

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

Verizon Pennsylvania Inc.
Verizon Services Corp.
Verizon Corporate Services Corp.

Respondents

and

Communications Workers of America,
District 2-13, AFL-CIO, CLC

Charging Party

Case No. 04-CA-156043

Verizon Wireless

Respondent

and

Communications Workers of America,
AFL-CIO

Charging Party

Case No. 02-CA-157403

Verizon New York, Inc.
Empire City Subway Company (Limited)
Verizon Avenue Corp.
Verizon Advanced Data Inc.
Verizon Corporate Services Group
Verizon New England Inc.
Verizon Services Corp.
Verizon New Jersey Inc.

Respondents

and

Communications Workers of America
("CWA")

Charging Party

Case No. 02-CA-156761

Verizon Washington, D.C. Inc.
Verizon Maryland Inc.
Verizon Virginia Inc.
Verizon Services Corp.
Verizon Advanced Data Inc.
Verizon South Inc. (Virginia)
Verizon Corporate Services Corp.
Verizon Delaware Inc.

Respondents

and

Communications Workers of America,
District 2-13, AFL-CIO CLC

Charging Party

Case No. 05-CA-156053

Verizon California, Inc. and
Verizon Federal Inc.
Verizon Florida Inc.
Verizon North LLC
Verizon Southwest Inc.
Verizon Connected Solutions Inc.
Verizon Select Services Inc.
MCI International, Inc.

Respondents

and

Communications Workers of America,
AFL-CIO, District 9

Charging Party

Case No. 31-CA-161472

VERIZON WIRELESS' AND VERIZON WIRELINE ENTITIES'
RESPONSE TO NOTICE TO SHOW CAUSE

The National Labor Relations Board should not remand the above-captioned matter to the Administrative Law Judge. This case has been pending for more than three and a half years, and it is properly positioned for Board review. In their papers to both the Board and the Judge, Verizon Wireless and the Verizon Wireline Entities argued that the matter should be decided

under legal standards that the Board has since adopted in *Boeing*, 365 NLRB No. 154 (2017). To the extent necessary, the Companies would not oppose an additional round of briefing to the Board to ensure that all parties are fully heard under the appropriate standards.

Indeed, rather than remanding this case, the Board should instead consolidate it (in whole or in part) with two other pending matters challenging overlapping provisions of the Verizon Wireless Code of Conduct. *See* Case No. 21-CA-075867; Case No. 28-CA-145221.¹ Those matters have been pending for far longer than the above-captioned matter – indeed, the unfair labor practice charge that underlies the Region 21 case has been pending for nearly seven years. Consolidation at the Board level would avoid the risk of inconsistent outcomes, and it would lead to a prompt conclusion of these long-unresolved cases.

I. BACKGROUND

A. The Above-Captioned Matter

The Communications Workers America filed the charges that underlie the above-captioned matter in mid-to-late 2015. The Charges presented challenges to numerous facially neutral provisions of the Code of Conduct, in addition to claims that other select provisions were inconsistent with standards articulated in *Purple Communications*, 361 NLRB 1050 (2014). On October 31, 2016 the General Counsel issued Complaints, and he consolidated them on November 4, 2016. Administrative Law Judge Donna Dawson issued a decision on May 25, 2017, and the parties filed exceptions which remain pending. Before both Judge Dawson and the Board, Verizon Wireless and the Verizon Wireline Entities argued that the balancing test

¹ The Verizon Wireline Entities and Verizon Wireless have objected to the consolidation of the above-captioned matter because Verizon Wireless is a separate and distinct company from the Verizon Wireline Entities, and because consolidation was inconsistent with the terms of a September 16, 2016 stipulation. The Companies stand by that objection, and they believe that Case No. 21-CA-075867 and Case No. 28-CA-145221 should be consolidated only with Case No. 02-CA-157403. However, to the extent that the Board concludes that the above-captioned matter was properly consolidated, the Companies believe that Case No. 21-CA-075867 and Case No. 28-CA-145221 should be consolidated with the whole of the above-captioned matter.

eventually adopted in *Boeing* should apply, and explained why each challenged rule is lawful under this correct standard.²

On November 19, 2018, the Board issued a Notice to Show Cause in the above-captioned matter. Following the *Boeing* decision, the Agency sought the parties' positions on whether it should remand "complaint allegations involving the maintenance of allegedly unlawful work rules or policies."

B. The Other Code Cases Involving Verizon Wireless

The above-captioned case, however, is not the only challenge to the Code of Conduct pending before the Board. In early 2012, the CWA filed a Region 21 charge alleging that portions of Verizon Wireless' Code violated the Act. *See* Case No. 21-CA-075867. A handful of allegations from that charge made it to complaint (consolidated with a handful of allegations from later charges), and on July 25, 2014 Associate Chief Administrative Law Judge William Nelson Cates issued a decision. All parties lodged exceptions in or about September 2014, and those exceptions remain pending before the Board.

Additionally, in early 2015 an individual now represented by the Union's counsel in the above-captioned matter filed a separate charge challenging portions of Verizon Wireless' Code of Conduct. *See* Case No. 28-CA-1455221. Certain of the allegations from that charge eventually made its way to the Board. *See Cell P'ship d/b/a Verizon Wireless*, 365 NLRB No. 38 (2017). Thereafter, Verizon Wireless and the CWA each filed an appeal, and the General Counsel sought enforcement of the decision. On September 7, 2018 the Ninth Circuit issued an Order remanding significant portions of that matter back to the Board to allow it to apply *Boeing*

² *See* Respondents' Post Hearing Brief at p. 24-35; *see also* Respondents' Brief in Support of Exceptions at p. 13-29, both available at <https://www.nlr.gov/case/04-CA-156043>.

in the first instance. *See* Order Granting Motion to Sever and Remand and Denying Motion for Full Remand, Case No. 17-71493 (9th Cir. Sept. 7, 2018).

II. ARGUMENT

A. The Board Should Not Remand the Above-Captioned Matter.

For at least two reasons, there is no justification or need for the Board to remand the above-captioned matter for further administrative law judge consideration. As an initial matter, it is incumbent upon the Board to decide cases with all deliberate speed. *See, e.g., Emhart Indus., Hartford Div. v. NLRB*, 907 F.2d 372, 376 (2d Cir. 1990) (“[R]emedies for unfair labor practices ‘must be speedy in order to be effective’” and holding that, under the Act “prompt resolution of ... claims is critical”) (quoting *NLRB v. Mastro Plastics Corp.*, 354 F.2d 170, 181 (2d Cir. 1965), *cert. denied*, 384 U.S. 972 (1966)). Here, remand would inject additional delay into a long-pending case.

Furthermore, this case is primed for Board review. As noted, Verizon Wireless and the Verizon Wireline Entities already presented arguments that the facially-neutral rules at issue are lawful under the standards adopted in *Boeing*. *See* Brief in Support of Exceptions at 13 (arguing that the Board should “adopt the standards articulated in Chairman Miscimarra’s dissents” in *Cellco P’ship d/b/a Verizon Wireless*, 365 NLRB No. 38 (2017) and *William Beaumont Hospital*, 363 NLRB No. 162 (2016)); *id.* at p. 17-29 (arguing that at-issue work rules were lawful under this standard). To the extent necessary, the Companies would not oppose additional briefing before the Board to allow the Region and the Union to make any arguments they wish to advance under the appropriate standards.

For these reasons, Verizon Wireless and the Verizon Wireline entities urge the Board to keep this matter and issue a substantive ruling as quickly as possible.³

B. The Board Should Consolidate The Above-Captioned Matter (In Whole Or In Part) With Code Of Conduct Cases Pending Against Verizon Wireless.

Rather than remanding this case, the Board should consolidate it for decision, in whole or in part, with other pending matters involving the Verizon Wireless Code of Conduct. *See* Case No. 21-CA-075867; Case No. 28-CA-145221. There is substantial overlap between the Code of Conduct provisions at issue here and the provisions at issue in those cases:

Provisions Challenged	02-CA-157403	28-CA-145221	21-CA-075867
“Speak Up” Provision	✓		
At-Will Statement	✓		
1.6	✓	✓	✓
1.8 (2014)		✓	✓
1.8 (2015)	✓	✓	
1.8.1	✓		
1.8.2	✓		✓
2.1.3	✓	✓	
3.2.1	✓		✓
3.3		✓	
3.4.1	✓	✓	✓
3.7			✓
4.6	✓		✓
Conclusion	✓	✓	

Consolidation at the Board level will promote efficiency and conserve resources, as well as ensure consistent decisionmaking. Particularly since Case Nos. 21-CA-098442 and 28-CA-

³ In the Notice to Show Cause, the Board asked whether the portion of this case decided under *Purple Communications* “should be severed and retained or instead included in the remand.” Since the Board should not remand any portion of this case for the reasons stated above, it should necessarily retain the portions of the case decided under *Purple Communications*, pending the outcome of the Board’s decision in *Caesars Entertainment Corporation d/b/a Rio All-Suites Hotel and Casino*, 28-CA-060841. The Companies briefed this matter under both *Purple Communications* standards and *Register Guard* standards, and they would be amenable to further briefing at the Board level to the extent necessary.

145221 have been pending even longer than the present matter, the Board should consolidate and decide them with all deliberate speed.⁴

III. CONCLUSION

The Board should not remand the above-captioned case to the Administrative Law Judge. Rather it should consolidate the matter (in whole or in part) with Case Nos. 21-CA-075867 and 28-CA-145221, and bring all the matters to a prompt conclusion.

Dated: December 21, 2018

Respectfully submitted,

/s/ E. Michael Rossman

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⁴ As detailed above (*supra* at p.2, n.1), the Companies believe that Case No. 21-CA-075867 and Case No. 28-CA-145221 should be consolidated only with Case No. 02-CA-157403. To the extent that the Board concludes that the above-captioned matter was properly consolidated, however, the Companies believe that Case No. 21-CA-075867 and Case No. 28-CA-145221 should be consolidated with the whole of the above-captioned matter.

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of December 2018, I electronically filed the foregoing document with the National Labor Relations Board. In addition, a copy of the document was sent via email to the following:

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