

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: January 12, 2018

TO: Valerie Hardy-Mahoney, Regional Director
Region 32

FROM: Jayme L. Sophir, Associate General Counsel
Division of Advice

SUBJECT: California Youth Connection
Case 32-CA-199056

506-0170
506-4067-1000
512-5012-0100
512-5012-0125
512-5012-6722
512-5036-6720
512-5072-2000
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The Region submitted this case for advice as to whether California Youth Connection (hereinafter “the Employer”) terminated the Charging Party pursuant to unlawfully overbroad confidentiality rules after (b) (6), (b) (7)(C) discussed terms and conditions of (b) (6), (b) (7)(C) employment with volunteer “youth members” of the Employer and, thus, violated Section 8(a)(1) of the Act under the test set forth in *Continental Group*.¹ We conclude that the Employer did not violate Section 8(a)(1) because it never informed the Charging Party that (b) (6), (b) (7)(C) was being discharged pursuant to the unlawful confidentiality rules or for conduct that was covered by the rules.

FACTS

The Employer is a non-profit organization that trains current and former foster youth to conduct legislative and policy advocacy at the state and local level in California relating to the foster care system. The Employer consists of paid staff, including Regional Coordinators and an Executive Director, and volunteer “youth members,” who are themselves primarily current or former foster youth between the ages of 14 and 24. Regional Coordinators develop and oversee leadership and advocacy training programs for the youth members, who then advocate on behalf of the Employer and themselves before local and state-level governmental entities. The Employer relies on grants from outside entities for its funding.

¹ 357 NLRB 409, 412 (2011).

In 2013, the Employer hired the Charging Party as one of its (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and then assigned (b) (6), (b) (7)(C) to its (b) (6), (b) (7)(C) region, which includes local chapters in (b) (6), (b) (7)(C). Although (b) (6), (b) (7)(C) was responsible for all of these chapters, the Charging Party understood that (b) (6), (b) (7)(C) was supposed to spend a significant portion of (b) (6), (b) (7)(C) time in (b) (6), (b) (7)(C).

In (b) (6), (b) (7)(C) 2017,² the Charging Party had a discussion with the donor funding the (b) (6), (b) (7)(C) chapter, who requested that the Charging Party spend more time working in (b) (6), (b) (7)(C). The Charging Party said that it was possible for (b) (6), (b) (7)(C) to do that, but that the Employer had assigned (b) (6), (b) (7)(C) a variety of statewide and administrative tasks that made devoting more time to (b) (6), (b) (7)(C) difficult. The Charging Party then said that in order for (b) (6), (b) (7)(C) to devote more time to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) would need to speak with the Executive Director and arrange for another staff member to take over (b) (6), (b) (7)(C) other chapters.

Soon after that conversation, the donor contacted the Executive Director directly and relayed the same concern, while also mentioning that the Charging Party was not responsive to the donor's requests. The donor also said that the Charging Party's explanation for (b) (6), (b) (7)(C) inability to comply with the donor's request was that the Employer had assigned (b) (6), (b) (7)(C) administrative work, meetings, and other tasks that prevented (b) (6), (b) (7)(C) from concentrating on (b) (6), (b) (7)(C).

At some point following the discussions with the donor, the Executive Director determined that the Charging Party's assignments should be restructured to allow (b) (6), (b) (7)(C) to focus on (b) (6), (b) (7)(C). On (b) (6), (b) (7)(C), the Charging Party, Executive Director, and a newly hired (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C)"), had a conference call to discuss options for the restructuring. According to the Charging Party, the Executive Director said that (b) (6), (b) (7)(C) was considering having the Charging Party spend 90% of (b) (6), (b) (7)(C) time in (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would be the only chapter that (b) (6), (b) (7)(C) would be responsible for, and that (b) (6), (b) (7)(C) title could potentially be changed to reflect (b) (6), (b) (7)(C) change in duties. The other chapters for which the Charging Party currently served as (b) (6), (b) (7)(C) would be transferred to (b) (6), (b) (7)(C).

The Charging Party was troubled by these proposed changes and vocalized (b) (6), (b) (7)(C) apprehension during the call. (b) (6), (b) (7)(C) major concerns were that (b) (6), (b) (7)(C) would be the only Regional Coordinator with fewer than three chapters and that the reassignment, combined with a potential job title change, was part of an effort to push (b) (6), (b) (7)(C) out for complaining about (b) (6), (b) (7)(C) workload. The Executive Director responded that the proposed adjustments were in response to (b) (6), (b) (7)(C) complaints about (b) (6), (b) (7)(C) workload and that (b) (6), (b) (7)(C) was

² All dates hereinafter are in 2017, unless otherwise stated.

trying to help (b) (6), (b) (7) by easing (b) (6), (b) (7) burden, allowing (b) (6), (b) (7) to focus primarily on one county. At that point, the Charging Party stated (b) (6), (b) (7) was concerned about (b) (6), (b) (7) job security. The Executive Director assured (b) (6), (b) (7) that (b) (6), (b) (7) was not being pushed out. The call ended with instructions from the Executive Director that the Charging Party and the (b) (6), (b) (7)(C) would travel together to the relevant chapters to announce to the youth members that the latter would now serve as their (b) (6), (b) (7)(C) ³

On (b) (6), (b) (7)(C), the Charging Party sent an email to the Executive Director and reiterated (b) (6), (b) (7) opposition to the reassignment and urged (b) (6), (b) (7) to reconsider what (b) (6), (b) (7) viewed as (b) (6), (b) (7) decision to assign (b) (6), (b) (7) exclusively to the (b) (6), (b) (7)(C) chapter. (b) (6), (b) (7) admitted that (b) (6), (b) (7) had complained about the amount of statewide work, meetings, and administrative tasks (b) (6), (b) (7) was assigned, but said that (b) (6), (b) (7) never claimed (b) (6), (b) (7) could not fully complete (b) (6), (b) (7) duties because of them. The Charging Party then offered ideas for assigning the (b) (6), (b) (7)(C) chapters. (b) (6), (b) (7) suggested that (b) (6), (b) (7) either keep (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C). The Executive Director replied to this email on (b) (6), (b) (7)(C) and said that (b) (6), (b) (7) would review it and respond in a few days.

After (b) (6), (b) (7)(C) the Charging Party continued (b) (6), (b) (7) previously scheduled meetings and calls with the (b) (6), (b) (7)(C) chapters. During these calls and meetings, the Charging Party announced to the youth members that (b) (6), (b) (7) was being transferred out of the chapters. The youth members in (b) (6), (b) (7)(C) were particularly upset at the announcement and asked the Charging Party about the options they had to protest. The Charging Party stated that (b) (6), (b) (7) was sad to be leaving and that (b) (6), (b) (7) had to remain neutral, but the youth members could take whatever actions they thought were necessary.

Following these meetings, on or about (b) (6), (b) (7)(C) youth members reached out to the Executive Director, with at least one requesting a meeting with (b) (6), (b) (7). On (b) (6), (b) (7)(C) prior to returning the messages, the Executive Director emailed the Charging Party to ask if (b) (6), (b) (7) knew what the youth members wanted to discuss. The Charging Party responded that (b) (6), (b) (7) was not sure, but that it likely had to do with the transition.

³ It is unclear exactly what the final reassignment instructions were. The Charging Party apparently understood that (b) (6), (b) (7) was being taken out of all (b) (6), (b) (7)(C) chapters except for (b) (6), (b) (7)(C). The Executive Director believed that the agreement was for the Charging Party to keep (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) though this assertion is undercut by the fact that (b) (6), (b) (7) later agreed to let (b) (6), (b) (7) keep (b) (6), (b) (7)(C) on a probationary basis in a subsequent email (b) (6), (b) (7) sent on (b) (6), (b) (7)(C). The (b) (6), (b) (7)(C) appears to have believed that (b) (6), (b) (7) was going to be taking over (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) from the Charging Party.

On or about (b) (6), (b) (7)(C) youth members from (b) (6), (b) (7)(C) voiced their distress about the transition to the Executive Director. They told (b) (6), (b) (7)(C) that they had already experienced too many changes as a chapter, and that the chapter would not survive without the Charging Party. In addition, the Executive Director noticed that the youth members mentioned specific details of the phone conversation that (b) (6), (b) (7)(C) had with the Charging Party and the (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C), particularly about the proposed job title change.

The Executive Director was displeased that the Charging Party had apparently divulged information to the youth members that had not been approved or finalized by the Employer. (b) (6), (b) (7)(C) also felt that the Charging Party had misled the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) members because, according to (b) (6), (b) (7)(C) the Charging Party was not actually being transferred out of that chapter. The Executive Director felt that the Charging Party had created a toxic environment for the youth members by sharing internal information that was not finalized, and was either false or framed in a way that made the youth members feel like it would negatively affect them, causing the youth members unnecessary stress.

On (b) (6), (b) (7)(C), the Executive Director sent (b) (6), (b) (7)(C) response to the Charging Party's (b) (6), (b) (7)(C) email in which (b) (6), (b) (7)(C) had proposed alternatives for the restructuring. In relevant part, the Executive Director said that (b) (6), (b) (7)(C) could keep (b) (6), (b) (7)(C) on a probationary basis and, over the next several months, the Employer would evaluate how (b) (6), (b) (7)(C) managing (b) (6), (b) (7)(C) was impacting (b) (6), (b) (7)(C) work in other areas. The Charging Party was on vacation from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) and did not see this email until (b) (6), (b) (7)(C) returned.

On (b) (6), (b) (7)(C) a youth member from the (b) (6), (b) (7)(C) chapter emailed the Executive Director, the Employer's Board of Directors, government employees, donors, and staff members with a 13-page document that outlined the drafters' concerns about changes taking place in the chapter, including the Charging Party's removal from chapters in the (b) (6), (b) (7)(C) region, apprehension about the new coordinator as (b) (6), (b) (7)(C) repl (b) (6), (b) (7)(C) he effect of a change in the Regional Coordinator job title. The document was prepared by two youth members from the (b) (6), (b) (7)(C) chapter and one from (b) (6), (b) (7)(C). The document references the Charging Party by name, notes the good work (b) (6), (b) (7)(C) had done in helping the chapters grow, and generally argues that (b) (6), (b) (7)(C) removal would be a major problem for the chapters. In the body of the email, the sender also states that some of the (b) (6), (b) (7)(C) chapters, presumably (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), would potentially explore creating their own organization if the concerns in the document were not addressed. The Executive Director responded on (b) (6), (b) (7)(C) and assured the drafters of the document that their concerns were being taken seriously.

On (b) (6), (b) (7)(C) the Executive Director sent an email to the Employer's entire staff in response to the document from the youth members. The Executive Director stated that the Employer anticipated that the restructuring would be difficult for some members, that members would need support in navigating the transitions, and that consistent and positive messaging would be a way of ensuring a less disruptive change. The Executive Director added that, "[t]here are internal conversations that need to remain confidential while they are in exploration stage. Internal conversations and frustrations staff have [sic] with the organization have been shared with members, supporters, and funders and this is creating some confusion and potentially can create [a] lasting impact on the organization as a whole."

On (b) (6), (b) (7)(C) the Charging Party and Executive Director spoke by phone, and the Executive Director asked about what (b) (6), (b) (7)(C) had discussed with the youth members. The Charging Party said that (b) (6), (b) (7)(C) told them (b) (6), (b) (7)(C) might be transferred out in (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) had no control over how they were going to react to the news. The Executive Director responded by accusing the Charging Party of being insubordinate because (b) (6), (b) (7)(C) did not follow (b) (6), (b) (7)(C) instructions with regards to announcing the transfer and said that (b) (6), (b) (7)(C) had to do a significant amount of damage control because of the confidential information that (b) (6), (b) (7)(C) shared. The Charging Party again said that (b) (6), (b) (7)(C) did not have any control over what the youth members did and the conversation ended.

On (b) (6), (b) (7)(C) the Executive Director sent an email to the Charging Party regarding the restructuring and reiterated the need to avoid "miscommunications to members" and to have a "positive, consistent message when sharing at chapter meetings so [youth] members feel supported." (b) (6), (b) (7)(C) added, "[p]lease do not vent or express discontent with members. There is a perception that you have shared information with an individual member about the transition who then shared it with others. This was difficult for the other members because they wished they heard directly from you, their (b) (6), (b) (7)(C)"

On (b) (6), (b) (7)(C) the Employer held a general staff meeting and the following day the Executive Director sent another email to all staff reminding them to "**[p]lease remember to keep all topics and conversations, including those during breaks and 'off-line,' confidential. I will send out specific communications to staff for members, supporters, and stakeholders as things unfold over the next couple of months.**"⁴

⁴ Emphasis in original. For ease of reference, the rules the Executive Director announced in her (b) (6), (b) (7)(C) emails to the entire staff will be referred to as the "confidentiality rules."

On (b) (6), (b) (7)(C) the Executive Director discharged the Charging Party effective (b) (6), (b) (7)(C) in person at the (b) (6), (b) (7)(C) chapter office.⁵ The Executive Director gave no reason for the discharge orally, only that (b) (6), (b) (7) felt it was a long time coming.⁶ (b) (6), (b) (7) provided the Charging Party with a termination letter and a separation agreement, neither of which mention any reason for the Charging Party's termination.

The Charging Party filed for unemployment compensation sometime later in (b) (6), (b) (7)(C) but was denied. The Employer did not dispute the claim and did not appear before, or submit any evidence to, the State. The State nevertheless determined the Charging Party was terminated for violating company policies, but did not cite any specifically. It also determined that the Charging Party engaged in willful misconduct. The Charging Party believes the State denied (b) (6), (b) (7) claim for unemployment compensation based on the Facebook argument with (b) (6), (b) (7) coworker and the Employer's claims that (b) (6), (b) (7) had arranged for youth members to promote (b) (6), (b) (7) on social media, both of which the Charging Party said the Employer felt violated employment policies. The Charging Party subsequently appealed the initial denial of (b) (6), (b) (7) unemployment claim, but the State affirmed the denial because it again determined that (b) (6), (b) (7) had been discharged pursuant to a reasonable work rule. The State did not identify the rule it was referring to.

During the Region's investigation, the Executive Director explained that there were many factors that (b) (6), (b) (7) considered when deciding to discharge the Charging Party and that (b) (6), (b) (7) communications with youth members regarding the restructuring played a significant role in (b) (6), (b) (7) decision-making. (b) (6), (b) (7) stated that the (b) (6), (b) (7)(C) phone call with the upset youth members prompted (b) (6), (b) (7) to consider the Charging Party's at-will employment status and (b) (6), (b) (7) fit at the Employer. (b) (6), (b) (7) stated that the Charging Party's

⁵ (b) (6), (b) (7) had been planning this decision for a few weeks, but wanted to discuss it with the Employer's Executive Board before implementing it.

⁶ In addition to the issues regarding the restructuring, the Charging Party had had other struggles with the Employer, the Executive Director, and (b) (6), (b) (7) coworkers. In (b) (6), (b) (7)(C) 2016, just prior to the Executive Director being hired, the Charging Party was given a written warning for unsatisfactory performance. The warning was related to a dispute with a coworker who wanted to transfer to a different region. In (b) (6), (b) (7)(C) roughly around the same time as the start of the regional restructuring, the Charging Party got into an argument with a coworker within a closed Facebook group about how the coworker was conducting a poll of youth members. The coworker told the Charging Party that (b) (6), (b) (7) felt (b) (6), (b) (7) belittled (b) (6), (b) (7) because of (b) (6), (b) (7)(C). The Executive Director told the Charging Party that (b) (6), (b) (7) should not address (b) (6), (b) (7) coworker directly or over Facebook.

communications to the youth members inappropriately shared internal information and were false and misleading. (b) (6), (b) (7) also stated that the communications had created a toxic environment and that some of the youth members were so upset that (b) (6), (b) (7) had to spend extra time calming them down. The Executive Director stated, though, that (b) (6), (b) (7) did not terminate the Charging Party specifically for venting or expressing to the youth members (b) (6), (b) (7) discontent. (b) (6), (b) (7) also stated that the contacts from the youth members made (b) (6), (b) (7) realize that the Charging Party had not followed (b) (6), (b) (7) plan for restructuring the chapters because (b) (6), (b) (7) initially met or spoke with the youth members alone and not with the (b) (6), (b) (7)(C) to facilitate the transition. The Executive Director stated that (b) (6), (b) (7) found (b) (6), (b) (7)(C) putting hours into discussions about going forward on the restructuring and then having to deal with the Charging Party going in a different direction than what had been discussed. In addition to the Executive Director's statements, the Employer submitted a position statement to the Region that referenced the communications with youth members as one of several reasons, including the Facebook argument and dispute with the transferring coworker, that the Employer had decided to discharge the Charging Party. The Employer did not cite the confidentiality rules. There is no evidence that the Executive Director ever relayed these, or any other, reasons for the discharge to the Charging Party. In fact, the Charging Party stated that (b) (6), (b) (7) discharge could be attributable to the Facebook dispute or the prior dispute with the transferring coworker, but did not mention the unlawful confidentiality rules as a potential reason for (b) (6), (b) (7) discharge until after the Region began investigating.

The Region's investigation did not uncover any evidence that the other employees know or believe that the Charging Party was discharged pursuant to the overbroad confidentiality rules or for (b) (6), (b) (7) conversations with the youth members.

ACTION

We conclude that the Employer did not violate Section 8(a)(1) because it never informed the Charging Party that (b) (6), (b) (7) was being discharged pursuant to the unlawful confidentiality rules or for conduct that was covered by those rules. Accordingly, the Employer did not violate Section 8(a)(1) under the test set forth in *Continental Group*.⁷

The Board has held that discipline pursuant to an unlawfully overbroad rule violates the Act in certain circumstances, a longstanding principle known as the

⁷ The General Counsel does not necessarily agree with the holding or rationale set forth in *Continental Group*.

“*Double Eagle* rule.”⁸ In *Continental Group*, the Board explained that one policy underlying the *Double Eagle* rule is to prevent a chilling effect on the exercise of Section 7 rights by employees, including those not immediately affected by the discipline.⁹ Because the mere maintenance of an overbroad rule has a potential chilling effect on employee Section 7 activity, the Board concluded that it is reasonable to infer that discipline made pursuant to “such a rule would have a similar, or perhaps even greater, chilling effect on the exercise of protected rights.”¹⁰ The Board extended this reasoning not only to discipline pursuant to an overbroad rule for employee activity protected by the Act, but also to activity that is not protected by the Act because it is not concerted, but nevertheless “touches the concerns animating Section 7.”¹¹ Regarding this second category, the Board explained that permitting an employer to discipline an employee based on an overbroad rule for activity that touches the concerns animating Section 7 creates a “much greater risk

⁸ *Continental Group*, 357 NLRB at 409 (citing *Double Eagle Hotel & Casino*, 341 NLRB 112, 112 n.3 (2004), *enforced*, 414 F.3d 1249 (10th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006)). We agree with the Region’s determination that Complaint should issue alleging that the confidentiality rules are unlawful and further conclude that the (b) (6), (b) (7)(C) email to the CP, although directed solely at the Charging Party and therefore not an unlawful “rule,” violated Section 8(a)(1) because it would restrain or coerce (b) (6), (b) (7) from engaging in Section 7 activities. The Region considered the legality of the rules under *Lutheran Heritage Village*, 343 NLRB 646, 647 (2004), which was overruled by *The Boeing Company*, 365 NLRB No. 154 (Dec. 14, 2017). However, even under *Boeing*, the rules are arguably unlawful because they are likely to have a significant impact on the exercise of Section 7 rights that is not outweighed by the Employer’s legitimate business interests. The Region should contact Advice before filing exceptions or cross-exceptions, and accompanying briefs, with the Board on this issue.

⁹ *Continental Group*, 357 NLRB at 411. See also *Butler Medical Transport, LLC*, 365 NLRB No. 112, slip op. at 7 (July 27, 2017) (“When an employee sees a coworker actually disciplined or discharged for conduct that, in somewhat different circumstances, *would be* protected by the Act, the employee (not to mention the coworker himself) is surely more likely to be chilled by the enforcement of an unlawful rule than he would be by the mere maintenance of the rule.”).

¹⁰ *Continental Group*, 357 NLRB at 411.

¹¹ *Id.* at 412. See also *Butler Medical Transport, LLC*, 365 NLRB No. 112, slip op. at 7.

that employees would be chilled in the exercise of their Section 7 rights,”¹² compared with the same employer response to activity that is neither concerted nor related to concerns about terms and conditions of employment.

Applying this analytical framework, we conclude that the Charging Party’s circumstances fall within the second *Continental Group* category, i.e., discipline pursuant to an overbroad rule for activity that is not protected because it is not concerted but which “touches the concerns animating Section 7.”¹³ Thus, because [REDACTED] was expressing work-related complaints to the non-employee youth members, [REDACTED] discussions did implicate the concerns underlying Section 7.¹⁴ However, we also conclude that there is no violation under *Continental Group* because the Employer did not inform the Charging Party that [REDACTED] discharge was pursuant to an overbroad rule.

To trigger application of the *Continental Group* test to an employee’s discipline, the employer must inform the employee in some way that the discipline imposed is *pursuant to* an unlawful rule.¹⁵ An employer’s explicit reference to an unlawfully overbroad rule at the time of the discipline easily satisfies this threshold requirement.¹⁶ The Board has also found that a reference, at the time of discharge, to conduct prohibited by an unlawfully overbroad rule is sufficient, even absent a

¹² *Continental Group*, 357 NLRB at 412.

¹³ *Id.* The Charging Party was not engaged in concerted activity because [REDACTED] only discussed [REDACTED] complaints regarding potential new work assignments and changes to [REDACTED] job title with the non-employee, volunteer youth members. Although the Region became aware during its investigation of this charge that the Charging Party may have discussed work-related concerns with the [REDACTED] it was unable to substantiate that. *See, e.g., Capital Times Co.*, 234 NLRB 309, 309-10 (1978) (finding employee’s activities on behalf of workers of a political subdivision, who are not employees under the Act, was not concerted activity).

¹⁴ *See, e.g., Kysor Indus. Corp.*, 309 NLRB 237, 238 n.3 (1992)(stating that action regarding work assignments “clearly bears an immediate relationship to terms and conditions of employment.”).

¹⁵ *See Continental Group*, 357 NLRB at 412.

¹⁶ *See, e.g., Butler Medical Transport, LLC*, 365 NLRB No. 112, slip op. at 3-4 (employer informed employee he was being discharged for violating its social media policy, which was overbroad).

statement that the employee breached the rule.¹⁷ The Board has not found, however, that an employee was disciplined pursuant to an overbroad rule where the employer never directly or indirectly informed the employee that violation of the rule was the reason for the discipline nor cited conduct that would be prohibited by such a rule. Thus, finding a violation in such a context would be an extension of the *Continental Group* rationale.

In this case, the Employer did not inform the Charging Party at any point of the conduct for which [REDACTED] was discharged and certainly never informed [REDACTED] that it was discharging [REDACTED] for violating the unlawful confidentiality rules. The Executive Director did not orally reference the confidentiality rules or the Charging Party's interactions with youth members at the time [REDACTED] discharged the Charging Party. Nor did the Employer mention the rules or [REDACTED] work-related discussions with youth members in the termination letter or separation agreement it provided [REDACTED]. The Employer also did not directly or indirectly refer to the confidentiality rules, or any other rules, before the State unemployment compensation agency because it did not contest the Charging Party's claim. The only reference to work rules made during the unemployment proceedings were made by the Charging Party [REDACTED] and [REDACTED] did not mention the confidentiality rules or speaking with youth members about [REDACTED] working conditions as the reason for [REDACTED] termination.

In light of the preceding, the concerns expressed in *Continental Group* are inapplicable because the potential for chilling of employees' Section 7 activity is not present. Neither the Charging Party nor the remaining employees would reasonably conclude that the confidentiality rules would be enforced against their future Section 7 activity because neither the rules nor conduct covered by the rules were cited as a reason for the Charging Party's discipline. As a result, neither the Charging Party nor [REDACTED] coworkers can reasonably believe that the overbroad rules played any role in [REDACTED] discharge, and certainly not to the extent that they could believe they would be terminated for engaging in protected concerted activity. Indeed, there is no evidence that the employees believe the Charging Party was discharged for violating these rules or for [REDACTED] conversations with youth members. Under these circumstances, there is simply no potential for the employees to infer that exercise of

¹⁷ See, e.g., *Continental Group*, 357 NLRB at 410, 413 (finding discipline pursuant to overbroad no-access rule where written warning did not specify employee had breached rule, but stated he was "frequenting the property while off duty" and "loitering on the property"); *NLS Group*, 352 NLRB 744, 745 (2008) (finding discharge was made pursuant to unlawfully overbroad rule where employer cited "failure to live up to his side of the bargain" as reason for discharge at the time and later testified at trial that that meant failure to abide by unlawful rule), *incorporated by reference in* 355 NLRB 1168 (2010), *enforced*, 645 F.3d 475 (1st Cir. 2011).

their Section 7 rights would lead to discipline. Thus, there is no basis here for finding a violation of Section 8(a)(1).

The Executive Director, in statements to the Region, did discuss and reference aspects of the Charging Party's communications with the youth members as major factors in (b) (6), (b) (7) decision to discharge the Charging Party. The Executive Director stated that the Charging Party lied to or misled the youth members about the transfers, that (b) (6), (b) (7) shared internal information with them, and that these actions helped create a toxic environment that necessitated (b) (6), (b) (7) termination. The Employer also referenced the conversations with youth members and donors as one of an array of reasons for the Charging Party's discharge in its Position Statement. However, the Employer never conveyed this information to the Charging Party at any time during or after (b) (6), (b) (7) discharge. Accordingly, we conclude that there was no violation under the *Continental Group* rationale.

Therefore, the Region should dismiss, absent withdrawal, the allegation in the charge dealing with the Charging Party's alleged discharge for violating an overbroad rule.

/s/
J.L.S.

ADV.32-CA-199056.Response.CaliforniaYouthConnection (b) (6), (b) (7)