

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH

DOLLAR THRIFTY AUTOMOTIVE GROUP,

and

Case 27-CA-173054

COMMUNICATION WORKERS OF AMERICA  
LOCAL NO. 7777

**ORDER GRANTING THE GENERAL COUNSEL’S MOTION  
TO WITHDRAW THE CONSOLIDATED COMPLAINT ALLEGATIONS  
AND SETTING FORTH TIME FRAMES FOR THE REMAINING ALLEGATIONS**

This case was decided based on a hearing held in Denver, Colorado on August 30, 2016. The complaint and amended complaint allege that Dollar Thrifty Automotive Group (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by unlawfully maintaining 18 rules in its Employee Handbook and Employee On-Boarding Documents as well as other employment materials. Respondent denied all allegations in its timely answer.

On January 27, 2017, I found that Respondent violated the Act as alleged. In evaluating the lawfulness of the rules, I applied the analytical frameworks set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Under that test, a work rule is unlawful if “the rule *explicitly* restricts activities protected by Section 7.” 343 NLRB at 646 (emphasis in original). If the work rule does not explicitly restrict protected activities, it nonetheless will violate Section 8(a)(1) if “(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.” *Id.* at 647.

On December 14, 2017, the Board issued its decision in *The Boeing Company*, 365 NLRB No. 154, overturning the first prong of *Lutheran Heritage Village-Livonia* and establishing a new standard aimed at balancing employees’ Section 7 rights and employers’ business justifications for maintaining the policy or rule. The Board, however, maintained that the application of a facially neutral rule against employees does not render protected activity unprotected. *Boeing*, 365 NLRB No. 154, slip op. at 16.

On January 7, 2019, in light of the holding in *Boeing*, the Board remanded this matter to the undersigned “for the purpose of reopening the record, if necessary, and the preparation of a Supplemental Decision addressing the complaint allegations affected by *Boeing* and setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended Order.” The limited purpose of the remand is to reconsider the lawfulness of the rules in light of *Boeing*.

On March 8, 2019, Counsel for the General Counsel filed a motion to withdraw allegations from the complaint and amended complaint; those allegations are as follows:

- 3(b) Action to Disrupt Harmony – Rule #9
- 3(c) Leading or Participating – Rule #26
- 3(e) Obligation to Protect Confidential Information – Rule #23
- 3(f) Internet Websites
- 3(k) Divulging Information – Rule #3
- 3(l) Specific Authorization – Rule #4
- 3(m) Intentionally Seeking Information – Rule #7
- 3(n) Other Inappropriate Use
- 3(q) Electronic Communications policy.

In addition, Counsel for the General Counsel moves to withdraw the following portion of paragraph 3(d), the underlined portions of which the General Counsel now considers to be lawful:

Complaint Paragraph 3(d): Personally Identifiable Data

**Hertz Information and Security Statement and Confidentiality Agreement for Hertz Employees:** “Hertz Confidential Information” means each of the following types of information: (i) information that is labeled, or that other Company policies and procedures specifically classify as “secret,” “confidential,” or “proprietary,” including, but not limited to, marketing data, financial results and operating data; (ii) information that the Company is legally or contractually required to keep confidential, including without limitation, information that is subject to confidentiality agreements or protective orders; (iii) personally identifiable data (“PID”) recorded in any form about identified or identifiable individuals, including, but not limited to, prospective, current, or former employees, customers, vendors, business partners, or any other natural persons in connection with the rental business or car sales business of Hertz, or acquired by Hertz as part of its claims management activities or any other business which Hertz, any Hertz employee, consultant, contractor, Licensee, agent, and other party obtains in the course of Hertz business; and (iv) information that could have a competitive impact on the Company or its organizational, technical, or financial position or which could cause damage to the Company or its prospective, current, or former customers, employees, or reputation if disclosed either internally or outside the Company.

The parties were notified that Counsel for the General Counsel intended to file this motion. Counsel for the General Counsel’s motion is granted.

The remaining allegations in the complaint and amended complaint remain; these allegations include paragraphs 3(a), 3(d)—non-underlined portions as indicated above, 3(g), 3(h), 3(i), 3(j), 3(o), and 3(p).

At this point in the proceedings, the parties are encouraged to engage in settlement discussions to determine whether the remaining allegations in the complaint may be resolved. As I indicated during our recent conference calls, if the parties agree, I would be willing to assist in settlement discussions when I am available (after April 5, 2019).

In addition, the parties should discuss whether the record in this matter should be reopened for a supplemental hearing or stipulated record for the purpose of offering any new evidence regarding the lawfulness of the remaining rules in light of the Board's holding in *Boeing*. Any motion to reopen should identify the nature of the evidence sought to be introduced.

It is ORDERED that any party seeking to reopen the record in this proceeding for the purpose of offering any new evidence regarding the lawfulness of the remaining rules in light of the holding in *Boeing* is directed to file a motion by close of business on **April 26, 2019**. The other parties' positions should be noted in the motion.

It is FURTHER ORDERED that any opposition brief to a party's motion to reopen the record must be filed by close of business on **April 30, 2019**.

Finally, I will conduct a status conference with the parties the week of **April 8, 2019**. The Division of Judges will schedule the conference after consulting with the parties for a mutually agreeable date and time.

SO, ORDERED.

Date: March 12, 2019, San Francisco, California



Amita Baman Tracy  
Administrative Law Judge

**Served via email upon the following:**

**For the NLRB Region 27:**

Todd D. Saveland, Esq., Email: todd.saveland@nlrb.gov

**For the Charging Party:**

Debra Medina, Vice President, Email: dmedina@cwa7777.org  
(Communications Workers of America, Local 7777)

**For the Respondent:**

Matthew T. Miklave Esq. Email: mmiklave@rc.com  
Peter A. Dagostine, Esq., Email: pdagostine@rc.com  
(Robinson & Cole, LLP)

**From:** Vanise.Lee@nlrb.gov <Vanise.Lee@nlrb.gov>  
**Sent:** Tuesday, March 12, 2019 3:18 PM  
**To:** Saveland, Todd <Todd.Saveland@nlrb.gov>; dmedina@cwa7777.org; mmiklave@rc.com; pdagostine@rc.com  
**Subject:** [NASS] Scan-to-EMail Delivery - Subject: Dollar Thrifty Automotive Group, Case 27-CA-173054, Judge's Order

Counsel attached please find Judge Tracy's Order granting the General Counsel's Motion to withdraw the consolidated complaint allegations and setting forth time for the remaining allegations. Thank you.  
Vanise Lee, Legal Tech. NLRB, Division of Judges.

Please find, attached, the document, "vlee-20191712061730.PDF," which was processed by the NLRB automated scan-to-email system.

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