

RKE  
Silver Spring, MD

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HOLY CROSS HEALTH d/b/a HOLY  
CROSS HOSPITAL

and

Cases 05-CA-182154  
05-CA-187452

NATIONAL NURSES ORGANIZING  
COMMITTEE/NATIONAL NURSES  
UNITED (NNOC/NU), AFL-CIO

NOTICE TO SHOW CAUSE

On July 21, 2017, Administrative Law Judge Michael A. Rosas issued a decision concluding, in part, that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by maintaining a policy that (1) overbroadly defined “solicitation” as “[a]pproaching a person for the purpose of . . . promoting, encouraging, or discouraging participation, support, or membership in any organization; or promoting a doctrine or belief” and (2) prohibited solicitation using the Respondent’s email system. To find the first violation, the judge applied the “reasonably construe” prong of the Board’s decision in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), and to find the second violation, the judge applied the standard set forth in *Purple Communications, Inc.*, 361 NLRB 1050 (2014). The judge also addressed other alleged unfair labor practices.

The Board has since overruled both the *Lutheran Heritage* “reasonably construe” test and *Purple Communications*, and the Board announced new standards that apply retroactively to all pending cases. *Boeing Co.*, 365 NLRB No. 154, slip op. 14-17 (2017); *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, 368 NLRB No. 143, slip op. at 8-9 (2019). Under *Boeing*, a facially neutral rule or policy must be evaluated

by weighing the asserted business justifications for the rule against the rule's potential interference with employee rights under the Act, viewing the rule or policy from the employees' perspective. *Id.*, slip op. at 3. In *Caesars Entertainment*, the Board held, in relevant part, that “an employer does not violate the Act by restricting the nonbusiness use of its IT resources *absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other.*” *Id.*, slip op. at 8 (emphasis added). The parties have not had an opportunity to address how, if at all, *Boeing* or the exception to the rule of *Caesars Entertainment* apply to the facts of this case.

Accordingly, having duly considered the matter,

**NOTICE IS GIVEN** that cause be shown, in writing, filed with the Board in Washington, D.C., on or before April 22, 2020 (with affidavit of service on the parties to this proceeding), why the identified complaint allegations should not be severed and remanded to the administrative law judge for further proceedings consistent with the Board's decisions in *Boeing* and *Caesars Entertainment*, including reopening the record if necessary. Any response should address whether a remand would affect the Board's ability to resolve the remaining complaint allegations, including whether those allegations should be severed and retained or instead included in the remand. Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C., April 8, 2020.

By direction of the Board:

Roxanne L. Rothschild

Executive Secretary