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Toledo, OH

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

MERCY ST. VINCENT MEDICAL CENTER

and

Cases 08-CA-128502  
08-CA-129537  
08-CA-133069  
08-CA-134215

INTERNATIONAL UNION, UNITED AUTOMOBILE  
AEROSPACE & AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, UAW, LOCAL 2213,  
RN UNIT, AND LOCAL 12 TECHNICAL AND  
SUPPORT UNITS

ORDER DENYING MOTIONS AND REMANDING<sup>1</sup>

Pursuant to charges and amended charges filed by International Union, United Automobile Aerospace & Agricultural Implement Workers of America, UAW, Local 2213, RN Unit, and Local 12 Technical and Support Units, the General Counsel issued a third consolidated amended complaint (the complaint) on November 20, 2014. The complaint alleges that since on or before January 18, 2014, the Respondent has maintained nine facially overbroad work rules in violation of Section 8(a)(1) of the Act. On November 24, 2014, the Respondent filed an answer admitting that it maintained the rules, but denying the legal conclusion that it is violating the Act by maintaining the rules and asserting several affirmative defenses.

The complaint further alleged several additional violations of the Act. The Respondent and the Charging Party resolved those allegations by entering into an informal settlement agreement on July 30, 2015, which was approved by the General Counsel on August 17, 2015. Previously, on December 18, 2014, the Respondent filed a motion for partial summary judgment

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<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

(“partial” because the parties had not yet settled the non-rule allegations). On February 9, 2015, the General Counsel filed an opposition to the Respondent’s motion and, in the alternative, a cross-motion for partial summary judgment. Thereafter, the Respondent filed a reply to the General Counsel’s opposition and an opposition to the General Counsel’s cross-motion, and the General Counsel filed a reply to the Respondent’s opposition. The Respondent also filed a supplemental brief comparing its allegedly unlawful rules with rules deemed lawful in General Counsel Memorandum 15-04, “Report of the General Counsel Concerning Employer Rules” (March 18, 2015). The General Counsel filed an opposition to the supplemental brief.

On August 11, 2015, the National Labor Relations Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why either motion should not be granted. The General Counsel and the Respondent each filed a response to the Notice to Show Cause, and the Respondent filed a reply.

In the pending motions, the parties take conflicting positions regarding the lawfulness of the Respondent’s challenged rules under the “reasonably construe” prong of the standard set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). On December 14, 2017, the Board overruled the *Lutheran Heritage* “reasonably construe” test and announced a new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154, slip op. at 16-18 (2017). Under the standard announced in *Boeing*, the parties’ motions do not establish that there are no genuine issues of material fact and that either party is entitled to judgment as a matter of law. Accordingly, we deny without prejudice the Respondent’s motion and the General Counsel’s cross-motion for partial summary judgment, and we will remand this proceeding to the Regional Director for Region 8 for further action as he deems appropriate.

ORDER

IT IS ORDERED that the Respondent's motion and the General Counsel's cross-motion for partial summary judgment are denied without prejudice, and these proceedings are remanded to the Regional Director for Region 8 for further appropriate action.

Dated, Washington, D.C., September 27, 2018.

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD