

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01**

ENTERGY NUCLEAR OPERATIONS, INC.

and

UNITED GOVERNMENT SECURITY
OFFICERS OF AMERICA, LOCAL 25

Cases 01-CA-153956
 01-CA-158947
 01-CA-165432

**SUPPLEMENTAL BRIEF TO THE ADMINISTRATIVE LAW JUDGE
ON BEHALF OF COUNSEL FOR THE GENERAL COUNSEL**

BEFORE: Administrative Law Judge Paul Bogas

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I. INTRODUCTION

Counsel for the General Counsel submits this brief pursuant to Administrative Law Judge Paul Bogas' April 18, 2019 Order inviting the parties to submit briefs addressing the impact of the Board's decision in *The Boeing Company*¹ on the allegations that remain before him on remand from the Board.

On May 12, 2017, Judge Bogas issued a decision in the above-referenced matter. Both parties filed Exceptions to that decision, but before the Board could rule on them, it issued a decision in *Boeing*² which substantially modified its approach to determining whether certain employer workplace policies violate Section 8(a)(1) of the Act.

On October 3, 2018, the Board issued a Notice to Show Cause in the instant case, directing the parties to show cause in writing why the allegations in the Second Amended Consolidated Complaint (Complaint) involving the maintenance of allegedly unlawful work rules or policies should not be severed and remanded to the Administrative Law Judge for further proceedings consistent with its *Boeing* decision, including reopening the record if necessary.

On November 6, 2018, Counsel for the General Counsel filed its Response to the Board's Notice to Show Cause, withdrawing the allegations in paragraphs 8(a), 9, 15(b), and 17 of the Complaint; requesting that the Board sever the allegations concerning alleged discriminatee Jamie Amaral 's discipline contained in paragraphs 7, 14, 15(a), 16, 17, 18 and 19 (as that paragraph pertains to Amaral's discipline) and retain jurisdiction over them, and remand to Judge Bogas for further proceedings consistent with its decision in *Boeing*, supra, all remaining

¹ 365 NLRB No. 154 (2017), reconsideration denied, 366 NLRB No. 128 (2018).

² Supra.

allegations involving Respondent's maintenance of unlawful work rules or policies as alleged in paragraphs 8(b)-(e), 10, 11, 12, 13, 17 and 19.

On January 15, 2019, the Board issued an Order severing the allegations that Respondent had unlawfully maintained certain work rules, and remanding them to Judge Bogas for the purpose of reopening the record, if necessary, and preparing a supplemental decision addressing the Complaint allegations affected by *Boeing*, setting forth credibility resolutions (if necessary), findings of fact, conclusions of law, and a recommended Order. The Board also announced that it would retain for future consideration the allegation that the Respondent unlawfully disciplined employee Jamie Amaral.³

On April 1, 2019, Counsel for the General Counsel filed a Motion to Withdraw Complaint Allegations with Judge Bogas. In that unopposed Motion, Counsel for the General Counsel moved to withdraw the allegations in paragraphs 8(b), 8(c), 8(e), paragraph 10, and paragraph 11, Sections 3.7, 3.14, 5.1, 5.6, and 5.7 of the Complaint.

On April 3, 2019, Judge Bogas issued an Order granting Counsel for the General Counsel's Motion to Withdraw. Thus, the only allegations that remain pending before Judge Bogas are contained in Complaint paragraphs 8(d), 11, 12, and 13.

On April 18, 2019, after the parties declined his offer of a supplemental hearing to present evidence relevant to the standards articulated in *Boeing*, supra, Judge Bogas invited them to submit supplemental briefs addressing its impact on the allegations that remain before him. This brief constitutes Counsel for the General Counsel's response to that invitation.

³ On May 21, 2019, the Board issued its decision with respect to the Amaral allegation. See 367 NLRB No. 135 (2019).

II. FACTS

At all relevant times, Respondent maintained several free-standing policies, and its Employee Handbook, the “Code of Entegrity” which are at issue in the instant case. These policies include the following:

A. Government Investigations – Complaint paragraphs 8(d) and 12

The Complaint alleges that two (2) separate government investigations policies maintained by Respondent violate Section 8(a)(1) of the Act. The first of these is described in Complaint paragraph 8(d), and can be found in section five (5) of Respondent’s “Code of Entegrity.” The second, which is described in Complaint paragraph 12, is Respondent’s Government Investigations Policy.

1. Code of Entegrity:

Complaint Paragraph 8(d) alleges that, at all material times between December 14, 2014 and present, Respondent has maintained an Employee Handbook entitled “Code of Entegrity” (the Code). The Code includes, in relevant part, the following policy:

- (d) I. GOVERNMENT INVESTIGATIONS AND INTERACTIONS
All government requests for inspections, investigative interviews or documents should be referred to the Legal department for review and further instruction. Additionally, except to the extent that interaction with governmental agencies is part of an employee’s job function, the employee should contact the Legal department before contacting a governmental agency about the company’s business.⁴

2. Government Investigations Policy:

Complaint Paragraph 12 alleges that, at all material times, and since at least October 1, 2015, Respondent has maintained a Government Investigations Policy that warns employees they may be liable for improper disclosure of information provided to government officials,

⁴ GC Exhibit 15(a) at 000023.

regardless of whether the information harms the Company or whether or not private legal counsel has been obtained. This policy requires employees:

- who are approached by someone claiming to be a government investigator to contact the Company's Legal Department before answering any questions, providing any documents, or allowing access to Company facilities.
- to refer all subpoenas, search warrants, civil investigative demands, written complaints, and requests for investigative interviews or documents to the Company's Legal Department for review.
- who are approached by someone claiming to be a government investigator seeking an interview or document to, if possible, contact a lawyer in the Company's Legal Department before answering any questions, providing any documents, or allowing access to Company facilities (unless the person has a search warrant), and not to answer any questions, produce any documents, or allow access to Respondent's facility before contacting the Legal Department.
- who are asked by a government investigator to provide documentation related to a government investigation to contact Respondent's Legal Department, and follow a variety of additional detailed steps before disclosing any documentation to the government agency.
- with whom a government official requests an interview to notify Respondent's Legal Department and provide the name, agency affiliation, business telephone number and address of the government official, and the reason for the interview, if known.⁵

By its own terms, the Government Investigations Policy does not apply to communications with and investigations by the NRC or to interactions by employees "in the normal course of their regular job duties" with other government regulatory agencies;

...(such as the Federal Energy Regulatory Commission, retail utility commissions, and federal/state environmental protection agencies) and with representatives of quasigovernmental agencies which exercise delegated government functions (such as the North American Electric Reliability Corporation and its designated regional entities).⁶

⁵ GC Exhibit 15(e), pp. 000001 and 000003-000006.

⁶ *Id.* at 000001.

Before issuing his Order requesting supplemental briefing, Judge Bogas offered the parties the opportunity to reopen the record to present evidence related to Respondent's business justification for its disputed policies. Respondent opted not to present any such additional evidence, relying, instead, on the evidence in the trial record. In that record, Respondent does not articulate a unique business justification for each policy. Instead, Respondent justifies its maintenance of the disputed policies by arguing that they must be read in context, taking them into account collectively, with the Code, each policy's statement of purpose, and the U.S. Nuclear Regulatory Commission (NRC) regulatory backdrop governing Respondent.⁷

The only arguable statement of purpose that exists in the record for the Code is contained in a letter at the beginning of the policy from Respondent's Corporate CEO, Leo Denault, in which he advises employees of Respondent's commitment to acting with integrity, his expectation that employees will act lawfully in every aspect of the business, and that when they are "lost in a situation where the right course of action isn't clear or easy," they should let the Code be their guide.⁸

The Government Investigations Policy's Policy Summary asserts that it is intended "...to protect Respondent's legal rights in connection with government investigations of possible civil or criminal violations of the law."⁹

B. Protection of Information Policy – Complaint Paragraph 11

Complaint Paragraph 11 alleges that, at all material times, and since at least July 22, 2015, Respondent has maintained a Protection of Information Policy which defines "confidential

⁷ Respondent's December 6, 2016 Post-Hearing Brief to the Administrative Law Judge (Respondent's Post-Hearing Brief) at p. 21, 32, and 36. *See also* pp. 9-11, 20, 22, and 35.

⁸ GC Exhibit 15(a), p. 000002.

⁹ GC Exhibit 15(e), p. 000001.

information” in Section 3.1 to include “employee information,” and in Section 5.2 prohibits the disclosure of such information, either by accident or intentionally, to anyone within or outside of Respondent who does not have a legitimate business "need to know" for purposes of the Company's operations or management.¹⁰

The Policy Summary states that it is intended to protect:

- Respondent’s information assets from loss, damage, theft, unauthorized access, unauthorized reproduction, unauthorized duplication, unauthorized use, unauthorized disclosure, misappropriation, inappropriate disposal and mishandling; and
- Outside party Copyright-Protected works, Trademarks, Patents, Trade Secrets, and other confidential or proprietary information.¹¹

As discussed herein, Respondent’s bare assertions that its policies should be evaluated in the context of its highly-regulated, safety-conscious environment and each policy’s statement of purpose and/or policy summary are the only record evidence of any purported business justification for this policy.

C. Issue Resolution Policy – Complaint Paragraph 13

Complaint Paragraph 13 alleges that, at all material times, and since at least October 1, 2015, Respondent has maintained an Issue Resolution Policy which states, in relevant part:

- 5.13 Confidentiality - All communications and documents generated during this process will be treated as confidential. Disclosure, circulation, distribution, or discussion of the information collected by the Panel should be limited to those individuals who have a legitimate business need to know the contents. Release of any of this information beyond this limited circulation must be approved by the Senior Vice President Human Resources/Chief Diversity Officer.¹²

¹⁰ GC Exhibit 15(d), pp. 000003 and 000008-000009.

¹¹ *Id.* at 000002.

¹² GC Exhibit 15(f), p. 000009.

The Purpose and Applicability section of the policy explains that it is intended to provide regular full-time, non-bargaining unit employees with a process to raise and resolve issues and to seek redress while ensuring proper treatment to employees who use the process.¹³ Once again, Respondent introduced no evidence of its business justification for this particular policy beyond its generalized assertions that its policies should be evaluated in the context of one another, the Code, and the heavily-regulated nuclear power industry, and related safety concerns.¹⁴

III. ARGUMENT

A. Respondent violated Section 8(a)(1) by maintaining the Government Investigations and Interactions section of its Code of Entegrity, its Government Investigations Policy, Sections 3.1 and 5.2 of its Protection of Information Policy, and Section 5.13 of its Issue Resolution Policy.

In *Boeing*,¹⁵ the Board overruled *Lutheran Heritage Village-Livonia*,¹⁶ and created a new standard for determining when an employer's maintenance of a facially-neutral work rule, if reasonably interpreted, violates Section 8(a)(1) of the Act. This standard seeks to balance an employer's asserted business justification for maintaining a particular rule against the invasion of employee rights under the Act, focusing on the employee's perspective.¹⁷ Thus, under *Boeing*, the Board will evaluate (i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the requirement(s).¹⁸ The Board in *Boeing* delineates the

¹³ *Id.* at 000002.

¹⁴ Respondent's Post-Hearing Brief, pp. 9-11, 20-22, 35-36.

¹⁵ *Supra* at 2-4.

¹⁶ 343 NLRB 646 (2004).

¹⁷ 365 NLRB at 3.

¹⁸ *Id.*

following three (3) categories of employment policies, rules and handbook provisions, which represent the results of the new balancing test, but are not part of the test itself:

Category 1 includes rules that the Board designates as lawful to maintain, either because (i) the rule, when reasonably interpreted, does not prohibit or interfere with NLRA rights; or (ii) the potential adverse impact on protected rights is outweighed by justifications associated with the rule.

Category 2 will include rules that warrant individualized scrutiny in each case as to whether the rule would prohibit or interfere with NLRA rights, and if so, whether any adverse impact on NLRA-protected conduct is outweighed by legitimate justifications.

Category 3 will include rules that the Board will designate as unlawful to maintain because they would prohibit or limit NLRA-protected conduct, and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule.¹⁹

1. Respondent's Government Investigations Policy and the Government Investigations and Interactions section of its Code of Entegrity interfere with employees' Section 7 rights because they require employees to obtain authorization from Respondent's Legal Department before communicating with certain government agencies, including the NLRB.

Complaint paragraphs 8(d) and 12 concern Respondent policies involving government investigations. Both of these policies place a substantial burden on employees' Section 7 rights by explicitly prohibiting or limiting their NLRB-protected conduct.²⁰ Interpreting the plain language of these policies, employees would reasonably believe that they are prohibited from returning a Board agent's telephone call, responding to correspondence or a subpoena from a Board agent, providing an affidavit or other evidence during an investigation, or even appearing for a Board proceeding pursuant to a request by a Board agent, without first obtaining clearance from Respondent's legal department. Similarly, the rule imposes a heavy burden on employees

¹⁹ *Id.* at 4.

²⁰ Whether these policies are classified under *Boeing* category 2 or 3, their adverse impact on employees' Section 7 rights is substantial, even when counterbalanced against Respondent's asserted business justifications.

wishing to concertedly initiate, cooperate with, or participate in investigations by other regulatory or law enforcement agencies concerning issues related to their wages, hours, and/or working conditions by requiring them to obtain permission from Respondent's Legal Department before doing so.²¹ In practice, these policies would require employees to notify Respondent's Legal Department whenever they are contacted by a Board agent or other governmental law enforcement agent, and to get permission to cooperate with or provide evidence to that individual. Such a requirement has the potential to significantly interfere with Board investigations and trials by subjecting possible employee witnesses to intimidation and coercion by Employer representatives who wield a great deal of power over them.

While the Policy Summary indicates that its intent is to protect Respondent's legal rights in connection with certain kinds of governmental investigations, its claim that the policy is justified, in part, by the fact that Respondent is heavily-regulated by the NRC is rendered moot with respect to this policy because it explicitly exempts NRC investigations. To the extent that Respondent contends that some other asserted business justification justifies its maintenance of these policies, the policies' overt interference with employees' NLRA-protected conduct does not outweigh the substantial adverse impact on employees' Section 7 rights, and both policies must be rescinded.

Judge Bogas recognized the heavy burden that these policies impose on employees' Section 7 rights when he correctly concluded that they are unlawful in part because they provide no exception for communications with the NLRB, nor do they otherwise safeguard employees' independent access to Board processes.²² Moreover, citing *NLRB v. Marine & Shipbuilding*

²¹ *T&W Fashions*, 291 NLRB 137, 137 fn. 2 (1988); *Squier Distributing Co.*, 276 NLRB 1195, 1195 fn. 1 (1985), *enfd.* 801 F.2d 238, 241 (6th Cir. 1986).

²² Administrative Law Judge Bogas' May 12, 2017 Decision (ALJD), p. 32, lines 16-17.

Workers Local 22,²³ Judge Bogas acknowledged the potential for intimidation and coercion posed by these policies:

The Supreme Court has recognized that guaranteeing the public coercion-free, independent access to the NLRB's processes is key to the "functioning of...[the NLRA] as an organic whole."²⁴

Applying these policies in the context of their everyday work, employees would, as concluded by Judge Bogas, reasonably interpret them to prohibit employees from (i) responding to inquiries from Board investigators or attorneys; (ii) responding to Board subpoenas; and/or (iii) initiating contact with the NLRB, without first obtaining authorization from Respondent's legal department. Such restrictions unlawfully interfere with employees' independent communications with the NLRB and its representatives.²⁵

2. Respondent has produced no evidence of a legitimate business justification that outweighs the burden its Government Investigations Policy and the Government Investigations and Interactions section of its Code of Entegrity impose on employees' Section 7 rights.

The Policy Summary for Respondent's Government Investigations Policy does not justify its maintenance. It exempts communications with and investigations by representatives of the NRC and interactions by employees with certain other government regulatory agencies, and identifies the purpose of the policy as the protection of Respondent's legal rights in connection with government investigations of possible civil or criminal violations of the law. Given the explicit exclusion of NRC investigations, Respondent cannot legitimately rely on the NRC's

²³ 391 U.S. 418, 424 (1968).

²⁴ ALJD at 32, lines 19-32 (also citing *Nash v. Florida Industrial Commission*, 389 U.S. 235, 238 (1967)).

²⁵ *Id.*, lines 5-14.

regulatory authority over it as a basis for justifying the policy. Moreover, had Respondent intended to safeguard employees' Section 7 rights, it could have included the NLRB and other state and federal government agencies to which employees might complain concertedly about their wages, hours, and/or working conditions in the list of exempted agencies in its Policy Summary. Its failure to do so unduly burdens important Section 7 rights granted to employees under the Act without a legitimate business justification.

Similarly, the introductory letter from Respondent's CEO in its Code of Entegrity does not provide a legitimate business justification for Respondent's maintenance of the Government Investigations and Interactions section of the Code.²⁶ Respondent has offered no other evidence that justifies its maintenance of this provision of the Code.

Additionally, Section 5.5(c) of Respondent's Government Investigations Policy admonishes employees that they may be liable for any improper disclosure of information to a government official, regardless of whether any harm results from such disclosure, and whether or not private legal counsel has been obtained to allow the employee to speak with a government official without Company counsel present, or without first getting permission to speak on Respondent's behalf.²⁷ The adverse impact of such language on employees' Section 7 rights far outweighs any articulated business justification by Respondent.

Finally, more narrowly-tailored government investigations policies could still achieve the objectives set forth in Respondent's Policy Summary and in Denault's introductory letter in the Code without burdening employees' Section 7 rights. For all of the reasons, Respondent's

²⁶ Even if it did, the letter is on page 2 of a 39-page policy, and the disputed provision is on page 23 of that policy, more than 20 pages from the letter.

²⁷ GC Ex. 15(e), p. 100006.

Government Investigation Policy and the Government Investigations and Interactions section of its Code of Entegrity must be rescinded because they substantially burden employees' Section 7 rights, and that impact is not outweighed by any business justification associated with their maintenance.

B. Respondent violated Section 8(a)(1) by maintaining Sections 3.1 and 5.2 of its Protection of Information Policy.

1. Respondent's Protection of Information Policy is overbroad and interferes with employees' Section 7 rights because it prohibits them from disclosing employee information to anyone within or outside its organization who does not have a legitimate business need to know.

Sections 3.1 and 5.2 of Respondent's Protection of Information Policy described in Complaint paragraph 11 fall under *Boeing* category 2 because, while they are facially-neutral, they implicate employees' Section 7 rights and therefore warrant individualized scrutiny.

While the standard set forth in *Boeing* seeks to balance the employer's business justification for maintaining a particular rule against the invasion of employee rights under the Act, it does so focusing on the employee's perspective.²⁸ In the instant case, a reasonable employee would likely interpret the phrase "employee information" to include information such as employees' names, addresses, telephone numbers, wages, raises, benefits, promotions, and discipline, and thus to preclude them from sharing any employee information, regardless of its nature or how they acquired it, with coworkers or anyone outside of the organization. Indeed, an employee could reasonably interpret Section 5.2 to prohibit him or her from discussing with coworkers or anyone outside of the organization his or her own knowledge of coworkers' contact information, compensation, discipline, or other terms and conditions of employment.

²⁸ 365 NLRB at 3.

Longstanding Board law makes clear that employer policies such as this one that prohibit the disclosure of confidential employee information infringe upon employees' Section 7 rights.²⁹

As correctly determined by Judge Bogas, these provisions interfere with employees' Section 7 rights because they prohibit employees from disclosing "employee information" (as opposed to "employee records"); and because Section 5.2 contains no savings clause language, makes no reference to the savings clause language in Section 5.6, and is not situated in close proximity to the savings clause in Section 5.6 of the 15-page policy. Additionally, the provisions that prohibit the disclosure of confidential information fail to clarify that they do not prohibit employees from disclosing such information in conjunction with NLRA-protected activity.³⁰ Finally, as Judge Bogas noted, the policy does not use the phrases "employee information" and "employee records" interchangeably. For example, it classifies "employee information" as "confidential," while classifying "employee records" as "sensitive."³¹

2. Respondent has produced no evidence of a legitimate business justification for maintaining Sections 3.1 and 5.2 of its Protection of Information Policy that outweighs the significant burden these sections of its policy impose on employees' Section 7 rights.

Nothing in the Policy Summary, or the record generally, including Respondent's asserted objective of protecting its information assets and certain proprietary information, justifies its

²⁹ *Flex Frac Logistics*, 358 NLRB 1131 (2012), *affd.* in relevant part 198 LRRM 2789 (5th Cir. 2014) (restating established Board law that nondisclosure rules with similar language are unlawfully overbroad because employees would reasonably believe that such rules prohibit them from discussing wages or other terms and conditions of employment with other nonemployees such as union representatives). *See also IRIS U.S.A., Inc.*, 336 NLRB 1013, 1013 fn. 1, 1015, 1018 (2001) and *Double Eagle Hotel & Casino*, 341 NLRB 112 (2004).

³⁰ ALJD at p. 29, lines 29-35 (referencing the considerations the Board looked to in *First Transit*, 360 NLRB 619, 621 (2014)).

³¹ *Id.* at fn.14.

adverse impact on employees' Section 7 rights. Respondent's asserted business justification for all of its policies; that it is heavily-regulated by the NRC and that safety issues are paramount in the nuclear context, does not outweigh the burden that the policy imposes on employees' right to discuss "employee information" amongst themselves and with third parties.

Moreover, a more narrowly-tailored definition of "confidential information" in Section 3.1 would accomplish Respondent's asserted policy objectives without compromising its NRC obligations or public safety, and simultaneously would eliminate the burden on employees' Section 7 rights. More specifically, it is Respondent's inclusion of the phrase "employee information" in its definition of "confidential information" that renders Section 3.1 unlawful. Section 5.2 repeatedly adopts this overly-broad definition, thereby also rendering that section of the policy unlawful. Consequently, elimination of the phrase "employee information" from the definition in Section 3.1, or replacement of that phrase with the phrase "employee records," would likely render both sections of the policy lawful under *Boeing* without disturbing Respondent's rationale for maintaining the policy. Since a more narrowly-tailored definition would accomplish Respondent's business objectives of protecting its information assets and ensuring compliance with NRC directives, the policy's infringement on employee Section 7 rights outweighs any business justification asserted by Respondent, and it must be rescinded.

C. Respondent violated Section 8(a)(1) by maintaining Section 5.13 of its Issue Resolution Policy.

- 1. Section 5.13 of Respondent's Issue Resolution Policy is overly-broad and interferes with employees' Section 7 rights because it imposes a blanket prohibition on employee discussions of communications and documents generated during Respondent's issue resolution process.**

Section 5.13 of Respondent's Issue Resolution Policy falls under *Boeing* category 2 because it is facially-neutral but implicates important Section 7 rights, and therefore warrants

individualized scrutiny to determine whether the employee rights with which it interferes outweigh any legitimate business justifications articulated by Respondent. This provision unnecessarily burdens employees' Section 7 rights because it prohibits them, without exception, from discussing communications and documents generated during Respondent's issue resolution process. As concluded by Judge Bogas, the restriction on employees' Section 7 rights is overly-broad because it applies regardless of whether such a prohibition is warranted under the circumstances of a particular investigation, for example due to legitimate concerns of witness intimidation or harassment, the destruction of evidence or other misconduct that might otherwise tend to compromise the integrity of the inquiry.³² Respondent's prohibition against employees' disclosure of such communications and/or documents infringes upon employees' Section 7 rights because such information relates to their terms and conditions of employment, and Section 7 permits them to discuss such information both with coworkers and with third parties.

2. Respondent has produced no evidence of a legitimate business justification that outweighs Section 5.13's imposition on employees' Section 7 rights.

Although Respondent argues that its policies must be evaluated in the context of the heavily-regulated nuclear power industry, no record evidence supports its claim that NRC directives or the protection of its employees and the public from nuclear accidents necessitate its maintenance of Section 5.13 of its Issue Resolution Policy. Moreover, nothing in the policy's Purpose and Applicability section justifies the burden that Section 5.13 imposes on employees' Section 7 rights.

³² *Id.*, p. 31, lines 25-46 (citing *Boeing Co.*, 362 NLRB No. 195, slip op. at 2 (2015), *Banner Estrella Medical Center*, 362 NLRB No. 137, slip op. at 2-3 (2015), enfd 851 F.3d 35 (D.C. Cir. 2017) and *SNE Enterprises*, 347 NLRB 472, 472 and 492-493 (2006), enfd 257 Fed. Appx. 642 (4th Cir. 2007)).

As Judge Bogas correctly concluded in his May 12, 2017 Decision, under Board law, an employer can only lawfully determine when its need for confidentiality with respect to a specific investigation outweighs the burden on employees' Section 7 rights on a case-by-case basis, and by considering whether the particular circumstances of that case raise legitimate concerns that might tend to compromise the integrity of the inquiry. As Judge Bogas correctly concluded, Respondent has not established that the blanket prohibition in this policy is necessitated by any NRC requirement or by any other legitimate business reason.³³ As such, Section 5.13 of Respondent's Issue Resolution Policy unnecessarily burdens employees' Section 7 rights under *Boeing*, and must be rescinded.

IV. CONCLUSION

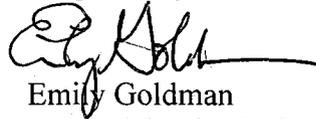
In conclusion, application of the *Boeing* balancing test to each of the disputed policies demonstrates that each of them unnecessarily burdens employees in exercising their Section 7 rights, and that this burden outweighs any legitimate business justification articulated by Respondent. Although Respondent repeatedly asserts, and Counsel for the General Counsel does not dispute, the paramount role of NRC oversight in order to ensure public safety, modification of the disputed policies to comply with the Act would not compromise those important objectives, while ensuring the protection of employees' essential Section 7 rights. Consequently, Counsel for the General Counsel urges Judge Bogas to uphold his prior findings that the Government Investigations and Interactions section of Respondent's Code of Entegrity, as well as its freestanding Government Investigations Policy, Protection of Information Policy, and Issue

³³ ALJD at 31, lines 30-43.

Resolution Policy violate Section 8(a)(1) of the Act, and to order their rescission at all Respondent facilities where they are in effect.³⁴

Dated: May 24, 2019

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³⁴ The appropriate remedy in this case is rescission of the disputed policies at all Respondent facilities where they are in effect, as well as a companywide Notice posting. *See* Counsel for the General Counsel's December 6, 2016 Brief to the Administrative Law Judge, pp. 84-86. Respondent's Government Investigations Policy has a slightly different format from its other policies, and does not have a "Purpose and Applicability" section as the others do. Nevertheless, by defining "Entergy, Entergy system Company, or Company" broadly to include "Entergy Corporation, all of its subsidiaries and affiliates in which Entergy Corporation has a direct or indirect majority ownership interest," it makes clear that it, too, applies corporate-wide. *See* GC Exhibit 15(e) at p. 2.

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CERTIFICATE OF SERVICE

I hereby certify that I served copies of Supplemental Brief To The Administrative Law Judge On Behalf Of Counsel For The General Counsel, on the parties listed below, by electronic mail, on May 24, 2019.

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