

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

**CC 1 LIMITED PARTNERSHIP D/B/A  
COCA COLA PUERTO RICO BOTTLERS**

**And**

**HECTOR SANCHEZ-TORRES**

**Cases 24-CA-011035, 24-CA-011044, 24-CA-011057, and  
24-CA-011065**

**And**

**JAN RIVERA-MULERO**

**And**

**JOSE SUAREZ**

**And**

**LUIS RIVERA-MORALES**

**THE GENERAL COUNSEL'S  
STATEMENT OF POSITION TO  
THE NATIONAL LABOR RELATIONS BOARD**

In response to the Board's April 10, 2019 request for statements of position with respect to the issue raised by the District of Columbia Circuit's remand in the above-captioned matter, the General Counsel respectfully submits the following:

**I. PROCEDURAL HISTORY**

On September 18, 2012, the Board issued a Decision and Order finding, *inter alia*, that CC1 Limited Partnership d/b/a Coca-Cola Puerto Rico Bottlers ("Employer") violated Sections 8(a)(1) and (3) by suspending and then terminating five stewards for their role in a two-hour

work stoppage in September 2008, and a three-day wildcat strike in October 2008. *Coca Cola Puerto Rico Bottlers*, 358 NLRB 1233, 1234-36 (2012). In addition, the Board held that the Employer violated Sections 8(a)(1) and (3) by suspending and/or discharging thirty-nine employees for engaging in the three-day wildcat strike. *Id.* at 1235-36. That decision, however, was set aside because it was issued by a panel that, under the Supreme Court’s decision in *NLRB v. Noel Canning*, 573 U.S. 513 (2014), was not properly constituted. *CC 1 Limited Partnership d/b/a Coca Cola Puerto Rico Bottlers*, 2014 WL 2929759 (June 27, 2014). On June 18, 2015, a new panel of the Board reaffirmed the previous decision, although by that point the Employer had reached settlement agreements with four of the five stewards and all but four of the wildcat strikers. *Coca Cola Puerto Rico Bottlers*, 362 NLRB 1047, 1047 (2015). In determining that the wildcat strike was protected, the Board held that the strikers were not attempting to bargain directly with the Employer or taking a position that was inconsistent with the Union’s position. *Id.* at 1048 (citing *Silver State Disposal Service*, 326 NLRB 84, 85 n.8, 103-04 (1998)).

Regarding the latter point, the Board emphasized that the “Union never informed the employees that their strike was unauthorized or that it was inconsistent with the Union’s position[.]” *Id.* The Board disregarded a letter sent by the Union to the Employer on the first day of the wildcat strike disavowing the strike, because “it was the Employer, not the Union, that ... g[a]ve it to the strikers.” *Id.* at 1048 n.6.

On appeal, the D.C. Circuit affirmed the Board’s holding that the Employer discriminatorily fired the remaining steward. *CCI Ltd. P’ship v. NLRB*, 898 F.3d 26, 32-33 (D.C. Cir. 2018). However, the court vacated the Board’s conclusion that the strikers were unlawfully terminated for engaging in protected activity because the Board had “failed to explain” the

significance of the Union's disavowal letter in its finding that the strike was protected and remanded the case to the Board to address this issue. *Id.* at 33-35.

## **II. THE WILDCAT STRIKERS WERE NOT ENGAGED IN PROTECTED ACTIVITY ONCE THEY LEARNED THAT THE UNION HAD DISAVOWED THE STRIKE**

Section 7 of the Act protects the “right[] to act in concert with one’s fellow employees.” *Emporium Capwell Co. v. W. Addition Cmty. Org.*, 420 U.S. 50, 63 (1975). However, that right is limited by the exclusivity principle of Section 9(a) of the Act, which “extinguishes the individual employee’s power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees.” *Id.* Thus, extending Section 7 protection to employee activity that is inconsistent with the Section 9(a) representative’s goals and strategies “would undermine the statutory system of bargaining through an exclusive representative, and place employers in the position of trying to placate self-designated minority groups.” *Energy Coal Partnership*, 269 NLRB 770, 770 (1984) (citing *Emporium Capwell Co. v. W. Addition Cmty. Org.*, 420 U.S. at 58). In evaluating whether wildcat activity is unprotected, the Board examines two factors: (1) whether the employees attempted to bypass the union and bargain directly with the employer; and (2) whether the employees’ position is inconsistent with the union’s. *See Silver State*, 326 NLRB at 85 n.8, 103-04.

In applying these principles, the Board has held that wildcat strikes were unprotected where the union disavowed the strike and employees nevertheless persisted in their unauthorized activity. Thus, in *Energy Coal Partnership*, the Board held that a wildcat strike was unprotected where the union representative informed the employees both before and after their strike vote

that the union strongly opposed a strike, and subsequently attempted to persuade strikers to quit the picket line once they nevertheless went on strike. 269 NLRB at 771.

Here, the strike was similarly unprotected. Although the strike was initially protected, it lost protection once striking employees received the Union's letter to the Employer giving clear notice that the Union opposed the strike. At that point, the strikers knew that their activity was not only unauthorized but was directly contrary to the Union's position. It does not matter that the Employer, rather than the Union, distributed to employees the *Union's* letter to the Employer. To the extent the strikers distrusted the letter's authenticity, they at least had a duty to check with the Union to verify the Union's position, which they failed to do. The employees' Section 9(a) representative has the right to decide when and how to utilize the strike weapon, and this group of employees improperly misappropriated that right. Moreover, although the employees did not expressly seek to bargain directly with the Employer, they put the Employer in a position where it would have had to bargain directly with them in order to secure an end to the work stoppage, since the Union was insisting that it had no involvement in, or control over, the strike. In these circumstances, the Board should find that the strike was no longer protected once employees were notified of the Union's contrary position, and that the Employer lawfully discharged them for engaging in this unprotected activity.

### **III. CONCLUSION**

Accordingly, the General Counsel urges the Board to conclude that the remaining complaint allegations should be dismissed.

Respectfully submitted,

/s/ Kyle Mohr

Kyle Mohr

Counsel for the General Counsel

National Labor Relations Board

Division of Advice

1015 Half Street SE

Washington, D.C. 20003

(202) 273-3812

kyle.mohr@nlrb.gov

Dated: June 5, 2019