

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

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

Respondents

and

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

Charging Party

Case No. 04-CA-156043

Verizon Wireless

Respondent

and

Communications Workers of America,  
AFL-CIO

Charging Party

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.

Respondents

and

Communications Workers of America  
("CWA")

Charging Party

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.

Respondents

and

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

Charging Party

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.

Respondents

and

Communications Workers of America,  
AFL-CIO, District 9

Charging Party

Case No. 31-CA-161472

**VERIZON WIRELESS' AND VERIZON WIRELINE ENTITIES'**  
**MOTION<sup>1</sup> FOR REPLY AND REPLY INSTANTER IN SUPPORT OF THE**  
**COMPANIES' RESPONSE TO THE BOARD'S NOTICE TO SHOW CAUSE**

Charging Parties' Response to the Board's June 24, 2020 Notice to Show Cause

demonstrates that remand of the Code of Conduct allegations pertaining to Sections 1.6 or 3.4.1

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<sup>1</sup> Verizon Wireless and the Verizon Wireline Entities respectfully request that the Board permit them a brief reply to the Charging Party's response. The reply will assist the full and fair consideration of this matter.

would serve no useful purpose and that, instead, Charging Parties seek remand for an improper purpose. Two points bear this out.

First, the initial sentence of Charging Parties' response demonstrates that their only aim at this point is to delay final resolution of this matter. *See* Charging Parties' Response to Notice to Show Cause, at 3 (seeking to "delay" resolution of this matter until "after the November election"). This statement echoes earlier comments that Charging Parties' counsel gave to the press.<sup>2</sup> *See* Julia Arciga, *NLRB OKs Searching Workers' Cars, Company Devices* (June 25, 2020), Law360, <https://www.law360.com/articles/1286759/nlr-oks-searching-workers-cars-company-devices> (emphasis added) (reporting that counsel for the Charging Parties "would likely file a motion to reconsider in order to delay the case."). To state the obvious, a party's strategic desire for delay is not a legitimate basis for the party to seek remand or undertake any other action in a pending case. *See, e.g.*, Fed.R.Civ.P. 11(b)(1) (prohibiting filings submitted for "any improper purpose, such as to . . . cause unnecessary delay"); Cal. Rule of Prof. Conduct 3.2 ("In representing a client, a lawyer shall not use means that have no substantial purpose other than to delay or prolong the proceeding or to cause needless expense."); NY Rule of Prof. Conduct 3.2 ("In representing a client, a lawyer shall not use means that have no substantial purpose other than to delay or prolong the proceeding or to cause needless expense."); PA Rules of Prof. Conduct 3.2 ("A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."); MD Attorneys' Rules of Prof Conduct 19-303.2 ("An attorney shall make reasonable efforts to expedite litigation consistent with the interests of the client.");

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<sup>2</sup> The desire for delay is further reflected in Charging Parties' frivolous claim that the Board's Notice to Show Cause should not have issued because "the parties . . . have 28 days to file a Motion for Reconsideration." Response to Notice to Show Cause at 3. Charging Parties cite no authority in support of this baseless proposition, because there is none.

*cf.* NLRB Rules & Regs. § 102.177 (requiring attorneys to “conform to the standards of the ethical and professional conduct required of practitioners before the courts”).

Second, the arguments that Charging Parties hope to raise on remand are transparently baseless, and do not support further delay in the final resolution of this matter. To the contrary, as Verizon Wireless and the Verizon Wireline Entities demonstrated in their Response to the Notice to Show Cause, in a case such as this involving a challenge to work rules related to non-business use of the employer’s email systems, remand is unwarranted unless a party: (a) states an intent to argue that the rules are subject to the “rare” exception to the *Register Guard/Caesars Entertainment* rule, and (b) makes a substantial proffer suggesting that such an argument would not be a futility. *See T-Mobile USA, Inc.*, 369 NLRB No. 90 (2020) (declining remand where “there is no indication in the record that the Respondent’s employees do not have access to other reasonable means of communication”). Charging Parties did not do this.

Instead, Charging Parties suggest that they will use remand to argue that the Companies *applied* Code of Conduct Sections 1.6 and 3.4.1 in a discriminatory fashion. *See* Response to Notice to Show Cause at 3-4 (alleging, for example, that “Verizon allows employees to engage in solicitation within the meaning of Section 1.6,” and “Verizon routinely approves political activities in the workplace.”); *see also id.* at 4 (noting that Charging Parties permit employees to use email systems “in the normal functioning of the business”). However, the General Counsel’s Complaint alleges only that the Companies’ maintenance of Sections 1.6 and 3.4.1 violates the Act, not that the Companies applied the rules in an unlawful fashion. *See* Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, at ¶¶ 5, 6. Charging Parties have no power to expand the General Counsel’s theory of the case, and their attempts to do so over the years have been repeatedly rejected. *See, e.g.* ALJ Decision JD-40-17, at 2 (May 25, 2017) (“I

concluded that the Union’s objections to deciding these consolidated cases on a stipulated record were without merit because the Union sought to present testimonial evidence on issues not raised in the complaint or not in dispute.”); *see also* Jan. 23, 2017 Hearing Transcript, at 28:3-5 (Judge Dawson: “Since ... the case only concerns the maintenance of the rules of conduct, I find that the stipulated facts are sufficient on which to make a decision”). The Board should not remand the matter so that the Charging Parties may once again attempt to revise the long-standing theory of this case. *See, e.g., Zurn/N.E.P.C.O.*, 329 NLRB 484, 486 (1999) (providing that a charging party may not “enlarge upon or change the General Counsel’s theory of the case”); *see also Roadway Express, Inc.*, 355 NLRB 197, 201 n.16 (2010).

Charging Parties further suggest that they hope to challenge Sections 1.6 and 3.4.1 under the standards articulated in *Boeing Co.*, 365 NLRB No. 154, at \*3 (2017). *See* Charging Parties’ Response to Notice to Show Cause at 4 (contending that there is “no business purpose” for Sections 1.6 and 3.4.1). But, again, the allegations pertaining to Section 1.6 and 3.4.1 are controlled by *Register Guard/Caesars Entertainment*. *See, e.g., Caesars Entertainment*, 368 NLRB No. 143, at \*1 (providing that employees have “no statutory right to use employer equipment, including IT resources”). By contrast, the *Boeing* standards apply to claims that facially neutral work rules interfere with protected rights. *See Boeing Co.*, 365 NLRB No. 154, at \*3 (2017). For *Boeing* to apply, then, Charging Parties would first need to demonstrate that Section 1.6 and 3.4.1 impact Section 7 rights – something that they cannot do since they have no argument that that the *Register Guard/Caesars Entertainment* exception applies in this case.

### **CONCLUSION**

For the reasons stated here and in the Companies’ Response to the Notice to Show Cause, the Board should retain the allegations related to Sections 1.6 and 3.4.1 and dismiss them.

Dated: July 22, 2020

Respectfully submitted,

*/s/ E. Michael Rossman*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 22nd day of July, 2020, I electronically filed the foregoing document with the National Labor Relations Board. In addition, a copy of the document was sent via email and to the following:

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