

DAVID A. ROSENFELD, Bar No. 058163
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
Telephone (510) 337-1001
Fax (510) 337-1023
E-Mail: drosenfeld@unioncounsel.net

Attorneys for Charging Party
SARA PARRISH, an Individual

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS,

Respondent,

and

SARA PARRISH, an Individual,

Charging Party.

No. 28-CA-145221

**RESPONSE TO NOTICE
TO SHOW CAUSE**

This response is submitted in response to the Board's Notice to Show Cause issued on May 18, 2020.

First, Charging Party requests the recusal of all Board members. Member Emanuel should particularly be recused because this involves *Caesars Entertainment* and *Purple Communications*. As we've made clear repeatedly, his firm continues to represent Purple Communications and related litigation.

The Board's Notice deals with Sections 1.6 and 3.4.1 of the employer's 2014 and 2015 Codes of Conduct.

In order to apply the *Boeing* standard, there must be some employer justification. We propose to show on remand to the Administrative Law Judge that there is no business

justification for either of these rules. In fact we will show that these rules are contrary to the core business model of this employer

For example, Section 1.6 of the Code of Conduct provides, in part, that “the use of company resources at any time (emails, fax machines, computers, telephones, etc.) to solicit or distribute, is prohibited.” We intend to show that employees use company resources all the time “to solicit or distribute” without objection and for very important business purposes. Employees distribute business-related material all the time. They distribute material related to wages, hours and working conditions all the time. They distribute information about products and services all the time. There is no business justification to prohibit that which the employer not only allows but encourages.

The same is true with respect to “solicit.” Employees solicit among themselves all the time. They solicit ideas, assistance, help, time off, training etc. They solicit from supervisors and managers. There is no business justification to prohibit solicitation which is encouraged and allowed by the employer. Soliciting is a necessary part of the functioning of any business. If the rule were to prohibit solicitation to support trump and his cronies, that would have a legitimate business justification. But the rule isn’t that narrow.

The Charging Party should be allowed to show that there is no business justification and, in fact, that there is a business justification to allow employees “to solicit or distribute” literature on work time and non-work time for many purposes related to wages, hours and working conditions.

This is a retail store. Its employees are engaged in solicitation all the time, meaning sales work. Nothing could be more clearly encompassed within the concept of solicitation than sales work, which are the core activities of these employees. The Board, on May 29, held that the word “solicitation” in a non-solicitation rule encompassed this kind of solicitation. See *Wynn Las Vegas*, 369 NLRB No. 91 (May 29, 2020). The Board adopted a Broad definition of solicitation from a dictionary definition. See fn. 9. That definition of no solicitation

encompasses the prohibition against solicitation contained in this rule. But this employers requires employees to engage in solicitation all the time

We note moreover that this rule doesn't define solicitation as, for example, soliciting for outside organizations. It just uses the broadest possible reference to prohibit all solicitation. The Board's Decision in *Wynn Las Vegas* changes the analysis. The Board may have thought it was benefiting employers. But what it did was overreach, disrupting many non-solicitation policies that are broadly defined, such as this one. Remand is appropriate so that the Charging Party can provide evidence that the employees who are subject to this rule engage in solicitation all the time at the company's behest and, in fact, do so as part of their job requirement.

Similarly, Section 3.4.1 should be remanded to the Administrative Law Judge. The Charging Party will show that there are company policies that are unlawful. Thus, using company systems to communicate about wages, hours and working conditions where the company policies prohibit such conduct cannot be also made unlawful. To phrase this another way, their unlawful policies restricting employees from using their Section 7 rights, particularly with communication about those rights is unlawful. It is therefore unlawful to prohibit use of company systems where the company policy itself is unlawful.

Additionally, 3.4.1 prohibits "[c]ommunications primarily directed to a group of employees inside the company on behalf of an outside organization." We shall show that the employer distributes to groups of employees on behalf of many outside organizations. Employees do this. There's no business justification to limit employees when the employer encourages employees and managers to use company resources to communicate on behalf of various outside organizations. Those outside organizations include vendors, business groups, and promotional opportunities. The word organization is not limited to any kind of organization.

For the reasons suggested above, these rules should be remanded to an Administrative Law Judge to allow the Charging Party to prove not only the lack of a business justification for those rules but, in fact, the employer has a strong business justification to allow the kinds of

communications which are prohibited by the rules. Alternative the rules should be remanded to determine if the employer can offer any legitimate business justification.

Dated: June 1, 2020

Organize and Resist,

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ David A. Rosenfeld
 David A. Rosenfeld

Attorneys for Charging Party

139604\1086198

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On June 1, 2020, I served the following documents in the manner described below:

RESPONSE TO NOTICE TO SHOW CAUSE

- (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Mr. E. Michael Rossman
Ms. Elizabeth L. Dicus
Jones Day
P.O. Box 165017
Columbus, Ohio 43216-5017
emrossman@jonesday.com
eldicus@jonesday.com

Mr. Alexander J. Gancayco
Counsel for the General Counsel
National Labor Relations Board, Region 28
2600 N. Central Ave, Suite 1400
Phoenix, AZ 85004-3099
alexander.gancayco@nlrb.gov

Mr. Cornele Overstreet
National Labor Relations Board, Region 28
Regional Director
2600 N. Central Ave, Suite 1400
Phoenix, AZ 85004-3099
cornele.overstreet@nlrb.gov

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 1, 2020, at Alameda, California.

/s/Karen Kempler
Karen Kempler