

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

WYNN LAS VEGAS, LLC

and

KELI P. MAY, an Individual

**Cases 28-CA-155984
28-CA-157203**

and

KANIE KASTROLL, an Individual

**ORDER (1) GRANTING MOTION TO WITHDRAW AND REMAND CERTAIN
ALLEGATIONS TO THE REGIONAL DIRECTOR AND (2) REMANDING THOSE
CERTAIN ALLEGATIONS TO THE REGIONAL DIRECTOR**

On September 12, 2019, the Board remanded several severed rules allegations in the above case for further consideration under *Boeing Co.*, 365 NLRB No. 154 (2017). In addition, the allegation of discipline requiring review in the light of *Boeing* is that the “second written warning” issued to May was unlawful. However, the discipline for May’s purported misconduct included not only the warning but also her suspension. The allegation that the suspension was also unlawful is therefore also remanded for review under this Order, to the extent that I find the suspension unlawful as based on an unlawful work rule.

On October 10, 2019, the Counsel for the General Counsel filed an unopposed Motion to Withdraw Certain Allegations from Complaint and for Remand to the Regional Director (Motion to Withdraw and Remand), pursuant to Section 102.24 of the Board’s Rules and Regulations. In support of its motion, Counsel for the General Counsel posits that:

In view of the Board’s new standard for evaluating facially neutral work rules under *Boeing*, the General Counsel respectfully moves to withdraw certain Complaint allegations that are currently before the ALJ, and requests that the ALJ remand these allegations to the Regional Director for further action consistent with *Boeing*. Specifically, the General Counsel moves to withdraw the following allegations:

- *Respondent maintained facially unlawful work rules requiring employees to display appropriate behavior at work, refrain from on-duty and off-duty misconduct and inappropriate conduct or horseplay (Complaint ¶ 5(a)(1));*
- *Respondent maintained facially unlawful work rules prohibiting photographing and recording in the work place (Complaint ¶ 5(a)(2), (3), and (4)); and*
- *Respondent maintained facially unlawful work rules prohibiting the use of company logos (Complaint ¶ 5(a)(3)).*

According to Counsel for the General Counsel, Respondent and Charging Parties do not oppose the Motion to Withdraw and Remand... The General Counsel maintains that the remaining allegations before the ALJ on remand are unlawful under current Board precedent, including the Board's decision in *Boeing*.¹

(Motion to Withdraw and Remand at 2-3.)

I find that it is well established that, pursuant to Section 3(d) of the Act, the General Counsel has exclusive authority over the issuance and prosecution of unfair labor practice complaints. See *Vaca v. Sipes*, 386 U.S. 171, 182 (1967) (decision as to whether a complaint should issue or be litigated, is within the exclusive province of the General Counsel); see also *Weigand v. NLRB*, 783 F.3d 889, 895 (D.C. Cir. 2015); *Operating Engineers Local 150 v. NLRB*, 325 F.3d 818, 830 (7th Cir. 2003). It is for this reason that, at hearing, the charging party has no right to introduce evidence in support of an allegation or theory not asserted by the General Counsel and the administrative law judge may not find a violation on a theory that the General Counsel has expressly disclaimed. See *Mid-Atlantic Regional Council of Carpenters (Goodell, Devries, Leech & Dann, LLP)*, 356 NLRB 61 n. 2 (2010).

Based on the foregoing, I find that the General Counsel has the sole right to withdraw the certain allegations at issue and referenced above. I further find that nothing in the Board's remand order purports to preclude the General Counsel from doing so. Accordingly, I find that it would effectuate the policies of the Act to grant the Counsel for the General Counsel's motion to withdraw and remand certain allegations of the complaint to the Regional Director for Region 28.

Accordingly, it is **ORDERED** that the Motion to Withdraw Certain Allegations from Complaint and for Remand them to the Regional Director is **GRANTED**, and

IT IS FURTHER ORDERED that only that certain portions of this case² are **REMANDED** to the Regional Director for Region 28 for further handling consistent with this Order.

Dated: October 11, 2019
San Francisco, California.



Gerald M. Etchingam,
Administrative Law Judge

¹ The General Counsel states that she will respond to my September 16, 2019 Notice to Show Cause as to the need for additional hearing dates in this matter as to the remaining un-withdrawn portions of the complaint under separate cover by the stated deadline of October 11, 2019.

² Specifically, these certain portions withdrawn and remanded in this Order are limited to: *Complaint ¶ 5(a)(1)*; *Complaint ¶ 5(a)(2), (3), and (4)*; and *Complaint ¶ 5(a)(3)*.

Served via Email and/or Facsimile:

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