

1 UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 Washington, D.C.
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6 LA SPECIALTY PRODUCE COMPANY

7 and

8 CASE 32-CA-207919

9 TEAMSTERS LOCAL 70,
10 INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

11
12 **REPLY BRIEF OF RESPONDENT LA SPECIALTY PRODUCE COMPANY TO**
13 **COUNSEL FOR THE GENERAL COUNSEL'S ANSWERING BRIEF**
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1 Respondent L.A. Specialty Produce Co. (“Respondent” or “LA Specialty”) files this
2 Reply Brief to Counsel for the General Counsel’s Answering Brief to Respondent’s Exceptions to
3 the Administrative Law Judge’s Decision.

4 **INTRODUCTORY STATEMENT**

5 The General Counsel’s Answering Brief only addresses the ALJ’s finding that
6 Respondent’s “Media Contact” policy violates Section 8(a)(1).¹ The “Media Contact” policy
7 states:

8 Employees approached for interview and/or comments by the news
9 media, cannot provide them with any information. Our President,
10 Michael Glick, is the only person authorized and designated to
comment on Company policies or any event that may affect our
organization.

11 [Answering Brief, p. 1; Stipulation, G.C. Exhibit 2.]

12 In his Answering Brief, the General Counsel contends that the ALJ was correct in finding
13 that the “Media Contact” policy violates Section 8(a)(1). However, for the reasons noted below
14 and in Respondent’s brief in support of exceptions, this policy does not violate Section 8(a)(1)
15 under Boeing Company, 365 NLRB No. 154 (2018), and applicable Board precedent.

16 The “Media Contact” policy does not violate Section 8(a)(1) because the policy does not
17 interfere with employees’ protected Section 7 activity. Under applicable Board precedent Section
18 7 protects employee communications to the public or the media that are “directly related to an
19 ongoing labor dispute.” Pilot Development Southwest d/b/a Hacienda de Salud-Espanola, 317
20 NLRB 962, 966 (1995), citing Allied Aviation Service Co. of New Jersey, 248 NLRB 229, 231
21 (1980), enfd. 636 F.2d 1210 (3d Cir. 1980); St. Luke’s Episcopal-Presbyterian Hospitals, 331
22 NLRB 761, 773 (2000). The “Media Contact” policy does not violate Section 8(a)(1) because it
23 does not prohibit or interfere with employees’ protected rights to communicate with the public or
24 the media about an ongoing labor dispute. In fact, the “Media Contact” policy is a facially neutral
25 policy because it does not explicitly prohibit Section 7 protected conduct.

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27 ¹ In the Answering Brief, the General Counsel agrees with Respondent’s contention that the
28 “Confidentiality & Non-Disclosure” policy does not violate Section 8(a)(1). See Answering Brief, p. 1,
footnote 2.

1 While the ALJ and the General Counsel refer to generalized testimony from a Union
2 representative about his experience in union campaigns having employees talking to the media
3 (see General Counsel Answering Brief at p. 4 citing Tr. 18:9-13), such testimony is irrelevant
4 because it did not relate to any of Respondent’s employees. The policy does not prohibit
5 employees from communicating with the media about an ongoing labor dispute. There is also no
6 evidence that the policy has been applied to prohibit employees from communicating with the
7 media or that employees have interpreted the policy as prohibiting them from doing so.
8 Accordingly, the ALJ was incorrect in finding the policy violative of Section 8(a)(1).

9 **REPLY ARGUMENT**

10 As noted above and in Respondent’s brief in support of its exceptions, the “Media
11 Contact” policy is a facially neutral policy because it does not expressly prohibit employees from
12 talking to the media about an ongoing labor dispute. When reasonably construed, the “Media
13 Contact” policy merely prohibits employees from speaking to the media *on behalf of Respondent*.
14 Preventing employees from talking to the media on Respondent’s behalf is a legitimate
15 justification for the policy. Moreover, under the Board’s Boeing analysis, where there is no
16 evidence that the “Media Contact” policy has *actually interfered* with employees’ protected
17 Section 7 conduct in talking to the media about an ongoing labor dispute, the policy poses only a
18 “comparatively slight” risk to employees’ Section 7 rights. Boeing, supra, slip. op. at 19. This
19 “comparatively slight” risk to employees’ Section 7 rights and Respondent’s justification for its
20 “Media Contact,” compels a finding that the policy is lawful and that the ALJ was incorrect in
21 finding it violative of Section 8(a)(1).

22 The General Counsel’s Answering Brief does not support the ALJ’s finding that
23 Respondent’s “Media Contact” policy violates Section 8(a)(1).

24 The General Counsel contends that the ALJ correctly applied Boeing and applicable
25 Board precedent interpreting the “Media Contact” policy as violating employees’ Section 7 rights.
26 The General Counsel is wrong because in finding a violation, the ALJ ignored the Board’s
27 mandate that an employer rule be given a reasonable reading; that the Board refrain from reading
28 particular phrases in isolation; and that the Board not presume improper interference with

1 employee rights. Lafayette Park Hotel, 236 NLRB 824, 825-826 (1998).

2 First, the ALJ's construction of the "Media Contact" policy was not reasonable. On its
3 face, the policy does not prohibit employees from talking to the media about an ongoing labor
4 dispute. The first sentence of the policy specifically states that "Employees *approached* for
5 interview and/or comments by the news media, cannot provide them with any information."
6 (Emphasis added.) This sentence does not prohibit or restrict employees from speaking to the
7 media on the employee's behalf or on behalf of other employees about an ongoing labor dispute.
8 Additionally, the second sentence of the policy clearly explains that "our President, Michael
9 Glick, is the only person authorized and designated to comment on Company policies or any
10 event that may affect our organization." [G.C. Exhibit 2]. A reasonable reading of the "Media
11 Contact" policy establishes that its purpose and intent is to protect Respondent from unauthorized
12 statements being made to the media on behalf of the Company; not to prohibit employees from
13 talking to the media about an ongoing labor dispute.

14 Second, in finding a violation the ALJ read particular phrases of the "Media Contact"
15 policy in isolation. The ALJ read the first sentence of the policy in isolation without taking into
16 account the second sentence of the policy. Had the ALJ not done so, the ALJ would have
17 concluded that the policy was directed at preventing employees from making unauthorized
18 statements to the media about the Company.

19 Third, the ALJ presumed that the "Media Contact" policy improperly interfered with
20 employees' Section 7 rights. The ALJ did so even though there was no evidence that the "Media
21 Contact" policy had "actually interfered" with Section 7 conduct even though the policy has been
22 in existence for over 20 years. Moreover, as noted above and in Respondent's brief in support of
23 exceptions, the un rebutted evidence established that the policy does not prohibit employees from
24 talking to the media, and the policy has never been interpreted or applied to prohibit employees
25 from doing so. [Tr. 32]. The ALJ presumed unlawful interference by construing the policy as if
26 the ALJ was the mythical "objective employee." The ALJ focused only on potential interference
27 with employees' Section 7 rights and, and as a result, downplayed Respondent's legitimate
28 business justification. The ALJ's analysis was rejected by the Board in Boeing, supra, 365 NLRB

1 No. 154, slip op. at 16 n. 80. The lack of evidence of any impact of the “Media Contact” policy
2 on employees’ Section 7 rights or actual interference with such rights, clearly supports a finding
3 that a reasonable employee would not view the policy as interfering with his/her Section 7 rights
4 to talk to the media about an ongoing labor dispute.

5 The General Counsel’s citations to Valley Medical Hospital Medical Center, 351 NLRB
6 1250 (2007), Crown Plaza Hotel, 352 NLRB 382 (2008), Trump Marina Casino Resort and other
7 cases in the Answering Brief at page 8, do not support the ALJ’s finding that the Media Contact
8 policy violates Section 8(a)(1).² All of the above cited cases pre-date Boeing and stand for the
9 proposition that a rule that prohibits employees from talking to the public or the media about an
10 ongoing labor dispute violates Section 8(a)(1). As noted above, the “Media Contact” policy
11 contains no such prohibition.

12 Based on the above, Respondent’s exceptions and supporting brief, Respondent’s “Media
13 Contact” policy is lawful. Accordingly, the ALJ’s finding that the policy violated Section 8(a)(1)
14 should be rejected.

15 CONCLUSION

16 Based on the foregoing, Respondent’s exceptions and brief in support of exceptions, the
17 General Counsel failed to prove that the “Confidentiality & Non-Disclosure” policy and the
18 “Media Contact” policy violate Section 8(a)(1). The Board’s Boeing decision and applicable law
19 compel a finding that these policies are lawful. Accordingly, the ALJ’s Section 8(a)(1) findings
20 should be rejected and the Complaint should be dismissed in its entirety.

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² The ALJ’s decision at page 8 also cites Valley Hospital Medical Center and Trump Marina
Casino Resort in support of the ALJ’s finding of a Section 8(a)(1) violation.

1 DATED: September 19, 2018

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 300 South Grand Avenue, 37th Floor, Los Angeles, California 90071-3147.

I hereby certify that on September 20, 2018, I caused the foregoing document described as **REPLY BRIEF OF RESPONDENT LA SPECIALTY PRODUCE COMPANY TO COUNSEL FOR THE GENERAL COUNSEL’S ANSWERING BRIEF** in Case 32-CA-207919 to be filed via E-Filing.

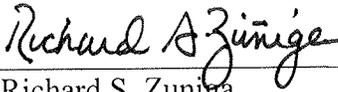
I hereby also certify that on September 20, 2018, I caused to be served the foregoing document by placing a true copy thereof in a sealed envelope with postage thereon fully pre-paid and addressed to each interested party in this action as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 20, 2018, at Los Angeles, California.


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