rather than in isolation.

5 The Company contends it simply acquires and retains personal information about its employees and has a valid right to protect its proprietary information acquired and stored by the Company for legitimate business purposes. The Company contends an employee reading the rule, as a whole, would reasonably understand it was designed to protect the confidentiality of the Company’s proprietary business information rather than to prohibit protected activity, citing,
10 *Mediaone of Greater Florida Inc.*, 340 NLRB 277, 278 (2003).

I find employees would reasonably conclude the Company’s rule prohibits them from discussing with other employees their coworkers working conditions. The Board has found confidential nondisclosure policies prohibiting employees from sharing or disclosing confidential
15 information such as employees’ addresses, telephone numbers, and email addresses, which explicitly apply to personal information, are impermissibly susceptible to an interpretation restricting employees from engaging in protected activities involving their terms and conditions of employment and thereby violates Section 8(a)(1) of the Act. *MCPc, Inc.*, 360 NLRB No. 39 slip op. 1 (2014). *Cintos Corp. v. NLRB*, 48 F.3d 463, 468–469 (D.C. Cir 2007). (explaining
20 that confidentiality rules that, by their terms, forbid disclosure of “information concerning employees” are unlawful.) Additionally I find the rule is unlawfully over broad because employees would reasonably believe they are prohibited from discussing wages or other terms and conditions of employment with nonemployees, such as, for example, union representatives, an activity clearly protected by Section 7 of the Act. See *Trinity Protection Services*, 357 NLRB
25 No. 117 slip. op. at 2 (2011). *Hyundai American Shipping Agency Inc.*, 357 NLRB No. 80, slip op. at 12, 13 (2011) (finding rule unlawful that prohibited “[a]ny unauthorized disclosure from an employee’s personnel file”); *IRIS U.S.A. Inc.*, 336 NLRB 1013, 1013 fn 1, 1015, 1018 (2001) (finding rule unlawful that stated all information about employees is strictly “confidential” and defined “personnel records” as confidential).
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I find the Company’s reliance here on *Mediaone of Greater Florida, Inc.*, 340 NLRB 277, 278 (2003), to justify the rule is misplaced. The Company’s rule at no point uses the term “intellectual property” nor refers to “private business information” that it has every right to protect. *Id* The policy/rule here relates solely to keeping information about employees
35 confidential. Furthermore, the term “employee information” in *Mediaone* appeared within a larger provision prohibiting disclosure of “proprietary information.” The Board concluded that employees “reading [the] rule as a whole would reasonably understand that it was designed to protect the confidentiality of respondent’s proprietary business information rather than to prohibit discussion of employee wages.” *Id* at 279. In the case here, the Company’s rule is a
40 separate provision titled “Employee Privacy” and makes no reference to proprietary information or intellectual property.

As explained above, I find the Company’s employee privacy rule restricts Section 7 activity and is unlawfully over broad in violation of Section 8 (a)(1) of the Act.

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3. Rule 1.8.2 Use of Recording Devices

This rule commences by noting that in many jurisdictions, use of recording devices without the consent of both parties is unlawful. The rule states employees “may not record, photograph, or videotape another employee . . . without that employee’s knowledge and approval.” Additionally, an employee, without prior approval from the Company’s Legal department, “may never record, photograph or videotape any customer, business provider or competitor without that person’s knowledge and approval.” This rule does not explicitly interfere with or inhibit Section 7 rights. Stated differently the use of recording devices is not protected Section 7 activity and may be prohibited for legitimate business purposes. Prohibiting employees from recording other employees without their consent is aimed here at compliance with the law and protecting the privacy of employees, and, not clearly directed at preventing union related or concerted activity from being recorded. The Board in *Flagstaff Medical Center*, 357 NLRB No. 65, slip op. at 5 (2011), found that the employer’s rule prohibiting taking photographs in the workplace had a lawful purpose of protecting patients’ privacy, and did not infringe on Section 7 rights.

Because the use of a recording device is not protected Section 7 activity, the rule does not violate Section 8(a)(1) of the act and is presumptively lawful. However, the presumption may be overcome by showing the rule was promulgated in response to union activity, that the employer’s application of the rule discriminated against Section 7 activity, or that a reasonable employee could interpret it to prohibit Section 7 activity. *Lutheran Heritage Village-Livonia*, 343 NLRB 646 at 647 (2004).

Here there is no showing the rule prohibiting the use of recording devices was promulgated in response to union activity or that it has been applied to restrict the exercise of Section 7 rights. Accordingly, the only basis on which to find this rule unlawful is if employees would reasonably construe its language to prohibit Section 7 activity. I find this rule could not be interpreted, by a reasonable employee, to prohibit Section 7 activity. First, Rule 1.8.2 “Use of Recording Devices” falls under Section 1.8 of the Company’s rules, entitled “Employee Privacy.” Secondly, the rule commences by noting the use of recording devices is unlawful in certain jurisdictions. Third, the rule’s location, within the Company’s Code of Conduct, and the sentence prefacing the restriction indicates protection of privacy and compliance with the law is the stated purpose for the rule. The rule does not completely ban the use of recording devices, but instead prohibits only nonconsensual recordings. The rule allows employees to use recording devices to document Section 7 activity, so long as the parties being recorded, have knowledge of, and give approval to, being recorded. Thus, a reasonable employee would infer that the rule is to protect privacy, not to limit the employee’s ability to communicate about, or engage in, Section 7 activities. In addition, and as an example, it is very simple for a union to abide by this rule by requiring its members to sign a waiver giving their knowing consent to any recording’s made of union activities.

In summary, the plain language of this rule leads to the conclusion, as I do, that it cannot reasonably be read as encompassing Section 7 activity. Likewise, the rule does not tend to chill employees in the exercise of their Section 7 rights. I find the Company has not violated the Act

by maintaining its rule regarding the use of recording devices. Thus, I dismiss the complaint allegations related to Rule 1.8.2 “Use of Recording Devices.”

4. Rule 3.2.1 Protecting Non-Public Information

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The Government urges that Rule 3.2.1 “Protecting Non-Public Company Information” which prohibits the release (disclosure) of nonpublic company financial information to the public, or third parties, or internet forums without the Company specifying what “non-public company information” includes, is overly board and unlawful. The Government contends employees could reasonably interpret the term “non-public company information” to include wages, and other working conditions. The Government also contends, that under these circumstances it is facially overbroad, since it does not restrict the definition of “non-public company information” to exclude terms and conditions of employment.

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The Company urges that Rule 3.2.1 “Protecting Non-Public Company Information” must not be read in isolation from the preceding Rule 3.2 “Safeguarding Company Information” and that when the two rules are considered together Rule 3.2.1 does not violate Section 8(1)(1) of the Act. The Company contends the overall thrust of the “non-public company information” focuses on “inside information,” which explicitly includes “information that could reasonably lead a person to buy, sell or hold Verizon Wireless or another company’s securities,” and the Company’s “intellectual property rights.” The Company further contends that employees, when considering both provisions as a whole, could not reasonably construe the provision here to restrict their ability to communicate among themselves, or with third parties, about protected conduct. *Lafayette Park Hotel*, 326 NLRB 824 (1998) (requires that language for confidential rules be considered as a whole, rather than focusing wholly on certain words or phrases).

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I am persuaded Rule 3.2.1 and Rule 3.2 must be read together. Reading Rule 3.2 in conjunction with Rule 3.2.1 leads to the conclusion it does not unlawfully restrict employees of their rights under Section 7 of the Act. The language provides that the company information, at issue here, pertains to “inside information” and to the Company’s proprietary business interests, rather than prohibiting employees from discussing information about wages and other terms and conditions of employment with other employees and/or union representatives. I find a reasonable employee is likely to understand Rule 3.2.1 “Protecting Non-Public Company Information” is a subsection of Rule 3.2 “Safeguarding Company Information” which defines nonpublic information as limited to “‘inside information’ (information that could reasonably lead a person to buy, sell or hold Verizon Wireless’ or another companies securities)” and would understand the rule is designed to protect those interests rather than to prohibit the discussion of wages, hours, and working conditions. See, *Super K-Mart*, 330 NLRB 263, 263 (1999) (prohibition on disclosing “company business and documents” did not by its terms include wages and working conditions, made no reference to employee information and did not implicate employee Section 7 rights). I find the Company has articulated a business justification for Rule 3.2.1 and thus the rule does not violate Section 8(a)(1) of the Act. Accordingly, I dismiss the complaint allegations related to Rule 3.2.1 “Protecting Non-Public Company Information.”

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5. Rule 3.4.1 Prohibited Activities

5 The complaint alleges this Company rule, which prohibits the use of Company systems
 (such as email, instant messaging, the internet or intranet) to engage in activities that are
 unlawful, or that violate company policy, or that cause liability or embarrassment to the
 Company violates Section 8(a)(1) of the Act. The rule specifically lists inappropriate uses to
 include, among other activities, “pornographic, obscene, offensive, harassing or discriminatory
 10 content,” “malicious software,” “unauthorized mass distributions,” “communications on behalf
 of commercial ventures,” and “communications primarily directed to a group of employees
 inside the company on behalf of an outside organization.” First, I note a rule prohibiting the use
 of an employer’s email system is presumptively lawful. *Register Guard*, 351 NLRB 1110 at
 1110 (2007) (Board held employees have no statutory right to use an employer’s email system
 for Section 7 purposes and that the employer’s policy of prohibiting employees use of the system
 15 for “non-job-related solicitations” did not violate Section 8(a)(1) of the Act). Because the rule
 here restricts the use of “company systems” without discrimination against Section 7 purposes it
 is lawful. Stated differently the rule falls squarely under the *Register Guard* precedent unless it
 is overturned. I am compelled to follow precedent unless, or until, the Board or Supreme Court
 overturns or otherwise alters the precedent—which neither have done. I decline to address the
 20 wisdom, or lack thereof, of the *Register Guard* decision as that is a matter for the Board to
 address, consider and decide. Thus, I dismiss the complaint allegations related to Rule 3.4.1
 “Prohibited Activities.”

25 I reject the Government’s contention that even applying *Register Guard* this rule is
 unlawful. The Government contends the rule, which restricts the use of Company systems (such
 as its email system), for activities that are unlawful, violate company policies or result in Verizon
 Wireless’ liability or embarrassment is unlawfully overbroad because “embarrassment” is not a
 privileged restriction under Board law. The Government asserts that “embarrassment” is the
 30 type of broad term employees would reasonably construct to prohibit criticism of, for example,
 the Company’s labor policies, practices, or treatment of employees. However, the rule here is
 narrowly drawn with specific examples of the conduct, that might cause “embarrassment” for the
 Company, namely; pornographic materials, obscene and/or offensive content; chain letters and
 pyramid schemes; communications on behalf of commercial ventures; gambling; and violation of
 others’ intellectual property rights. When the Rule is read as a whole, I am fully persuaded no
 35 reasonable employee would read it to prohibit Section 7 activity. I dismiss this complaint
 allegation.

6. Rule 3.7 Handling External Communications

40 Employees are prohibited from holding themselves out as speaking on behalf of the
 Company, without prior approval, when presenting their personal views at community,
 professional, or cultural functions, or, on the internet and that use of the Company brand and
 logo must adhere to approved corporate identity specifications. The question raised in the
 complaint at this point is whether the Company’s rule restricting employee use its brand and logo
 45 is a restriction of Section 7 rights and an 8(a)(1) violation of the Act. The Government contends

the rule is overly broad, as a reasonable employee, would interpret the rule to include the lawful use of the Company logo for lawful union and other protected concerted activities.

5 The Company contends the rule is valid because it is aimed at ensuring employees do not suggest they represent the Company when presenting personal views at community, professional, or cultural functions or on the internet. The Company asserts it may lawfully implement such policies to ensure an employee’s personal messages could not be reasonably attributed to the Company, and contends, in this context, a reasonable employee simply could not construe this provision as impacting Section 7 rights.

10 It seems the Board has not had the opportunity, very often, to address the question presented here of employees’ use of a company’s logo. In *Pepsi-Cola Bottling Co.*, 301 NLRB 1008, 1019–1020 (1991), enfd., 953 F.2d 638 (4th Cir. 1992), the Board held an employer’s policy prohibiting employees from wearing uniforms with the company logo while engaged in union activity was unlawful in the absence of a legitimate business purpose for the rule. The employer in *Pepsi-Cola* promulgated its rule in response to union activity. In a second case, *Flamingo Hilton-Laughlin*, 330 NLRB 287, 292 (1999), the Board dismissed the allegation a company rule against wearing hotel uniforms, off company premises, constituted an excessive impediment to union activity. The Board distinguished *Pepsi-Cola*, supra, finding that in *Pepsi-Cola* the rule expressly discriminated against, and was promulgated in response to, Section 7 activities, while in *Flamingo Hilton-Laughlin* there was no evidence at all of discriminatory application of the rule. *Id.*

25 While not precedent, but informative, there have been two fairly recent administrative law judge decisions dealing with employer rules prohibiting the display of company logos, and the two judges arrived at opposite results. *Shadyside Hospital* (JD-28-13) (2013); and, *General Motors, LLC*, (JD-27-12) (2012). The decisions are in agreement that employees have a right to display a company logo as part of their Section 7 communications because such communications are noncommercial and do not trigger trademark infringement.⁵ *Shadyside Hospital* at 19 (“Employees have a Section 7 right to display a logo as part of their Section 7 communications. There is no issue—or, more accurately, need not be an issue—of trademark or copyright infringement.”); *General Motors LLC*, at 6 (“Employees do have a Section 7 right to use their

⁵ This issue relates to the question of whether employee use of the brand and logo would infringe on the company’s proprietary interests in its brand and logo. The Lanham Act established liability for the unauthorized use of company trademarks where the trademarks are “intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services.” 15 U.S.C. 1114. However, if the use of the trademark is for expressive purposes, i.e., to communicate an idea, such as commentary, comedy, parody, news reporting or criticism, it is considered noncommercial and falls within the protections of the First Amendment. See *CPC International v. Skippy, Inc.*, 214 F.3d 456, 461–463 (4th Cir. 2000); *General Motors LLC*, at 6. “Much useful social and commercial discourse would be all but impossible if speakers were under threat of an infringement lawsuit every time they made reference to a person, company or product by using its trademark.” *New Kidds on the Block v. News America Publishing, Inc.*, 971 F.2d 302, 307 (9th Cir. 1992). Interests protected by trademark laws include the trademark holder’s interests in protecting the good reputation associated with the mark from the possibility of being tarnished by inferior merchandise sold by another entity using the trademark and in being able to enter a related commercial field and use its well-established trademark. Employees’ noncommercial use of a name, logo, or other trademark to identify an employer in the course of engaging in Sec. 7 activity does not implicate the employer’s interests under Lanham Act. *General Motors LLC*, at 6.

5 employer’s name or logo in conjunction with protected concerted activity, such as to
communicate to fellow employees or the public about a labor dispute”). Notwithstanding this
agreement, the two decisions differ in answering the question of whether an employer’s rule, that
prohibits using the company logo in social media posts, is lawful. Judge David I. Goldman in
10 *Shadyside Hospital* drew on *Pepsi-Cola* to find the employer’s rule was unlawful because it
consisted of discriminatory application by prohibiting certain types of Section 7 communication
through social media while allowing others. *Shadyside Hospital*, at 18. In *General Motors, LLC*
an employer’s rule, that prohibited employees from incorporating GM logos, trademarks or other
assets in their social media posts, was found to be lawful because there was insufficient evidence
15 of discriminatory application or unlawful promulgation of the rule. Judge Ira Sandron followed
Flamingo Hilton-Laughlin; and, distinguished *Pepsi-Cola*, emphasizing that the rule in *Pepsi-*
Cola was promulgated in response to a union organizing drive and specifically stated that
employees could not engage in union activities while wearing company uniforms, factors which
were not present in *Flamingo Hilton-Laughlin, General Motors LLC*, at 7.

15 The Company’s rule is factually distinct from the above Board and ALJ decisions in that
the scope of its prohibition is not limited to wearing a company uniform or posting on social
media. Instead, this rule prohibits all employee use of the “company brand and logo” that does
not “adhere to approved corporate identity specifications.” There is no evidence this rule was
20 promulgated in response to union activity, or discriminatorily applied. However, to the extent
employees have a Section 7 right to display a logo as part of their Section 7 communications,
“*Shadyside Hospital*, at 19, the rule expressly prohibits Section 7 activity. In addition, a
reasonable employee could construe this rule as a restriction of Section 7 rights because it may
be reasonably read to limit the use of the employer’s brand and logo while engaging in protected
25 activity, such as posting the logo in leaflets, cartoons, or picket signs in connection with a
dispute related to the terms and conditions of their employment. Because the rule expressly
prohibits Section 7 activity, and, because an employee could reasonably construe this rule to
prohibit certain Section 7 activity, it is unlawful and violates Section 8(a)(1) of the Act, and I so
find.

30 **7. Rule 4.6 Relationships with and Obligations of Departing and Former Employees.**

35 The Government contends this rule is overly broad as it proscribes the disclosure of
nonpublic information to all employees and is also overly broad because it proscribes the
disclosure of nonpublic information to former employees, unless authorized.

40 The Company contends it has a right to protect confidential information and that when
the rule is read in context it is clear the type of “non-public information” at issue is “inside
information” that might lead a person to buy, sell, or hold Company securities, and, is not
intended to interfere with the protected activities of its employees. The Company further
contends this provision, which restricts employees from “provide[ing] non-public Company
information to former employees, unless authorized,” simply cannot reasonably be read as a
prohibition of discussion of employee working conditions or as otherwise interfering with
protected rights.

The central issue is whether the prohibition against the disclosure of “nonpublic company information” to former employees, without authorization of the Company, could reasonably cause employees to conclude discussions about wages, hours, or working conditions with current, departing, or former Verizon Wireless employees, restricts their Section 7 rights.

5

As set forth elsewhere, in considering Rule 3.2 “Safeguarding Company Information” in conjunction with Rule 3.2.1 “Protecting Non-Public Company” information, it is clear the focus of these restrictions are prohibiting disclosure of “inside information,” “information that could reasonably lead a person to buy, sell, or hold Verizon Wireless or another company’s securities,” and/or the Company’s “intellectual property” rights and not to prohibit employees from discussing wages and other terms and conditions of employment with each other. Thus in reading Rule 4.6 “Relationships with and Obligations of Departing and Former Employees” with the Code of Conduct as a whole, and specifically in light of Rules 3.2 and 3.2.1, and not in isolation, I conclude Rule 4.6 is presumptively lawful and not overbroad. In so concluding, I am persuaded a reasonable employee, considering the employee Code of Conduct as a whole, would not read this rule as a prohibition of discussions related to employee wages, or other working conditions with, or among, current, departing, or former employees. A different conclusion could be reached if case law did not compel that the Code of Conduct rules be considered as a whole. See *Lafayette Park Hotel*, supra. Accordingly, I dismiss the complaint allegations related to Rule 4.6 “Relationships with and Obligations of Departing and Former Employees.”

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CONCLUSIONS OF LAW

1. Cellco Partnership d/b/a Verizon Wireless is, and has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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2. AirTouch Cellular is, and has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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3. Communication Workers of America District 9, AFL–CIO; Communication Workers of America, AFL–CIO is a union within the meaning of Section 2(5) of the Act.

4. The Company (Verizon Wireless and AirTouch), by restricting its employees’ Section 7 rights, has violated Section 8(a)(1) of the Act by maintaining the following overly broad work rules in its employees’ Code of Conduct:

35

a) That prohibits its employees from disclosing employees’ financial information, residential telephone numbers, and addresses.

b) That prohibits, under all circumstances, employees from utilizing the Company’s logo.

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REMEDY

Having found the Company has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act.

45

Having found certain rules in the Company’s (Cellco Partnership d/b/a Verizon Wireless and AirTouch Cellular) Code of Conduct for its employees infringes on its employees’ Section 7 rights, I recommend the Company be ordered to rescind the following rules; Section 1.8 “Employee Privacy” that prohibits employees from disclosing, employees’ financial information, residential telephone numbers, and address; and, Section 3.7 “Handling External Communications” that prohibits, under all circumstances, employees from utilizing the Company’s logo. In rescinding the Code of Conduct rules found unlawful and described above, the Company shall remove the offending rules from its employee Code of Conduct rules and advise its employees in writing it has done so.

On these findings of facts and conclusions of law and on the entire record, I issue the following recommended:⁶

ORDER

The Company (Cellco Partnership d/b/a Verizon Wireless and AirTouch Cellular), their officers, agents, successors, and assigns, shall

1. Cease and desist from

a) Maintaining in its employee Code of Conduct rules an overly broad rule that prohibits employees from disclosing employees’ financial information, residential telephone numbers, and addresses.

b) Maintaining in its employee Code of Conduct rules an overly broad rule that prohibits, under all circumstances, employees form utilizing the Company’s logo.

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

a) Within 14 days of the Board’s Order rescind the rule in the employee Code of Conduct that prohibits employees from disclosing employees’ financial information, residential telephone numbers, and addresses.

b) Advise all current employees of the Company (Cellco Partnership d/b/a Verizon Wireless and AirTouch Cellular), in writing, that the employee Code of Conduct rules no longer contains a rule that prohibits employees form disclosing employees’ financial information, residential telephone numbers, and addresses.

c) Within 14 days of the Board’s Order rescind the rule in the employee Code of Conduct that prohibits employees, under all circumstances, from utilizing the Company’s logo.

⁶ 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.

5 d) Advise all current employees of the Company (Cellco Partnership d/b/a Verizon Wireless and AirTouch Cellular), in writing, that the employee Code of Conduct no longer contains a rule that prohibits, under all circumstances, employees from utilizing the Company’s logo.

10 e) Within 14 days after service by the Region, post at its Verizon Wireless places of business throughout the United States of America, specifically including its principal offices in Basking Ridge, New Jersey, and at AirTouch Cellular retail facilities throughout Southern California, specifically including its principal office in Irvine, California, copies of the attached notice marked “Appendix.”⁷ Copies of the notice on forms provided by the Regional Director for Region 21 after being signed by the Company’s authorized representative, shall be posted by the Company and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by
15 the Company to ensure that the notices are not altered, defaced, or covered by any other material. In addition to the 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 Company customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Company has gone out of business or closed any
20 of the facilities involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since March 5, 2012.

25 f) 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 Company has taken to comply.

30 **IT IS FURTHER ORDERED** that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated Washington, D.C., July 25, 2014.

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William Nelson Cates
Associate Chief Judge

⁷ 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.”

APPENDIX

**NOTICE OF 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 a representative 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 do anything to prevent you from exercising the above rights.

WE WILL NOT maintain a rule that prohibits our employees from disclosing employees' financial information, telephone numbers, and addresses.

WE WILL NOT maintain a rule that prohibits, under all circumstances, employees from using the Company's logo.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind the rules indicated above, remove them from our Code of Conduct, and advise our employees in writing the rules are no longer being maintained.

**CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS
AND AIRTOUC CELLULAR
(Employer)**

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

888 South Figueroa Street, 9th Floor, Los Angeles, CA 90017-5449
(213) 894-5200, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/21-CA-075867 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (213) 894-5184.