

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

**KAISER FOUNDATION HEALTH PLAN,
INC., KAISER FOUNDATION HOSPITALS,
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP and THE PERMANENTE
MEDICAL GROUP, INC.**

and

Case 32-CA-169979

**ENGINEERS AND SCIENTISTS OF CALIFORNIA,
IFPTE LOCAL 20, AFL-CIO & CLC**

**ORDER GRANTING CHARGING PARTY'S
MOTION TO WITHDRAW UNFAIR LABOR PRACTICE CHARGE**

This matter is before me on Charging Party Engineers and Scientists of California, IFPTE Local 20 (the Union's) Motion to Withdraw the underlying unfair labor practice (ULP) charge that formed the basis of this case. For the reasons set forth below, the Motion is GRANTED.

This case was decided after a hearing held on July 11, 2017 and September 19, 2017. On August 24, 2018, I issued my decision where I found that the Permanente Medical Group, Inc. (PMG), Kaiser Foundation Hospitals (KFH), Southern California Permanente Medical Group (SCPMG), and Kaiser Foundation Health Plan, Inc. (KFHP) (collectively, Respondents) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by maintaining and enforcing two provisions in their Electronic Assets Usage policy that: (1) limited employees' personal use of Respondents' email system during non-working time; and (2) prohibited employees from sending "mass" personal messages on non-working time unless there is a clear business need and only if prior authorization from management was obtained.

In evaluating the lawfulness of Respondents' rule restricting employees' use of its email system, I applied the then-applicable analytical framework set forth in *Purple Communications*, 361 NLRB 1050 (2014). The parties appealed my decision to the National Labor Relations Board (NLRB or the Board).

While this case was on appeal, on December 16, 2019, the Board issued its decision in *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino*, 368 NLRB No. 143 (2019), which overturned *Purple Communications*, supra. The new analytical standards in *Caesars Entertainment* applied retroactively to this matter.

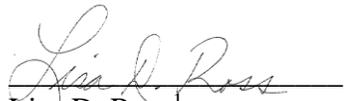
In light of these developments, on March 20, 2020, the Board remanded this case to the undersigned to analyze the aforementioned provisions of Respondents' Electronic Assets Usage policy in light of *Caesars Entertainment*.

In response to the Board's remand, on April 3, 2020, Charging Party Union moved to withdraw the underlying ULP charge that gave rise to this complaint. Counsel for the General Counsel and Respondents does not object to the Union's motion.

Accordingly, having duly considered the Union's and with good cause having been shown,

IT IS ORDERED that the motion to withdraw the underlying ULP charge in this case is **GRANTED**. This matter shall be remanded to the Regional Director for Region 32 forthwith for further processing consistent with this Order and/or to administratively close this case.

Date: April 7, 2020, San Francisco, California



Lisa D. Ross¹
Administrative Law Judge

Served via electronic mail upon the following:

For the General Counsel:

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also to:

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¹ At the time of the trial, my name was Lisa D. Thompson. However, since the hearing and appeal to the Board, I got married and have legally changed my name to Lisa D. Ross.

DiCrocco, Brian

From: DiCrocco, Brian
Sent: Tuesday, April 7, 2020 2:00 PM
To: Kwon, Christy; Lindsay, Michael R.; Anderson, Alicia; dlucido@ifpte20.org; april.l.weaver@kp.org
Cc: Gomez, Doreen E.; Lam, Ida
Subject: 32-CA-169979 - KAISER FOUNDATION HEALTH PLAN : ORDER GRANTING CHARGING PARTY'S MOTION TO WITHDRAW UNFAIR LABOR PRACTICE CHARGE
Attachments: Kaiser Foundation Health Plan Order Appov Withdrawal of Charge w prej.pdf

Dear Counsel,

Please see the attached document.

Brian C. DiCrocco, Legal Tech.
NLRB Division of Judges San Francisco
628-221-8821