

**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

28-CA-155984

28-CA-157203

and

KANIE KASTROLL, an Individual

CORRECTED ORDER

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 11, 2019, I issued an order granting the General Counsel’s October 10 unopposed motion to withdraw and remand to the Region 28 Regional Director three rules that the General Counsel concedes are lawful under the new *Boeing Co.* standard.

Accordingly, on September 16, a Notice to Show Cause was issued directing the parties to submit written statements of position addressing the following: 1) whether the party wishes to introduce additional evidence at a hearing; 2) the estimated number of hearing days needed to present the evidence; and 3) the dates it is available for a hearing in the event it or any other party requests one.

On October 11, 2019, responses were filed by the Respondent Company and the General Counsel to the September 16 Notice to Show Cause and they indicate that a hearing of at least 2 days will be required, absent settlement. Further, they indicate that the only 2 consecutive days between now and the end of January 2020 that all parties and their counsel do not have a direct conflict are January 8-10, 14-16, or 28-31¹.

¹ **The General Counsel indicates that Charging Party May is out of the country and unavailable from December 14, 2019 through January 20, 2020.** I leave it to the General Counsel to confirm whether one or both Charging Parties are necessary for the supplemental hearing and to provide notice to us as to their availability for the new hearing.

Accordingly, the Regional Director for Region 28 is directed to set a place for the hearing beginning at 9 a.m. on January 8, 2020 and continuing through January 10, 2020. Alternatively, if all parties agree, the Regional Director shall set a place for hearing beginning at 9 a.m. on January 28, 2020 or as soon thereafter as all parties are available on consecutive days to complete the hearing.

Consistent with the Board's Remand, the hearing will address the lawfulness of the challenged provisions in the subject rules under the new *Boeing* framework. As indicated by the General Counsel, this includes both (1) the nature and extent of the potential impact of the rules on NLRA rights, and (2) legitimate justifications associated with the rules. See *Boeing*, slip op. at 15–16 (“Parties may also introduce evidence regarding a particular rule’s impact on protected rights or the work-related justifications for the rule. The Board may also draw reasonable distinctions between or among different industries and work settings. We may also take into consideration particular events that may shed light on the purpose or purposes served by the challenged rule or on the impact of its maintenance on protected rights.”).

If any party desires a prehearing conference call to discuss settlement or other procedural matters or issues, they may request one by emailing Legal Technician Vanise Lee at vanise.lee@nlrb.gov, with copies on the other parties, and identifying the dates and times the parties are available.

Dated: October 16, 2019
San Francisco, California.



Gerald M. Etchingam,
Administrative Law Judge

Served via facsimile and/or email:

For the NLRB Region 28

Cornele A. Overstreet, Regional Director

Fax: (602)640-2178

Julia M. Durkin, Esq. (R-27), E-mail: julia.durkin@nlrb.gov

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For the Respondent

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(Kamer Zucker Abbott)

Fax: (702)259-8646

From: Microsoft Outlook

Sent: Wednesday, October 16, 2019 10:44 AM

To: Lee, Vanise J.

Subject: Delivered: Wynn LV, 28-CA-155984-CorrectedOrderGUnopposedM4PartialRemand2R28RD10-11-19.pdf

From: Lee, Vanise J. <Vanise.Lee@nlrb.gov>

Sent: Wednesday, October 16, 2019 10:44 AM

To: Durkin, Julia M. <Julia.Durkin@nlrb.gov>; gkamer@kzalaw.com; tcreer@kzalaw.com

Cc: Nicole Young <nyoung@kzalaw.com>; Lee, Vanise J. <Vanise.Lee@nlrb.gov>

Subject: Wynn LV, 28-CA-155984-CorrectedOrderGUnopposedM4PartialRemand2R28RD10-11-19.pdf

Importance: High

Counsel attached please find a Corrected Order. The Order has corrected language in the footnote.

Thank you for your attention in this matter.

Vanise J. Lee, Legal Tech.

NLRB Division of Judges San Francisco Branch

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Remote CSID: NLRB
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Fax number : +16026402178
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Remote CSID: 0016026402178
Duration : 34 sec.
Status : OK
Reason :

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Remote CSID: 7022598646
Duration : 32 sec.
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