

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

**PHILLIPS 66**

**and**

**Cases 31-CA-085243  
31-CA-096709**

**UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL & SERVICE WORKERS  
INTERNATIONAL UNION, AFL-CIO/CLC**

**ORDER GRANTING GENERAL COUNSEL’S MOTION TO  
WITHDRAW CERTAIN COMPLAINT ALLEGATIONS**

This matter is before me on the General Counsel’s Motion to Withdraw certain complaint allegations in this case. For the reasons set forth below, the Motion is GRANTED.

These consolidated cases were decided after a hearing held on February 24 – 27, 2014 and March 18 – 19, 2014. The consolidated complaint alleged that Phillips 66 (Respondent) committed multiple unfair labor practices that violated Section 8(a)(1), (3) and/or (5) of the National Labor Relations Act (the Act). Specific to this Order, the complaint alleged that Respondent violated Section 8(a)(1) of the Act when it promulgated and maintained an unlawful work rule that prohibited employees from speaking to the news media.

The policy/work rule at issue was contained in a December 10, 2012 email from Jerry Stumbo (Stumbo), Respondent’s site manager at its Santa Maria Refinery. Stumbo’s email was sent to all Phillips 66 employees at the refinery. The email stated:

With the recent supply and demand issues in California, and the resulting price increases, it is extremely important for all employees and contractors to not speak to the news media about our operations. Confidentiality is a condition of employment and I urge you to not speculate on market conditions or refinery operations.

Please be aware of the following guidelines.

**News Media Guidelines**

If a Phillips 66 employee or on-site contractor is contacted by a member of the news media, no information exchange is permitted concerning Santa

Maria or Rodeo Refinery operations. It is against company policy for anyone but an authorized company spokespersons (sic) to speak to the news media. This is to ensure that our company's communications to the public are aligned and consistent, and that they are factual and meet all legal and business confidentiality requirements. All media inquiries are to be referred to the designated site spokesperson. Please refer all calls to Kristen Kopp. If you have any questions, please contact your supervisor.

On November 25, 2014, I issued my decision where I found that Respondent's rule barring employees from speaking to the news media about "[company] operations," and/or prohibiting any "information exchange concerning the Santa Maria or Rodeo Refinery operations" with the news media unlawful because it was overbroad and would reasonably be construed by employees as chilling their protected, concerted activity, in violation of Section 8(a)(1) of the Act. In evaluating the lawfulness of the aforementioned rule, I applied the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). The parties appealed my decision to the National Labor Relations Board (NLRB or the Board).

While this case was pending before the Board, on December 14, 2017, the Board issued its decision in *The Boeing Company*, 365 NLRB No. 154 (2017), which overruled parts of *Lutheran Heritage* and announced new standards by which facially neutral work rules should be analyzed to determine whether such rules violate the Act. The Board made these new standards retroactive, and thus applicable to the instant case.

In light of these developments, the Board severed the work rule allegation and remanded that allegation to the undersigned to analyze Respondent's news media guidelines in light of *Boeing*. After granting the General Counsel a two-week extension of time, I directed the General Counsel to determine whether she intended to withdraw the remanded allegation by the close of business on May 14, 2019.

In response to my Order, on April 30, 2019, counsel for the General Counsel moved to withdraw the allegations concerning Respondent's news media guidelines (paragraph 9 of the consolidated complaint and any references within the complaint to Respondent's news media guidelines).

Accordingly, having duly considered the General Counsel's motion and with good cause having been shown,

**IT IS ORDERED** that the motion to withdraw the complaint allegations set forth in Paragraph 9 of the Consolidated Complaint is granted. This matter shall be remanded to the Regional Director for Region 28 forthwith for further processing consistent with this Order and/or resumption of the proceedings with the Board.

Date: May 1, 2019, San Francisco, California

  
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Lisa D. Ross  
Administrative Law Judge

*Served via electronic mail upon the following:*

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**DiCrocco, Brian**

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**From:** DiCrocco, Brian  
**Sent:** Wednesday, May 1, 2019 11:32 AM  
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jstuligross@usw.org  
**Cc:** Romero, Jorge  
**Subject:** 31-CA-085243 - PHILLIPS 66 : ORDER GRANTING GENERAL COUNSEL'S MOTION TO WITHDRAW  
CERTAIN COMPLAINT ALLEGATIONS  
**Attachments:** 20190501 Order Revised Consent Order.pdf

Dear Counsel,

Please see the attached document.

**Brian C. DiCrocco, Legal Tech.**  
**NLRB Division of Judges San Francisco**  
**628-221-8821**