

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

Verizon Pennsylvania Inc.
Verizon Services Corp.
Verizon Corporate Services Corp.

and

Communications Workers of America,
District 2-13, AFL-CIO, CLC

Case No. 04-CA-156043

Verizon Wireless

and

Communications Workers of America,
AFL-CIO

Case No. 02-CA-157403

Verizon New York, Inc.
Empire City Subway Company (Limited)
Verizon Avenue Corp.
Verizon Advanced Data Inc.
Verizon Corporate Services Group
Verizon New England Inc.
Verizon Services Corp.
Verizon New Jersey Inc.

and

Communications Workers of America
("CWA")

Case No. 02-CA-156761

Verizon Washington, D.C. Inc.
Verizon Maryland Inc.
Verizon Virginia Inc.
Verizon Services Corp.
Verizon Advanced Data Inc.
Verizon South Inc. (Virginia)
Verizon Corporate Services Corp.
Verizon Delaware Inc.

and

Communications Workers of America,
District 2-13, AFL-CIO CLC

Case No. 05-CA-156053

Verizon California, Inc. and
Verizon Federal Inc.
Verizon Florida Inc.
Verizon North LLC
Verizon Southwest Inc.
Verizon Connected Solutions Inc.
Verizon Select Services Inc.
MCI International, Inc.

and

Communications Workers of America,
AFL-CIO, District 9

Case No. 31-CA-161472

**RESPONDENTS VERIZON WIRELESS' AND THE VERIZON WIRELINE ENTITIES'
ANSWERING BRIEF TO THE UNION'S EXCEPTIONS**

Date: November 27, 2019

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INTRODUCTION

For multiple reasons, the instant matter should not be before the Board. First, the Communications Workers of America's filings are procedurally defective. They arise from an Administrative Law Judge's Order that granted the General Counsel's Motion to Withdraw Complaint Allegations and remanded those allegations to the appropriate Regional Director for dismissal. The Order, in turn, followed the Board's remand for further consideration in light of *Boeing Co.*, 365 NLRB No. 154 (2017). Now, the Union seeks to challenge the Administrative Law Judge's Order through exceptions. However, the Board's rules are clear: a party may not challenge an order dismissing complaint allegations through exceptions.

Second, and more fundamentally, the Union's filings lack substantive merit because the Administrative Law Judge did not abuse her discretion in granting the General Counsel's Motion. The Judge reviewed the parties' submissions under the *Boeing* standards, as the Board directed, and correctly concluded that the provisions at issue are all lawful, Category 1 rules. The CWA has no cogent argument to the contrary. Rather, it argues that the Board should overrule *Boeing*, raising groundless contentions that *Boeing* itself rejected. Further, the Union's arguments about the Religious Freedom Restoration Act (Union Br. at 21-25) under the "Golden Rule" (*id.* at 23) are frivolous, as is its demand that "the Board should hold this case until a new Board is appointed by a legitimate President" (*id.* at 34).

Had this case been filed under the now-controlling *Boeing* standards, the Regions would not have issued complaints, and the matter would have been dismissed at the charge stage long ago. Instead, the parties and the government have expended far too many resources on this matter over the course of the last four years, though dismissal remains the correct result. Thus, while the Board could reject the Union's present filings on procedural grounds, the far better

course would be for the Board to dismiss the filings with prejudice and end the proceedings with respect to the rules at issue.

BACKGROUND AND PROCEDURAL HISTORY

A. The Codes Of Conduct

Verizon Wireless' and the Verizon Wireline Entities' separate Codes of Conduct challenged here emphasize integrity, respect, excellence, ethical standards, and accountability.

(Ex. KK, p. 2.) The Codes affirm each Company's commitment to customers and the community:

The Verizon commitment is to put our customers first by providing excellent service and great communications experiences. This is what we do and this is why we exist. By focusing on our customers and being responsible members of our communities, we will produce a solid return for our shareowners, create meaningful work for ourselves and provide something of lasting value for society. As a result, Verizon will be recognized as a great company.

(*Id.*)

For employees, the applicable Code of Conduct is a guide to ethical and lawful business practices. (*See, e.g.*, Ex. KK, p. 8 (“This Code of Conduct is a statement of the principles and expectations that guide ethical business conduct at Verizon.”); *id.* at 4 (“That’s why we have the Verizon Code of Conduct as a resource on ethical business practices.”); *id.* (“I know I can count on you to put integrity and ethical business practices at the center of what you do.”).) While it is “not possible to describe all unethical or illegal business practices in detail” (*id.* at 36), the Codes identify examples of illegal and unacceptable conduct, such as discrimination and harassment, insider trading, and bribes and kickbacks. Employees are urged to “review the Code thoroughly,” and they are informed that they “can and should take up any questions or concerns

with [their] supervisor, [their] Human Resources representative, [and] the Ethics Office or the Legal Department.” (*Id.* at 4, 8 and *passim.*)

In mid-to-late 2015, Communications Workers of America entities filed the underlying charges, asserting Section 8(a)(1) facial challenges to portions of Verizon Wireless’ Code and the Verizon Wireline Entities’ Codes of Conduct. (Stipulation at ¶ 1, Exs. A, C, G, O, W.) Among others, the Union challenged the following Code provisions, which are in both the Verizon Wireless Code and the Verizon Wireline Entities Code:

Introduction (Speak Up)

At Verizon, we have an open door policy. Everyone should feel comfortable speaking his or her mind, particularly with respect to ethical concerns. You must report suspected and actual violations of this Code, company policy and the law. Verizon will investigate reported instances of questionable or unethical behavior.

In deciding whether a violation of the Code has occurred or is about to occur, you should first ask yourself:

Could this conduct be viewed as dishonest, unethical or unlawful?

Could this conduct hurt Verizon? Could it cause Verizon to lose credibility with its customers, business providers or investors?

Could this conduct hurt other people, such as other employees, investors or customers?

If the answer to any of these questions is “yes” or even “maybe,” you have identified a potential issue that you must report.

(Ex. KK, p. 9; Ex. CC ¶ 6(a); Ex. EE ¶ 5(a).)

Footnote 1

You are required to comply with this Code as a condition of continued employment. This Code does not give you rights of any kind, and may be changed by the company at any time without notice to you. Employment with Verizon is “at will,” which means that you or Verizon may terminate your employment, at any time,

with or without cause, with or without notice, for any reason not prohibited by law, unless governed by a collective bargaining agreement or specific contract of employment. This at will employment relationship may not be modified except in a written agreement signed by an authorized Verizon officer. This Code sets forth policies and practices applicable to all Verizon employees, except those employees of Verizon who are employed in union represented bargaining units in existence as of April 2015 and are covered by a separate Code.

(Ex. KK at 10 n.1; Ex. CC ¶ 6(b); Ex. EE ¶ 5(b).)

Section 1.8 (Employee Privacy)

You must take appropriate steps to protect confidential personal employee information, including social security numbers, identification numbers, passwords, bank account information and medical information. You should never access or obtain, and may not disclose outside of Verizon, another employee's personal information obtained from Verizon business records or systems unless you are acting for legitimate business purposes and in accordance with applicable laws, legal process and company policies, including obtaining any approvals necessary under those policies.

(Ex. KK at 14; Ex. CC ¶ 6(d); Ex. EE ¶ 5(d).)

Section 1.8.2 (Use of Recording Devices)

In many jurisdictions, use of recording devices without the consent of both parties is unlawful. Unless you are participating in an approved observation program or you have obtained prior approval from Security or the Legal Department, you may not record, photograph, or videotape another employee or access another employee's systems, records or equipment without that employee's knowledge and approval. In addition, unless you receive prior approval from the Legal Department, you may never record, photograph or videotape any customer, business provider or competitor without that person's knowledge and approval.

(Ex. KK at 14; Ex. CC ¶ 6(f); Ex. EE ¶ 5(f).)

Section 2.1.3 (Activities Outside of Verizon)

Many employees participate in an individual capacity in outside organizations (such as their local school board or homeowners'

association). Memberships in these associations can cause conflicts if they require decisions regarding Verizon or its products. If you are a member of an outside organization, you must remove yourself from discussing or voting on any matter that involves the interests of Verizon or its competitors. You must also disclose this conflict to your outside organization without disclosing non-public company information and you must disclose any such potential conflict to the Compliance Guideline. Participation in any outside organization should not interfere with your work for Verizon. To the extent that your participation infringes on company time or involves the use of Verizon resources, your supervisor's approval is required.

If you serve or are seeking to serve as a representative of Verizon on a board or committee of any outside organization, you must obtain the prior approval of your vice president level or above supervisor, and the Ethics Office.

If you serve on the Board of Directors of a public corporation, you must obtain prior approval from both your vice president level or above supervisor and your organization's president or executive vice president, and the Ethics Office. Service on the Board of Directors of a non-public corporation must be approved by the Ethics Office.

(Ex. KK at 16; Ex. CC ¶ 6(g); Ex. EE ¶ 5(g).)

Section 3.2.1 (Protecting Non-public Company Information)

You must safeguard non-public company information by following company policies and procedures and contractual agreements for identifying, using, retaining, protecting and disclosing this information.

You may not release non-public company financial information to the public or third parties unless specifically authorized by Verizon's Controller.

You may not release other non-public company information to the public, third parties or Internet forums (including blogs or chat rooms) unless you are specifically authorized to do so by a vice president level or above supervisor, and the Public Policy, Law and Security Department.

You may only disclose non-public company information to employees who have demonstrated a legitimate, business-related need for the information.

Even after the company releases information, you should be mindful that related information may still be non-public and must be protected.

Your obligation to safeguard non-public information continues after your employment with the company terminates. Without Verizon's specific written prior authorization, you may never disclose or use non-public company information.

If you suspect or are aware of any improper disclosure of non-public company information, you must immediately report it to Security or the VZ Compliance Guideline

(Ex. KK at 20; Ex. CC ¶ 6(h); Ex. EE ¶ 5(h).)

Section 4.6 (Relationships With and Obligations of Departing and Former Employees)

Your obligation to abide by company standards exists even after your employment with Verizon ends. The following requirements apply to all current, departing and former Verizon employees:

....

- You may not breach any employment condition or agreement you have with Verizon. You may not use or disclose Verizon non-public information in any subsequent employment, unless you receive written permission in advance from a Verizon vice president level or above supervisor and the Legal Department.
- You may not provide any Verizon non-public company information to former employees, unless authorized. If a former employee solicits non-public information from you, you must immediately notify Security or the Legal Department.

....

If you are concerned that a former Verizon employee is benefiting unfairly from information obtained while employed at Verizon, or may be inappropriately receiving Verizon non-public information, you should contact the VZ Compliance Guideline for guidance.

(Ex. KK at 29-30; Ex. CC ¶ 6(j); Ex. EE ¶ 5(j).)

The Code's Conclusion (Bullets One and Seven)

It is not possible to describe all unethical or illegal business practices in detail. The best guidelines are individual conscience,

common sense and unwavering compliance with all company policies, applicable laws, regulations and contractual obligations. Seek guidance if you are unsure of what to do, ask questions and report wrongdoing. Company policy strictly forbids any retaliation against an employee who reports suspected wrongdoing.

Violations of the law, the Code and other company policies, procedures, instructions, practices and the like can lead to disciplinary action up to and including termination of employment. Such disciplinary action may also be taken against supervisors or executives who condone, permit or have knowledge of improper conduct or fail to take action to prevent and detect violations, such as failure to provide training and failure to supervise subordinates' work. No one may justify an illegal or improper act by claiming it was ordered by someone in higher management. The following are examples of actions considered illegal or unacceptable:

Theft or unauthorized access, use or disclosure of company, customer or employee records, data, funds, property or information (whether or not it is proprietary);

....

Disparaging or misrepresenting the company's products or services or its employees;

....

(Ex. KK at 36; Ex. CC ¶ 6(k); Ex. EE ¶ 5(k).)

B. Initial Proceedings Below

The regions considering the Unions' charges dismissed a number of the allegations, but on October 31, 2016, the General Counsel issued a Complaint against Verizon Wireless in Case No. 02-CA-157403 (Ex. CC), and a Consolidated Complaint against the Verizon Wireline Entities in Case Nos. 02-CA-156761, 04-CA-156043, 05-CA-156053, and 31-CA-161472. (Ex. EE.) On November 4, 2016, the General Counsel consolidated the two cases. (Ex. GG.)

On January 23, 2017, during a pre-hearing conference, Administrative Law Judge Donna Dawson agreed with the General Counsel, Verizon Wireless, and the Verizon Wireline Entities and ruled that the matter should be tried on the basis of a stipulated record, rejecting the Union's contrary contentions. On March 29, 2017, the parties filed merits briefs. In theirs, Verizon

Wireless and the Verizon Wireline entities argued that the rules at issue were lawful under the Board's then-current standards for evaluating facial challenges to work rules. *See Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). The Companies also argued that the rules were lawful under standards that then-Chairman Miscimarra articulated in his dissents in *William Beaumont Hosp.*, 363 NLRB No. 162, slip op. at 15-16 (2016) (Miscimarra dissenting) and *Cellco P'ship d/b/a Verizon Wireless*, 365 NLRB No. 38, slip op. at 4-7 (2017) (Miscimarra dissenting).

On May 6, 2017, Judge Dawson issued a decision on the merits, concluding that the Codes' Speak Up provision, Footnote 1, Sections 1.8.2, 2.1.3, 3.2.1, and 4.6, and the at-issue bullets in the Codes' Conclusions were unlawful under *Lutheran Heritage Village-Livonia*. Bound by that then-applicable decision, Judge Dawson did not address Verizon Wireless' and Verizon Wireline's alternate arguments regarding Chairman Miscimarra's proposed standards.

C. Proceedings Before The Board And Remand

On June 22, 2017, the Companies filed exceptions to the Administrative Law Judge's May 6, 2017 decision on the merits, and on July 19, 2017 the Charging Parties filed cross-exceptions. In their papers, the Companies again argued (among other things) that the Board should abandon the *Lutheran Heritage* standard in favor of then-Chairman Miscimarra's proposed framework for assessing facial work-rule challenges.

On December 14, 2017, while the exceptions and cross-exceptions were pending, the Board issued *Boeing Co.*, 365 NLRB No. 154 (2017). On November 19, 2018, the Board issued a Notice to Show Cause as to why the matter should not be remanded for further proceedings in light of *Boeing*, and, on March 22, 2019, the Board remanded to Judge Dawson the complaint allegations related to the Codes' Speak Up provision, Footnote 1, Sections 1.8, 1.8.2, 2.1.3,

3.2.1, and 4.6, and the Codes' Conclusions. *See* Ex. CC ¶¶ 6 (a), (b), (f), (g), (h), (j), (k); Ex. EE ¶¶ 5(a), (b), (f), (g), (h), (j), (k).

The Board's March 22, 2019 Order did not remand all Consolidated Complaint allegations back to the Administrative Law Judge, however. In her May 6, 2017 decision on the merits, Judge Dawson had evaluated certain Consolidated Complaint allegations under standards announced in *Purple Communications, Inc.*, 361 NLRB 1050 (2014). In its remand order, the Board "sever[ed] and retain[ed]" those allegations. March 22, 2019 Order Remanding, at 2 n.2. 9 (identifying Sections 1.6, 1.8.1, and 3.4.1).

D. The General Counsel's Motion To Withdraw Allegations And The Judge's September 27, 2019 Order

Following remand, the General Counsel filed an August 21, 2019 Motion to Withdraw the remanded allegations, conceding that the Codes' Speak Up provision, Footnote 1, Sections 1.8, 1.8.2, 2.1.3, 3.2.1, and 4.6, the Codes' Conclusions are lawful under *Boeing*. *See* Motion to Withdraw at 3-4 (stating that the General Counsel's motion was filed "based upon the Board's decision in *Boeing*, and in the interest of maintaining consistency with current Board law"). On September 27, 2019, Administrative Law Judge Dawson issued an Order granting the General Counsel's motion. *See* Decision Granting the General Counsel's Motion To Withdraw Complaint Allegations In Light Of *The Boeing Co.* And Order Withdrawing Complaint Allegations. In doing so, Judge Dawson remanded the at-issue Consolidated Complaint allegations to "the appropriate Regional Director for dismissal." *Id.*

On October 23, 2019, the Union sought to appeal the Administrative Law Judge's September 27, 2019 Order by filing a document entitled Exceptions to the Decision of the Administrative Law Judge, as well as a Brief in Support. The Union did not seek the Board's permission before filing these documents.

ARGUMENT

The Board should dismiss the Union's October 23, 2019 filings with prejudice because they are procedurally defective and substantively meritless.

A. The Union's Filings Are Procedurally Defective Because The Judge's Order Is Not Subject To Challenge Through Exceptions

As an initial matter, the Union's filings are procedurally improper. Following the filing of an Administrative Law Judge's merits decision, a party may appeal by filing exceptions within 28 days of service of the order transferring the case to the Board. *See* NLRB Rules & Regs., Section 102.46. But Administrative Law Judge orders dismissing all or part of a case are subject to different rules. If the Judge's order dismisses a "complaint in its entirety," a party may file a request for review under Section 102.27 of the Rules and Regulations. *See* NLRB Rules & Regs., § 102.27 ("Unless such request for review is filed within 28 days from the date of the order of dismissal, the case will be closed."). If the Judge's order dismisses only part of a complaint, the order may be immediately appealed only by "special permission of the Board" under Section 102.26 of the Rules and Regulations.

Here, on August 21, 2019, the General Counsel filed what amounted to a partial motion to dismiss, asking the Administrative Law Judge to remand certain Consolidated Complaint allegations to the Regions for dismissal. (The Consolidated Complaint allegations that involve *Purple Communications* issues remain pending before the Board.) Judge Dawson's September 27, 2019 Order, in turn, granted the General Counsel's motion, and remanded the at-issue allegations to "the appropriate Regional Director" for dismissal. However, because the September 27 order was not a merits decision or order transferring matters to the Board, it is not subject to appeal by exceptions but rather may be appealed only by "special permission of the

Board” under Section 102.26 of the Rules and Regulations. The Union’s October 23, 2019 filings may be dismissed on that basis alone.

B. The Union’s Filings Lack Substantive Merit Because The Judge Did Not Abuse Her Discretion In Granting The General Counsel’s Motion

However, the Union’s filings should not be dismissed simply because they are procedurally defective. They are substantively meritless and should be dismissed with prejudice.

The Board reviews a Judge’s decision on a motion to withdraw complaint allegations for abuse of discretion. *See, e.g. In re Consumers Distrib. Co.*, 274 NLRB 346 (1985) (denying appeal of ALJ’s decision “because we find that the judge did not act arbitrarily or capriciously or otherwise abuse his discretion in granting the General Counsel’s motion.”). In the *Consumers Distribution* case, the General Counsel moved for permission to withdraw a complaint following a hearing before an administrative law judge; the judge granted the motion because “the ‘legal underpinnings’ of the complaint no longer existed as a result of [a] recent Board decision.” *Id.* The charging party filed a request for review pursuant to the Board’s Rules and Regulations § 102.27. *Id.* Concluding that withdraw in these circumstances reflected “a legitimate exercise of the General Counsel’s prosecutorial authority under Section 3(d) of the Act,” the Board agreed with the judge and denied the appeal. *Id.* In this case too, the Union’s exceptions – even if they were correctly captioned as an appeal – likewise should be denied and the case dismissed.

C. The Administrative Law Judge Was Correct To Apply The Boeing Standard (Exception 2)

As an initial matter, the Union’s exception challenging the Judge’s application of the *Boeing* standard can be dismissed out of hand. There is simply no argument that such application was an abuse of discretion since the Judge applied current Board law – just as the Board directed her to do in its remand order. Instead, the Union urges the Board to reverse *Boeing* but presents no cogent argument for doing so. It argues (Union Br. at 1-7) that the Board

should replace *Boeing* with a standard under which a work rule's context would be ignored, unreasonable readings would be invited, and virtually any provision could be invalidated at the whim of a union. There is no merit to the Union's proposal, which would exacerbate the problems associated with *Lutheran Heritage*, many of which were remedied through *Boeing*.

Specifically, the CWA advocates a subjective test. Under this test, the Board would be compelled to find a violation if a charging party located even a single employee who "can read the language [of a provision] as interfering with Section 7 rights." (Union Br. at 2.) But an objectively unreasonable (if not patently ridiculous) reading by a single individual is no sensible basis to invalidate a legitimate rule. With all its problems, not even the now-overruled *Lutheran Heritage* test allowed for this, and the Board should not move in this wrong direction. *See, e.g., Adtranz ABB Daimler-Benz Transp., Inc. v. NLRB*, 253 F.3d 19, 28 (D.C. Cir. 2001) (holding that a rule will not be declared unlawful based on "fanciful speculation"); *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998) (rejecting challenge to rules where "any arguable ambiguity arises only through parsing the language of the rule"), *enf'd* 203 F.3d 52 (D.C. Cir. 1999).

Illustrating the unworkability of the Union's own proposal, the CWA's brief contains (at 5-7) an extended discussion of Code of Conduct Section 1.8. That provision is a confidentiality rule (*see supra* at 4), and in a prior case the Board unanimously determined that it was lawful under the then-controlling *Lutheran Heritage* standards. *See Cellco P'ship d/b/a Verizon Wireless*, 365 NLRB No. 38, slip op. at 2 (2017). It did so because, among other things, the rule unambiguously details the types of information subject to its restrictions such that no reasonable employee could conclude that it prohibits activity protected by the Act. *See id.*, slip op. at 2 n.5 (noting that the section "specifically lists . . . social security numbers, identification numbers, passwords, bank account information, and medical information"). Nevertheless, the CWA

complains that an employee *might* read the rule to “prohibit disclosure of names, addresses, job titles, hours of work, work locations, days off, and other information.” (Union Br. at 5, *see also id.* (“It is clear that some employees, but perhaps not all employees, would understand the language and the employee privacy portion of the Unethical Code to limit the disclosure of information that otherwise could be disclosed.”).) Of course, the Union presents no argument as to how or why this might be so, particularly since Section 1.8 does not mention “names, addresses, job titles, hours of work, work locations, [or] days off.” It is a mystery, then, how *any* work rule would be lawful under the Union’s proposed standard. *Cf. Beaumont Hosp.*, 363 NLRB No. 162, slip op. at 14 (2016) (Miscimarra dissenting) (describing the “false premise” that “employers drafting facially neutral policies, rules and handbook provisions can anticipate and avoid all *potential* interpretations that may conflict with NLRA-protected activities”) (emphasis added).

D. The Union’s Arguments Regarding Specific Code Sections Are Unavailing (Exceptions 7, 8, 9, 10, 13, 15)

The Union next attempts to argue (at 7-21) that various Code provisions are unlawful as a general matter. Here, the Union largely fails to even acknowledge the *Boeing* standard, let alone demonstrate that Judge Dawson abused her discretion in agreeing with the General Counsel (and the Companies) that the at-issue Consolidated Complaint allegations are not viable under *Boeing*. Instead, the Union recycles meritless arguments from its prior cross-exceptions briefing.

1. Speak Up

With respect to the Speak Up provision, the Union isolates one sentence in the provision (“Could this conduct hurt Verizon?”) and argues that requires employees to report “[a] strike, boycott, or criticism of Verizon.” (CWA Brief at 7-8.) It does not address the legitimate reason for the Speak Up language, or even mention the *Boeing* standard in its argument.

In reality, the Codes' "Speak Up" provision is entirely lawful under the *Boeing* standards, and Judge Dawson clearly did not abuse her discretion in reaching this conclusion. (Ex. CC ¶ 6(a); Ex. EE ¶ 5(a).) This provision does three things: (1) announces an open door policy, (2) instructs employees to "report suspected and actual violations of this Code, company policy and the law" and (3) provides guidance to help assess whether conduct violates the Codes, suggesting that the reader consider whether the actions are "dishonest, unethical or unlawful" or could "cause Verizon to lose its credibility with its customers, business providers or investors." (Ex. KK, p. 9.)

The Companies have a significant and legitimate interest in all elements of the Speak Up provision. For instance, they have an obvious interest in ensuring that employees report violations of the Code or the law: to help ensure an environment of ethical business practices. *See, e.g., Boeing*, at *4 (rules that require employees "to abide by basic standards of civility" properly fall into Category 1; *cf.* Ex. KK at 4 ("That's why we have the Verizon Code of Conduct as a resource on ethical business practices.")) Companies have an equally obvious interest in prohibiting dishonest behavior, and in maintaining credibility with customers, business providers, and investors. *See* Memorandum GC 18-04, at 6 (recognizing employers' interest in "avoiding legal liability"); *id.* at 8 (rule against "creating discord with clients" lawful); *id.* at 12 ("[p]romoting honesty among employees creates a healthy working environment").

A Division of Advice Memorandum predating *Boeing* further illustrates these concepts. The rule in that case assigned "[e]very employee . . . the responsibility to ask questions, seek guidance, and report suspected violations of this Code of Conduct," as well as responsibility to report "any illegal or unethical conduct." *Boeing Co.*, Case No. 19-CA-088157, at 2-3 (Div. of Advice Feb. 28, 2013). The Division of Advice concluded that the employer's reporting

requirement permissibly targeted legal and ethical lapses, not protected, particularly when read in context of the code in which it was located:

[E]mployees would not reasonably construe that language as restricting Section 7 activity when viewed within the broader framework of the Ethical Guidelines. The Ethical Guidelines describes numerous activities that could undermine the Employer’s “honesty, impartiality, reputation,” or otherwise “cause embarrassment,” including bribery, antitrust violations, insider trading, and offering and accepting certain “business courtesies” regarding commercial customers and government employees—activities which clearly do not implicate activities protected by Section 7.

Id. at 5-6. Here, too, the Codes provide context to the Speak Up provision, underscoring the Companies’ lawful interests in prohibiting discrimination and harassment (Ex. KK, p. 11), workplace violence (*id.*), insider trading (*id.* at 17), violation of others’ intellectual property rights (*id.* at 23), and bribes, kickbacks and unlawful loans (*id.* at 29). It is those sorts of unlawful and unethical behavior that encouraged to Speak Up about.

By contrast, the Speak Up provision has no material impact on Section 7 rights. It does not, for example, state or even remotely suggest that employees must report their co-workers if they discuss their wages or complaints about their supervisors. And, after *Boeing*, speculation that employees could misconstrue “common-sense rules and requirements that most people would reasonably expect every employer to maintain” is no basis for invalidating a work rule grounded in legitimate business interests. *Boeing*, 365 NLRB No. 154, at *3; *see also id.* at *2 (criticizing *Lutheran Heritage’s* “false premise” that “unless employers correctly anticipate and carve out every possible overlap with NLRA coverage, employees are best served by not having employment policies, rules and handbooks”); Memorandum GC 18-04, at 1 (“generalized provisions should not be interpreted as banning all activity that could conceivably be included”).

2. Footnote 1

The Union mentions footnote 1 only in passing (CWA Br. at 8 (“footnote 1 ... is similarly unlawful because it compels employees to comply” with the Code)). Here the Union is wrong; footnote 1 states: “[t]his Code does not give you rights of any kind, and may be changed by the company at any time without notice to you.” (Exhibit KK, p. 10 n.1.) The footnote also contains express language referencing the fact that employees governed by a “specific contract of employment” such as a collective bargaining agreement, are not subject to the footnote’s “at will” provisions. Footnote 1 is lawful under the *Boeing* standards, and Judge Dawson did not abuse her discretion in permitting withdraw of complaint allegations regarding Footnote 1.

Verizon Wireless’ and the Verizon Wireline Entities’ interest in Footnote 1 is plain. Statements of this kind, a common provision of employee handbooks, are designed to limit the risk of legal action “by employees asserting that the employee handbook creates an enforceable employment contract.” *Windsor Care Ctrs.*, Case No. 32-CA-087540, at 3 n.5 (Div. of Advice, Feb. 4, 2013); *see also Fresh & Easy Neighborhood Market*, Case No. 21-CA-085615, at 2 (Div. of Advice Feb. 4, 2013) (recommending dismissal, notwithstanding language providing that “I understand that my employment is at-will, meaning that . . . the [Employer] has the right to . . . change the terms of my employment . . . at its discretion, at any time, with or without cause or advance notice”).

There are no countervailing Section 7 considerations. Footnote 1 does not suggest that employees have no Section 7 rights, only that the *Code of Conduct* does not create legal rights. Further, while the footnote states that the Code may be changed “without notice to you,” this statement merely informs an *employee* reader that the Companies will not provide *personalized* notice to *him or her* before making Code changes. It does not purport to disclaim the Companies’ applicable bargaining obligations, nor does it disclaim any notice obligations to the

Union in instances where it is a bargaining agent. And, particularly at the Companies, no reasonable employee could possibly conclude otherwise: the Verizon Wireline Entities and Union (and their predecessors) share a bargaining history that stretches back to before World War II. Thus, Footnote 1’s impact on Section 7 activity is marginal at best, based upon the speculative chance an employee could misread it, and it does not outweigh the Companies’ legitimate and material need to minimize the risk of implied contract litigation. *See, e.g., Boeing*, 365 NLRB No. 154, at *3 (the Act should not be read to invalidate “common-sense rules and requirements that most people would reasonably expect every employer to maintain”).

3. Section 1.8 (Employee Privacy)

Next, the Union argues that the ALJ Dawson erred by permitting the General Counsel to withdraw the allegations against the Codes’ Section 1.8. Again, the Judge did not abuse her discretion here, and the Union’s contentions are without merit.

Indeed, the Board can make relatively short work of the challenge to 1.8 – because the Board already found Section 1.8 lawful under *Lutheran Heritage*. *See Celco Partnership d/b/a Verizon Wireless*, 365 NLRB No. 38, slip op. at *2 & n.5 (concluding that when Section 1.8 is “read in context, employees would not reasonably read it to interfere with their Sec. 7 rights”).

The provision is equally lawful under the *Boeing* standards. Section 1.8 requires employees to protect indisputably “confidential personal employee information,” such as “social security numbers, identification numbers, passwords, bank account information and medical information.” (Ex. KK at 14.) Employers have an “obvious need” to maintain the confidentiality of such information. Memorandum GC 18-04, at 11. By contrast, the Act does not entitle employees “access[] or disclos[e] confidential employee records or documents.” *Id.* at 10; *see also LA Specialty Produce Co.*, 368 NLRB No. 93 (2019) (“the Act does not protect employees who divulge information that their employer lawfully may conceal.”); *Macy’s, Inc.*,

365 NLRB No. 116, at *3 (2017) (finding lawful rules that restrict the use or disclosure of social security numbers credit, card numbers, and other information “obtained from the Respondent’s own confidential records”). Again, the balance is wholly one sided, and Section 1.8 is lawful.

For its part, the Union contends (Union Br. at 9) that Section 1.8 – which requires employees to “protect confidential personal employee information, including . . . medical information” – is unlawful because employees “are entitled to disclose . . . medical conditions.” But the Act does not afford employees a protected right to disclose other employees’ confidential medical information, or other information that “their employer lawfully may conceal.” *LA Specialty Produce Co.*, 368 NLRB No. 93; *see also IBM Corp.*, 341 NLRB 1288, 1293 n. 9 (2004) (“For example, an employer may not release information about an employee’s health without authorization.”). And to the extent that the Union contends that Section 1.8 prohibits employees from disclosing their own medical information, it misreads the rule. (Ex. KK, p. 14 (prohibiting disclosure of “another employee’s personal information”).)

The Union next spends three pages arguing that the ALJ in 2017, and the Board in the *Verizon Wireless* case, read the word “including” in Section 1.8 incorrectly. (Union Br. at 10-13 (contending that the term is “illustrative and not limiting”).) Again, however, the Union parses the provision too finely. Upon reading the provision as a whole – “social security numbers, identification numbers, passwords, bank account information and medical information” – no reasonable reader could conclude that it prohibits discussions of terms and conditions of employment. *See Cellco P’ship d/b/a Verizon Wireless*, 365 NLRB No. 38, slip op. at 1-2 (2017).

4. Section 1.8.2 (Use of Recording Devices)

The CWA next argues (Union Br. at 13-14) that employees are permitted to make certain recordings at work, but once again does not address the *Boeing* balancing test that the Board

ordered Judge Dawson to apply or establish that the Judge abused her discretion in permitting the General Counsel to withdraw this allegation. Instead, in response to the fact that the Codes refer to states which limit recordings without consent, the Union argues that “very few” jurisdictions have such rules, and that in other jurisdictions at least, Section 1.8.2 is unlawful.

Notably absent from the CWA’s Brief is any reference to the “no recording” rule that the Board found lawful in *Boeing* – a rule that is *broader* than the Codes’ provision – a holding that is in direct alignment with the “no recording” rules the General Counsel deemed lawful, Category 1 rules. *See* Memorandum GC 18-04, at 5-6. The rule in *Boeing* prohibited all photography in the workplace that did not have Security’s approval. *See* 365 NLRB No. 153, at *17. Here, the Verizon rule states only that employees “may not record, photograph, or videotape another employee . . . without that employee’s knowledge and approval.” (Ex. KK, p. 14.) It is expressly aimed at ensuring compliance with the laws of “many jurisdictions”¹ that prohibit “use of recording devices without the consent of both parties.” (*Id.*)

The Companies’ rule does not violate the Act. *See* 365 NLRB No. 153, at *17 (concluding that Boeing’s broader “no-camera” rules “in general, fall into Category 1, types of rules that the Board will find lawful”); *see also* Memorandum GC-04, at 6 (June 6, 2018) (concluding that “no-recording rules . . . should be in Category 1”). In fact, the balance is wholly one sided. Verizon Wireless and the Verizon Wireline Entities have a clear and compelling interest in ensuring compliance with state laws prohibiting non-consensual recording. *See, e.g., Whole Foods Market, Inc.*, 363 NLRB No. 87 (2015) (noting that “nonconsensual recording is unlawful in many of the states”). By contrast, Section 1.8.2’s impact on Section 7 rights, if any,

¹ Verizon Wireless and the Verizon Wireline Entities operate in many such jurisdictions. *See, e.g.,* Cal. Penal Code §§ 631, 632-632.7, 636 (2014); Fla. Stat. Ann. § 934.03(3)(d) (2015); 720 I.L.C.S. § 5/14-2(a)(2) (2016); Md. Code Ann., Cts. & Jud. Proc. § 10-402(c)(3) (2015); Mass. Gen. Laws Ann. ch. 272, §§ 99(B)(4), 99(C)(1) (1998); Mich. Comp. Laws Ann. § 750.539(c) (2016); Mont. Code Ann. § 45-8-213 (2017); Nev. Rev. Stat. §§ 200.620, 200.650 (2016); N.H. Rev. Stat. Ann. § 570-A:2(I-a) (2017); 18 Pa. Cons. Stat. Ann. §§ 5702, 5704 (2016); Wash. Rev. Code Ann. § 9.73.030 (2017).

is modest. This is because the “vast majority of images or videos blocked by the policy do not implicate any NLRA rights” *Boeing*, 365 NLRB No. 153, at *19, and because “no-recording rules may *promote* Section 7 activity by encouraging open discussion and exchange of ideas.” Memorandum GC 18-04, at 6. Most obviously, the Act does not permit employees to make non-consensual recordings that violate state law. *See id.* (stating that employers’ “legitimate and substantial interest in limiting recording and photography on their property” is grounded in concerns including “avoiding legal liability”).

Further, and even assuming *arguendo* that the Act protects the non-consensual recordings in some circumstances (where they are not barred by state law), such activities are (at best) peripheral to the Act. *See Boeing*, 365 NLRB No. 153, at *19 (finding the impact of a broader, no-camera rule on the exercise of Section 7 rights “comparatively slight”); Memorandum GC-04, at 5-6 (“photography is not central to protected concerted activity”). Indeed, the Board has recognized that recording devices – whether open or surreptitious – are far more likely to *chill* Section 7 activities than to foster them. *See id.* at 6.²

5. Section 2.1.3 (Activities Outside of Verizon)

The Union’s assertions regarding Section 2.1.3 similarly fail. Here, the Union generally contends (Union Br. at 14-18) that the rule – a conflict of interest provision – is reasonably read as limiting participation in labor organizations and limiting other protected activities. Not so, and the Judge did not abuse her discretion in permitting withdraw of complaint allegations on 2.1.3

Indeed, employers have a legitimate and obvious interests in avoiding actual and apparent conflicts of interest, such as those that may arise if a Verizon Wireless employee – acting as a

² *See also, Bartlett-Collins Co.*, 237 NLRB 770, 773 n. 9 (1978) (noting labor experts’ opinions that “the presence of a reporter during contract negotiations has a tendency to inhibit the free and open discussion.”), *enf’d* 639 F.2d 652 (10th Cir.); *PA Tel. Guild (Bell Tel.)*, 277 NLRB 501, 501-02 (1985) (recording devices in grievance meetings “have a tendency to inhibit free and open discussions”).

school board member – voted on a wireless contract for her district. As the General Counsel has noted:

Employers have a legitimate and substantial interest in preventing conflicts of interest such as nepotism, self-dealing, or maintaining a financial interest in a competitor. Such usurpation of corporate opportunities, pitting the pecuniary interest of employees against their employer's, can have a serious detrimental effect on an employer's revenue. Conflicts of interest can also undermine a company's reputation and integrity, and cause employees to doubt the fairness of personnel actions.

Memorandum GC 18-04, at 15. On the other hand, the Board has “historically interpreted rules banning disloyalty and blatant conflicts of interest to not have any meaningful impact on Section 7 rights.” *Id.*

It is true that Section 2.1.3 uses the phrase “outside organizations,” and that a union is an organization outside Verizon Wireless and the Verizon Wireline Entities. But so is a school board and a home owners' association, the two types of outside organizations specifically mentioned in the rule, along with any number of other charitable and civic organizations such as a college alumni association, a civic theater group, or a youth hockey program. Given that context, there is no plausible basis to suspect that employees would read Section 2.3.1 as applying anything other than membership in outside charitable or civic organizations, let alone to restrict Section 7 rights. *LA Specialty Produce Co.*, 368 NLRB No. 93 (noting that under *Boeing*, rules must be “reasonably interpreted”). This is particularly true given the fact that, between them the Verizon Wireline Entities and Verizon Wireless employ thousands of union-represented employees. *See, e.g., Local Union No. 710*, 333 NLRB 1303 (2001) (adopting judge's dismissal of complaint allegations based, in part, on application of the *ejusdem generis*

principle).³ And, again, a speculative possibility that employees incorrectly could read a legitimate provision as somehow impacting Section 7 rights is no basis under *Boeing* to invalidate a common-sense work rule.

The Union's additional claims are similarly without merit and do not compel a finding that the Judge abused her discretion. For instance, the Union claims (CWA Except. Br. at 17) that Section 2.1.3 unlawfully prohibits employees from disclosing "non-public company information" to an outside organization. But as the Board has recognized, *see Cellco P'ship d/b/a Verizon Wireless*, 365 NLRB No. 38, slip op. at 1-2 (2017) – the Code defines and contextualizes this term such that no reasonable employee would construe it as precluding discussions of wages, hours, and working conditions.

The Union further contends (Union Br. at 16-17) that Section 2.1.3 is unlawful because it prevents employees from "going to work for another competitor as a union organizer." But the Act does not provide employees a protected right to simultaneously hold jobs with two different companies, even if the employee hopes to organize the second company. *See Thermal Tech, Inc.*, Case No. 19-CA-068292 (Div. of Advice May 16, 2012) ("Section 7 does not provide a right to work simultaneously for more than one employer.").

³ People use the principles of *ejusdem generis* (things of the same kind) and *noscitur a sociis* (it is known from its associates) "all the time, to understand ordinary speech, without realizing that they are doing so." *U.S. v. Holmes*, 646 F.3d 659, 665 (9th Cir. 2011) (Kleinfeld, C.J., concurring). For example, When the waiter says "would you like a cocktail? wine? anything else?," we know he is asking for a drink order, not a dessert order, and not whether you would like a new car, even though a new car would fall within the "anything else" category were the phrase considered according to dictionary meaning without regard to context. And when the grade school boy tells his mother "we have to bring a ruler, a pencil, paper, and other stuff to school tomorrow," we know he is talking about school supplies, not his pet puppy. Watching an old movie recently, I saw the words "roll film" on the screen, and quickly realized they meant "start the movie," not "120 film for cameras." The only way to tell that "roll" was a verb, not an adjective, was context.

Id.

The Union also asserts that Section 2.1.3 would prohibit employees from organizing boycotts or seeking public support in connection with their labor disputes. Not so. Section 2.1.3 details the types of organizations that it was intended to cover – civic groups such as “local school board[s]” and “homeowners’ associations,” as well as “public” and “non-public corporation[s].” (Ex. KK, p. 16.) Indeed, the fact that Section 2.1.3 is couched in the Codes’ chapter that generally prohibits legal and ethical conflicts (e.g., nepotism, insider trading, employment with vendors, etc.) removes any lingering doubts.

Finally, the Union briefly asserts (CWA Answ. Br. at 8) that Section 2.1.3 violates the Religious Freedom Restoration Act. In the interest of brevity, the Companies address this argument below (*infra* at 25-26).

6. Section 3.2.1 (Protecting Non-Public Company Information) and Section 4.6 (Relationships With And Obligations of Departing and Former Employees)

In attacking Sections 3.2.1 and 4.6, the Union primarily takes issue with the term “non-public company information.” (Union Br. at 18-20.) Neither provision is unlawful, and the Union falls far short of demonstrating that the Judge abused her discretion in allowing withdrawal of these complaint allegations under *Boeing*. Indeed, the Codes define this sort of information as (1) that which could lead to a violation of insider trading laws, and (2) third-party information entrusted to the Companies. *See id.* at 20 (Code section immediately preceding Section 3.2.1). (Ex. CC ¶ 6(h), (j); Ex. EE ¶ 5(h), (j).)

Verizon Wireless and the Verizon Wireline Entities have a significant interest in preventing insider trading and a significant interest in maintaining the confidentiality of unlisted telephone numbers and other confidential information entrusted to the respective Companies. *See, e.g.* Memorandum GC-04, at 9-10 (June 6, 2018) (“rules banning the discussion of confidential, proprietary, or customer information that make no mention of employee or wage

information” are lawful, Category 1 rules.); *see also See K-Mart*, 330 NLRB 263, 263-64 (1999) (recognizing lawfulness of rule “designed to protect the Respondent’s legitimate interest in maintaining the confidentiality of its private business information”); *Legacy Charter LLC*, Case No. 28-CA-201248 (ALJ Aug. 16, 2018) (applying *Boeing* to find lawful a confidentiality provision that restricted disclosure of information “not generally known about the School”).

There are no serious countervailing considerations. Employees do not have a Section 7 right to disclose proprietary information or information that customers entrust to their employer. *Macy’s, Inc.*, 365 NLRB No. 116, at *3 (2017). Further, the rules contain no language limiting communication about terms and conditions of employment or other matters protected by Section 7, and, once again, speculation that employees could read such a limitation into the rules does not tilt the *Boeing* balance. *See supra* at 17-18.

7. Conclusion

The Union argues (Union Br. at 20-21) that because the previously discussed provisions of the Code are unlawful, so too is the Conclusion. Instead, the Conclusion is lawful under the *Boeing* standards, and it was no abuse in discretion for the Judge to reach this finding.

The first bullet at-issue states that “[t]heft or unauthorized access, use or disclosure” of “employee, records, data, funds, property or information” is prohibited. (Ex. KK, p. 36.) The analysis here is the same applicable to Sections 1.8 (*supra* at 17-18). The Companies have a clear interest in preserving and protecting the confidentiality of this information. On the other hand – and particularly since the bullet simply restates the lawful requirements of Section 1.8 – speculation that employees could misread the rule does not outweigh the Companies’ interests.

The second at-issue bullet states that “[d]isparaging or misrepresenting the company’s products or services or its employees.” (Ex. KK at p. 36.) This bullet easily falls within *Boeing*’s Category 1. The Companies’ interest in preventing product disparagement is obvious.

Their interest in prohibiting employees from disparaging one another is no less so. *See* Memorandum GC 18-04, at 15 (noting a company’s “legal responsibility to maintain a workplace free of unlawful harassment, its substantial interest in preventing violence, and its interest in avoiding unnecessary conflict or a toxic work environment that could interfere with productivity. . . and other legitimate business goals”). On the other hand, Section 7 does not protect product disparagement. *See In re Allied Aviation Serv. Co.*, 248 NLRB 229 (1980) (recognizing that Section 7 does not permit employees to “disparage[] or vilif[y]” their “employer’s product or reputation”). And a ban on employees demeaning one another has a comparatively slight impact on Section 7 rights. *See* Memorandum GC-04, at 5 (“Employees are capable of exercising their Section 7 rights without resorting to disparagement of their fellow employees; thus the impact of such a rule on NLRA-rights is comparatively slight.”); *Adtranz ABB Daimler-Benz Transp., N.A., Inc. v. NLRB*, 253 F.3d 19, 27-28 (D.C. Cir. 2001) (“It defies explanation that a law enacted to facilitate collective bargaining and protect employees’ right to organize prohibits employers from seeking to maintain civility in the workplace.”).

E. The Union’s Remaining Exceptions Deserve Scant Attention

1. The Union’s RFRA And Golden Rule Arguments Are Baseless (Exception 14)

Moving on, the Union asserts (Union Br. at 21-25) that the Administrative Law Judge erred because the Code violates the Religious Freedom Restoration Act and, apparently (*id.* at 23 n.11), the Golden Rule. *Cf.* Wikipedia, *Golden Rule*, [https:// en.wikipedia.org/wiki/Golden_Rule](https://en.wikipedia.org/wiki/Golden_Rule) (last visited November 21, 2019) (“The Golden Rule is the principle of treating others as you want to be treated.”). For multiple reasons, the Administrative Law Judge did not abuse her discretion in rejecting these baseless contentions.

First, the Board has no jurisdiction over RFRA claims or claims under the Golden Rule. *See* 29 U.S.C. § 160(a) (“The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce.”); *Herbert F. Darling, Inc.*, 287 NLRB 1356, 1361 (1988) (noting “the Board’s statutory duties to enforce the NLRA and leave the enforcement of other statutes to other forums designated for that purpose”), *enf’d. sub nom Ewing v. NLRB*, 861 F.2d 353 (2d Cir. 1988).

Second, even if the Board had jurisdiction over RFRA and/or Golden Rule claims, which it does not, the Complaint includes no allegation that Verizon Wireless or the Verizon Wireline Entities violated either. *See Zurn/N.E.P.C.O.*, 329 NLRB 484 (1999). Nor could it. Since the Companies are not part of the federal government, they are not subject to RFRA. *See* 42 U.S.C. § 2000bb-1; 42 U.S.C. § 2000bb-2(1). The Golden Rule – while a salutary principle – is not actually a law. *See* Wikipedia, *Golden Rule*, https://en.wikipedia.org/wiki/Golden_Rule (last visited November 22, 2019) (“It is a maxim that is found in many religions and cultures.”).

Third, the Codes do not even theoretically conflict with RFRA or the Golden Rule. The Codes do not burden the exercise of religion. To the contrary, their only reference to religion is in Section 1.2, which *prohibits* discrimination and harassment on the basis of religion.⁴ Likewise, as a “resource on ethical business practices” (Ex. KK, p. 4), the Codes are fully consistent with the Golden Rule.

⁴ Although the Board need not reach this issue, the Union’s underlying premise– that a violation of the Act is a violation of “core religious activity” (Union Br. at 21-22) – is wrong. The Act is a civil law, not a Canon law, and an employee’s decision to engage or not engage in Section 7 activity is a civic matter, not a religious one. Were it otherwise, and the Act purported to establish a religion, it would be unconstitutional. *See* U.S. CONST., AMEND. 1 (providing that “Congress shall make no law respecting an establishment of religion”).

2. The Judge’s September 27 Order Did Not Address Trial Procedure, But Trying This Case *Via* Stipulation Was The Correct Procedure In Any Event (Exceptions 3, 4, 5)

The Union also challenges the Judge’s decision not to reopen the record, but the Order did not decide this issue. Instead, on August 2, 2019, Judge Dawson issued her Amended Order Denying the Charging Parties’ Request to Hear Additional Witness Testimony and Otherwise Reopen the Record and Amending Briefing Schedule. The Union did not seek appeal of that decision, and there is no basis for the Board to review that decision now.

In any event, it was not error for the Judge to decline to reopen the record in this case following the *Boeing* decision, and the Union makes no persuasive arguments to the contrary. Indeed, while the Union asserts (Union Br. at 25-32) that the ALJ erred by trying the case via stipulation and declining to allow testimonial evidence, its arguments consist almost entirely of block quotes from a brief filed years ago – and under the standards of *Boeing*, the Union is incorrect.

Here, the record before the ALJ contained everything needed to evaluate (1) whether each at-issue rule, when reasonably interpreted, would have any impact on Section 7 right, and (2) if so, whether such impact is outweighed by legitimate justifications. *Boeing*, 365 NLRB No. 154, *slip op.* at 3. And, the Codes themselves provide justifications for each provision, eliminating any need for additional presentation of evidence. (*See, e.g.* Code at 2.1.3 (explaining that membership in outside organizations such as local school boards or homeowners’ associations “can cause conflicts if they require decisions regarding Verizon or its products”); *see also* Code at 3.2.1 (requiring that employees “safeguard non-public company information by following company policies and procedures and contractual agreements for identifying, using, retaining, protecting and disclosing this information”).

The Union's various arguments that the case should not have been tried on a stipulated record are without merit. First, the Union claims that it should be permitted to introduce oral testimony and other evidence as to how Respondents have applied the rules at issue in order to provide "context." (Union. Br. at 28 ("[I]f the employer has interpreted [rules] to encompass Section 7 activity, then it is more likely that employees would so interpret them.")). But this is nothing more than an attempt to raise an unlawful application theory of liability not advocated by the General Counsel. It is well settled that a union may not expand a case to include additional theories not raised in a complaint. *See Roadway Express, Inc.*, 355 NLRB 197, 201 n.16 (2010); *Zurn/N.E.P.C.O.*, 329 NLRB at 486.

Second, the Union fails with its contention (Union Br. at 30) that it should be entitled to present evidence on "facts that need to be presented in terms of the scope of a remedy." Any factual issues related to a potential remedy become relevant only if a violation can be established in this case. There was no need for the Union to present live testimony on such issues before the ALJ.

Finally, the Union misses the mark with its argument (Union Br. at 7) that it "was not afforded an opportunity to provide any rebuttal evidence." They misapprehend the test. Under it, the Union's burden is to argue that a rule's purported impact on Section 7 rights outweighs its justifications, which is a legal rather than a factual question. Further, the purpose of the rules at issue is obvious, expressly stated in the text, or both. It is not clear what "rebuttal evidence" the Union believes might have been relevant in that context. The Union has never alleged that the rules were applied to restrict Section 7 rights, for example, or that the rules were enacted in response to protected activity.

3. The Union’s Contentions Regarding Remedies Are Misplaced (Exception 16)

The Union also claims (Union Br. at 32-34) that the Judge erred by failing to award a number of draconian remedies (including those not authorized by the Act). However, because it was not an abuse of discretion for the Judge to grant the Motion to Withdraw Complaint Allegations, there was obviously no abuse of discretion in declining to award remedies. The Codes are lawful, and no remedy is warranted (other than dismissal of the Complaint).

4. The Union Failed To Even Attempt To Support A Number Of Contentions (Exceptions 1, 6, 11, 12)

Finally, the Union raises a series of exceptions not supported – or even argued – in its brief. These exceptions are frivolous and should be summarily rejected. For example, in Exception 1, the Union apparently challenges Board Members Emmanuel and Ring’s decision not to recuse themselves from the Board’s remand order, but this issue was not before Judge Dawson and not subject to exception to her Order now. Exception 11 apparently contends that the ALJ was in error to include the words “IT IS SO ORDERED,” but without context or argument, this exception is meaningless. The same is true for Exception 12, which challenges the date of the Order. Likewise, Exception 6 apparently challenges the General Counsel’s Motion to Withdraw, but here the ALJ is just reciting the procedural history. Each of these “exceptions” should be rejected.

CONCLUSION

For reasons stated here, the Board should affirm the Judge’s Order and permit remand of the consolidated cases to the Region for dismissal.

Dated: November 27, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of November, 2019, I electronically filed the foregoing document. In addition, a copy of the document was sent via email to the following:

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