

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

AT&T MOBILITY, LLC
Respondent

and

Case 05-CA-178637

MARCUS DAVIS, an Individual
Charging Party

**COUNSEL FOR THE GENERAL COUNSEL'S
ANSWERING BRIEF TO CHARGING PARTY'S CROSS-EXCEPTIONS**

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I. INTRODUCTION

Pursuant to Section 102.46(e) of the National Labor Relations Board's Rules and Regulations, the General Counsel files the following Answering Brief to the Charging Party's Cross-Exceptions¹ to the Supplemental Decision of the Honorable Deputy Chief Administrative Law Judge Arthur J. Amchan (the ALJ).²

II. STATEMENT OF THE CASE

On July 1, 2019, the ALJ issued his supplemental decision in this case. On August 26, 2019, Marcus Davis (Davis or Charging Party) filed three Cross-Exceptions to the ALJ's supplemental decision.

III. ARGUMENT

The Charging Party's third Cross-Exception contends that the ALJ erred when he failed to order Respondent to post a notice nationwide. (Cross-Exceptions at 9.) Specifically, the Charging Party argues that the Board should order a nationwide notice posting remedy as to the rule allegation in the Complaint and Notice of Hearing (Complaint) because AT&T Mobility,

¹ Citations to the Charging Party's Cross-Exceptions appear as "Answering Brief [page numbers]." Citations to the ALJ's initial decision appear as "ALJD [page numbers]," and citations to the ALJ's supplemental decision appear as "Suppl. ALJD [page numbers]." Citations to the transcript appear as "Tr. [page numbers]." Citations to the General Counsel's exhibits appear as "GC Exh.[exhibit number]," and citations to Respondent's exhibits appear as "R Exh. [exhibit number]." Finally, citations to joint exhibits appear as "Jt. Exh. [exhibit number]."

² The Charging Party's first exception argues that the ALJ incorrectly implied that the Board overruled *Lutheran Heritage-Livonia*, 343 NLRB 646 (2004) in its entirety in *The Boeing Company*, 365 NLRB No. 154 (2017). In doing so, the Charging Party appears to argue that the rule at issue in this case is unlawful. If so, the General Counsel relies on its first exception and the argument that the Board should dismiss the allegation regarding the maintenance of the rule. The Charging Party also argues, in its second exception, that the ALJ erred by equating the lawfulness of the rule to the lawfulness of the threat. Similarly, for the Charging Party's second exception, the General Counsel agrees that the ALJ erred, for the reasons discussed in the General Counsel's exceptions and supporting brief.

LLC (Respondent) maintains its Privacy of Communications rule nationwide. (*See Ibid.*) In view of the Board’s decision in *The Boeing Company*, 365 NLRB No. 154 (2017), the General Counsel has concluded that the Board should dismiss the Complaint’s rule allegation. To the extent that the Board disagrees with the General Counsel and concludes that Respondent’s Privacy of Communications rule is unlawful, the General Counsel agrees that the Board should amend the ALJ’s remedy and order a nationwide notice posting to remedy the rule allegation.

Turning to the Complaint’s threat allegation, the Charging Party claims that the Board should order a nationwide notice posting regardless of whether the Board deems Respondent’s rule lawful. (Cross-Exceptions at 9.) The Charging Party contends that a nationwide posting is an appropriate remedy “because the threat of discipline was to all unit employees, not just those in D.C. stores.” (*Ibid.* citing *Miller Group*, 310 NLRB 1235, 1235 fn. 4 (1993).) Further, the Charging Party notes that Respondent “is a large company that relies heavily on a centralized human resources system” and that a “sister” company uses “the very same policy.” (Cross-Exceptions at 9.)

The Charging Party’s request that the Board order a nationwide posting for the threat allegation provides no basis to conclude that such a remedy is necessary or appropriate. The lone case the Charging Party cites, *Miller Group*, is easily distinguishable from the record in this case. In *Miller Group*, the Board concluded that a notice posting at two related plants which shared a bargaining unit was appropriate under the totality of the circumstances despite evidence that day-to-day labor relations operated at the individual plant level. 310 NLRB at 1235 fn. 4. Although the Board noted that the same individuals owned and set labor relations at both locations, the Board further emphasized that the employer had “recidivist history of engaging in unfair labor practices” and a “clear pattern or practice of unlawful conduct.” 310 NLRB at

1235 fn. 4 (quoting *John J. Hudson, Inc.*, 271 NLRB 874 fn. 2 (1985).) Under the circumstances, the Board concluded that a notice posting at both locations was “essential” to effectuating the Act. *Miller Group*, supra at 1235 fn. 4.

By contrast, the record here demonstrates neither a recidivist history, nor a clear pattern or practice of unlawful conduct. Further, the record provides no basis to conclude a posting regarding Area Retail Sales Manager Andrew Collings’s statement to the Charging Party is “essential” to effectuating the Act. On the contrary, the Board’s remedial scheme focuses its “make-whole” remedies to unfair labor practices. *See, e.g., Goya Foods of Florida*, 356 NLRB 1461, 1462 (2011). Unlike Respondent’s Privacy of Communications rule—which is applicable nationwide—the record provides no basis to infer that Collings’s statement to the Charging Party reached employees nationwide. In this regard, the Charging Party has not demonstrated that a nationwide posting regarding the threat allegation would be a make-whole remedy. Moreover, the Charging Party provides no explanation or caselaw suggesting why the Board should rely solely on Respondent’s size, the centralization of its human resources system, or the rules that “sister” companies use. If employer size, centralized human resources, or the use of similar policies at a related employer alone justified a nationwide posting, every violation at every large, centralized employer with related corporate subsidiaries would require a nationwide posting. But such a remedy would not be in keeping with the “make-whole” focus of the Board’s remedial scheme. Accordingly, the Board should dismiss the Charging Party’s third exception to the extent it argues that a nationwide notice posting is appropriate for the Complaint’s threat allegation.

IV. CONCLUSION

For the foregoing reasons, counsel for the General Counsel respectfully requests that the Board overrule Charging Party's third exception to the extent that the Charging Party contends that the Board should order a nationwide notice posting remedy regarding the Complaint's threat allegation.

Dated at Washington, D.C., on September 9, 2019, and respectfully submitted by:

/s/ Paul J. Veneziano

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CERTIFICATE OF SERVICE

I hereby certify that Counsel for the General Counsel's Answering Brief to Respondent's Exceptions was filed electronically on September 9, 2019, and, on the same day, copies were electronically served on the following individuals by e-mail:

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