

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

STERICYCLE, INC.

and

**Cases 04-CA-137660,
04-CA-145466,
04-CA-158277 and
04-CA-160621**

TEAMSTERS LOCAL 628

**COUNSEL FOR THE GENERAL COUNSEL'S SUPPLEMENTAL BRIEF ON
REMAND TO THE ADMINISTRATIVE LAW JUDGE**

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I. STATEMENT OF THE CASE

This case is before Administrative Law Judge Michael A. Rosas and was initially heard by Judge Rosas in a hearing held on August 24 and 25, 2016. On November 10, 2016, Judge Rosas issued his Decision and recommended Order regarding the Section 8(a)(1) and 8(a)(5) allegations enumerated in the Second Consolidated Complaint and Amendments to Second Consolidated Complaint (Amendments). (GCX-1(dd), GCX-1(hh))¹ Judge Rosas found Stericycle (Respondent) had violated, *inter alia*, Section 8(a)(1) of the National Labor Relations Act (the Act) by maintaining the following overbroad policies as alleged in paragraphs 6(a)(ii), (iii) and (iv) of the Second Consolidated Complaint and Amendments—Personal Conduct policy, Conflict of Interest policy, and Retaliation policy (the Policies). (ALJD 24-27) The parties filed exceptions to Judge Rosas’ decision.

On December 14, 2017, before it considered the parties’ exceptions, the National Labor Relations Board (the Board) issued a decision in *The Boeing Company*, 365 NLRB No. 154 (2017), establishing a new standard for assessing the lawfulness of rules that do not explicitly prohibit employees’ exercise of their rights under the Act and applying the new standard retroactively to all pending cases. Thereafter, because the legal framework underlying both the Second Consolidated Complaint and Amendments and Judge Rosas’ decision had been changed by *Boeing*, on May 8, 2020, the Board severed the allegations concerning the Policies and remanded them to Judge Rosas “for the purpose of reopening the record, if necessary, preparing a supplemental decision addressing those allegations, setting forth credibility resolutions (if

¹ Throughout this brief references to the transcript and exhibits will be as follows:

Transcript.....T (followed by page number)
General Counsel’s Exhibit.....GCX (followed by exhibit number)
Administrative Law Judge Decision...ALJD (followed by page and line number)

necessary), findings of fact, conclusions of law, and a recommended Order.” *Stericycle, Inc.*, Cases 04-CA-137660 et al, May 8, 2020 (unpublished Order).

On May 22, 2020, the ALJ requested the parties to set forth their positions on whether to reopen the record to introduce additional evidence regarding the allegations on remand. No party sought to introduce any additional evidence. However, Counsel for the General Counsel advised Judge Rosas that the General Counsel would be withdrawing certain allegations from the Complaint.² Subsequently, on June 9, 2020, Judge Rosas directed the parties to file briefs addressing the remaining remanded 8(a)(1) allegations under the *Boeing* framework based on the original record.

For the reasons set forth below, General Counsel maintains that, under the *Boeing* standard, Respondent’s Retaliation policy is a lawful Category 1 policy but that the Personal Conduct and Conflict of Interest policies unlawfully interfere with Respondent’s employees’ rights under Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

II. STATEMENT OF FACTS³

A. Background

Respondent is the largest medical waste disposal company in the United States. It performs waste treatment work at its Morgantown facility involving the collection, processing and disposal of regulated medical waste (RMW), including bandages, bodily fluids, and sharp containers of needles, from hospitals, nursing homes, and medical, dental and veterinary offices. Once delivered

² On June 2, 2020, the General Counsel withdrew allegations concerning the “Use of Personal Electronics Policy,” “Electronic Communications Policy,” “Camera and Video Policy,” and “Use of Personal Electronics in the Workplace Policy” from the Second Consolidated Complaint, finding them to be lawful policies under *Boeing*. These allegations were then dismissed by the Region on June 9, 2020 and are not being considered as part of the remand.

³ The facts presented herein are limited to those relevant to the remand issues.

to the Morgantown facility, RMW is processed, chemically treated, shredded in a treatment system, placed in containers and disposed of in landfills. (ALJD 2: 38-42, 3:1-2; T. 34-35)

Respondent also has a transfer station facility in Southampton, Pennsylvania, where drivers pick up trash which is then consolidated and brought to the Morgantown facility. These employees pick up RMW from hospitals, doctor/dentist offices, and other medical facilities. The RMW is transported to facilities for processing prior to disposal. (ALJD 2:4-7; T. 35-36) The Union represents employees at both of these facilities. (T. 33, 35)

At Southampton, the Union represents a unit of approximately 105 employees, which includes drivers, driver techs, in-house techs, helpers, and dock workers. The Union was certified on September 1, 2006. (GCX-1(dd),(ff); GCX-2; T. 33, 34) The collective bargaining agreement in effect at the time of the hearing between Respondent and the Union for Southampton unit employees was ratified on April 13, 2014 and expired on October 31, 2016. (GCX-2; T. 35, 112)

At Morgantown, the Union represents a unit of approximately 55 employees, which includes drivers, plant workers, maintenance mechanics, painters, dispatchers, and leaders. The Morgantown unit was certified on September 1, 2011. (GCX-1(dd),(ff); GCX-3; T. 36) Respondent and the Union were parties to an initial collective bargaining agreement that expired on February 29, 2016. (GCX-3; T. 37) A new collective bargaining agreement was ratified in June 2016. (T. 37)

B. The New Handbook at Morgantown and Unlawful Overbroad Policies

In late February 2015, Respondent distributed a new handbook at the Morgantown facility to unit employees during team member experience meetings. (GCX-32; T. 89, 109, 325) In addition, as new employees have been hired, they too have been given a copy of the new handbook and signed its acknowledgement. On March 2, 2015, Respondent provided a copy of the new

handbook that was implemented at the Morgantown facility to the Union. (GCX-21; GCX-22; T. 71, 305-306, 328) Although implemented corporate-wide, the handbook has not been distributed in Southampton. (T. 109)

The nationwide handbook given to Morgantown employees contains the following policies, in pertinent part:

Retaliation Policy:

Stericycle strictly prohibits unlawful retaliation against any team member or applicant for employment who reports discrimination or harassment, or who participates in good faith in any investigation of unlawful discrimination or harassment.

What action should you take if you feel you have been a victim of harassment or retaliation?

If you believe you have been the victim of harassment or retaliation of any kind, immediately do the following:

1. If you feel comfortable doing so, we encourage you to tell the person in no uncertain terms to stop; and
2. Report the incident and the name of the individual(s) involved to your Human Resources Representative. If you cannot report the issue to your Human Resources Representative for any reason, contact the Team Member Help Line at [Phone Number]. The Help Line accepts anonymous complaints of any kind.

All complaints will be promptly investigated. *All parties involved in the investigation will keep complaints and the terms of their resolution confidential to the fullest extent practicable.* (Emphasis added) (GCX-22, p. 10)

Personal Conduct Policy:

In order to protect everyone's rights and safety, it is the Company's policy to implement certain rules and regulations regarding your behavior as a team member. Conduct that maliciously harms or intends to harm the business reputation of Stericycle will not be tolerated. You are expected to conduct yourself and behave in a manner conducive to efficient operations. Failure to conduct yourself in an appropriate manner can lead to corrective action up to and including termination.

The following are some examples of infractions which could be grounds for corrective action up to and including termination, however this list is not all-inclusive.

....

- *Engaging in behavior which is harmful to Stericycle’s reputation.* (Emphasis added) (GCX-22, p. 30)

Conflict of Interest Policy:

Stericycle will not retain a team member who directly or indirectly engages in the following:

- *An activity that constitutes a conflict of interest or adversely reflects upon the integrity of the Company or its management.*
- An activity in which a team member obtains financial gain due to his/her association with the Company.
- An activity, which by its nature, detracts from the ability of the team member to fulfill his/her obligation to the Company. (Emphasis added) (GCX-22, p. 33)

III. ARGUMENT

A. The Boeing Standard.

In *Boeing*, the Board set out a new standard for determining whether a facially neutral work rule, reasonably interpreted, would unlawfully interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. The Board overruled the “reasonably construe” prong delineated in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), which held that a facially neutral work rule would be found unlawful if employees would reasonably construe it to prohibit Section 7 activity. *Id.* at 647. Instead, the Board in *Boeing* held that, when evaluating a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights, the Board will evaluate two things: (i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule. The Board further clarified this test in *L. A. Specialty Produce Co.*, 368 NLRB No. 93 (2019). Under *Specialty Produce*, the General Counsel must show initially that a facially neutral rule would, in context, be interpreted by an objectively reasonable employee to potentially interfere with the exercise of Section 7 rights. *Id.* slip op. at 2. An “objectively reasonable employee” is one who is

“aware of his legal rights but who also interprets work rules as they apply to the everydayness of his job. The reasonable employee does not view every employer policy through the prism of the NLRA.” Id.

If reasonable employees would, in context, interpret a rule as potentially infringing on their Section 7 rights, then this potential interference must be balanced against the legitimate justifications associated with the rule. Id. at 3. If the balance favors the employer’s general interests over potentially interfering with Section 7 rights, then the rule is lawful. Id. After applying this test, a rule may be sorted into one of three categories, as a guide to help “give parties certainty and clarity.” *Boeing*, slip op. at 14-15. These three categories are not part of the *Boeing* test, but rather reflect the classification of results from applying the *Boeing* test. Id. at 15. Category 1(a) consists of rules that are lawful to maintain because the rules do not potentially interfere with the exercise of employees’ rights under Section 7 of the Act. Category 1(b) consists of rules that are lawful to maintain because, although the rule, reasonably interpreted, potentially interferes with the exercise of Section 7 rights, the potential interference is outweighed by legitimate employer interests. Category 2 consists of rules that warrant individualized scrutiny in each case under *Boeing’s* balancing framework. Category 3 consists of rules that are unlawful to maintain because their potential to interfere with the exercise of Section 7 rights outweighs the legitimate interests they serve. Once a rule is placed in Category 1(b) or 3, rules of the same type are categorized accordingly without further case-by-case balancing; balancing is never required for rules in Category 1(a). *Boeing*, slip op. at 3-4; *LA Specialty Produce Co.*, slip op. at 2-3.

B. Applying Boeing, Respondent’s Retaliation Policy Should Be Found Lawful

In *Apogee Retail LLC d/b/a Unique Thrift Store*, 368 NLRB No. 144 (Dec. 16, 2019), the Board overruled *Banner Estrella Medical Center*, 362 NLRB 1108 (2015), which held that an

employer could lawfully restrict discussion of ongoing confidential investigations only where it made a particularized showing of a substantial and legitimate business justification outweighing employees' Section 7 rights. The Board in *Apogee* held that investigative confidentiality rules that by their terms apply only for the duration of any investigation are categorically lawful under the analytical framework set forth in *Boeing*. Specifically, the Board found that “justifications associated with investigative confidentiality rules applicable to open investigations will predictably outweigh the comparatively slight potential of such rules to interfere with the exercise of Section 7 rights.” 368 NLRB No. 144, slip op. at 8. Accordingly, the Board held that investigative confidentiality rules limited to open investigations fall into Category 1(b).

The Board further stated in *Apogee* that its holding “does not extend to rules that would apply to nonparticipants [in an investigation], or that would prohibit employees—participants and nonparticipants alike—from discussing the event or events giving rise to an investigation (provided that participants do not disclose information they either learned or provided in the course of the investigation).” *Watco Transloading, LLC*, 369 NLRB 93, slip op at 11 (May 29, 2020) quoting *Apogee*, supra., slip op. at 2 fn. 3. The Board reasoned that “[i]nvestigative confidentiality rules, by their nature, bind those who are privy to internal investigations from sharing information that might bias the investigation.” *Apogee*, supra, slip op. at. 8 fn. 14. The Board further found in *Apogee*, that employees would reasonably interpret an investigative confidentiality policy that is silent with regard to the duration of the confidentiality requirement not to be limited to open investigations. It categorized these types of rules as *Boeing* Category 2 rules, requiring individualized scrutiny as to whether any post-investigation adverse impact on Section 7 protected conduct is outweighed by legitimate justifications. 368 NLRB No. 144, slip op. at 9.

Given that the language of the Retaliation policy is not limited to the term of the investigation but contemplates keeping complaints and terms of resolutions confidential in perpetuity, Counsel for the General Counsel notes that under *Apogee* this is a Category 2 rule requiring individualized scrutiny as to whether any post-investigation adverse impact on Section 7 rights is outweighed by legitimate justifications. *Id.* While this blanket confidentiality directive under the current Board framework arguably infringes on employees' statutory rights because it is open ended, Counsel for the General Counsel argues that based on similar justifications articulated in *Apogee*, the Retaliation policy is lawful. Indeed, the Board acknowledged in *Apogee* that there may be "substantial and even compelling reasons, outweighing the potential adverse effect on the exercise of Section 7 rights, for extending a confidentiality requirement well beyond the end of particular kinds of investigations." *Id.* The legitimate employer interests in maintaining confidentiality during an open investigation—e.g., the need to protect witnesses from retaliation—also applies after the investigation has closed. Moreover, the Retaliation policy is unlikely to meaningfully deter employees' exercise of their Section 7 rights as it imposes no discipline if confidentiality is not maintained.

In this regard, EEOC guidelines suggest that information about sexual harassment allegations and records related to investigations of those allegations post-investigation should be kept confidential. See, e.g., EEOC Notice No. 915.002, Enforcement Guidance on Vicarious Liability for Unlawful Harassment by Supervisors, Equal Emp't Opportunity Comm'n (June 18, 1999), <https://www.eeoc.gov/policy/docs/harassment.html>. Respondent, in previous briefs to the Judge and the Board on exceptions, has already argued that EEOC guidance justified its confidentiality-in-investigations rule, albeit without focusing on the post-investigation period. Employers have substantial justifications for maintaining confidentiality-in-investigation rules

applicable to harassment investigations both during and after the investigation, and these justifications are implicit in the EEOC guidance relied on by Respondent. These compelling interests in requiring post-investigation confidentiality outweigh the Retaliation policy's potential impact on Section 7 rights after the investigation. Accordingly, the Retaliation policy is a lawful Category 1(b) rule.

Furthermore, for the reasons articulated above, Counsel for the General Counsel argues that the Board should not have limited lawful confidentiality rules to open investigations in *Apogee*. Rather, confidentiality-in-investigation rules should fall in Category 1 whether they apply to open investigations or to investigations that have been completed because employers' legitimate and substantial business justifications for maintaining the rules outweigh the comparatively slight impact on employees' NLRA rights.

In the alternative, if the Administrative Law Judge does not find that *all* confidentiality-in-investigation rules (applying both during and after the investigation) should fall in Category 1, Counsel for the General Counsel submits that the Administrative Law Judge should find that confidentiality-in-investigation rules that are specifically tied to *harassment* investigations, like the rule here, should fall in Category 1, again irrespective of whether the harassment investigation is open or complete. Employers have strong justifications for these rules, such as the need to minimize fear or risk of retaliation for employees who report on witness harassment, protect these employees' privacy, and foster a workplace culture in which employees are willing to report harassment and cooperate in harassment investigations. These justifications are substantial and extend beyond the end of a harassment investigation; indeed, these justifications may become even more compelling after the conclusion of an investigation, for example, where an investigation results in discipline. Striking the balance in favor of the legality of such rules also inures to the

benefit of employees who will know, when deciding whether to report workplace misconduct, that they will be assured confidentiality. Confidential investigations benefit employees by encouraging employee victims and witnesses to report misconduct without fear of retaliation, thereby allowing employees to not only address wrongs done to them personally, but also to potentially remove those harms from the workplace to the benefit of all employees.

Accordingly, weighing the legitimate, substantial, and compelling business justifications for confidentiality-of-investigations rules, and the benefits they accord employees, against the comparatively slight impact on Section 7 activity, the Retaliation policy should be found to be a lawful Category 1(b) rule. Accordingly, the Complaint allegation that this rule unlawfully interferes with employees' Section 7 rights should be dismissed.

C. Applying Boeing, Respondent's Personal Conduct and Conflict of Interest Policies are Overbroad and Violate Section 8(a)(1) of the Act

Applying the *Boeing* standard to this case, Respondent's Personal Conduct and Conflict of Interest policies are Category 2 rules requiring that they be evaluated to determine whether they would potentially interfere with Section 7 rights, and if so, whether any adverse impact on those rights is outweighed by legitimate justifications. The Board has long found that employees shall not be restricted in exercising their freedom to criticize management with each other by striking down as unlawful many iterations of non-disparagement clauses. See, e.g., *Southern Maryland Hospital*, 293 NLRB 1209, 1222 (1989), *enfd. in rel. part* 916 F.2d 932, 940 (4th Cir. 1990); *Lafayette Park Hotel*, 326 NLRB 824 (1998); *Cincinnati Urban Press*, 289 NLRB 966, 975 (1988); *Spartan Plastics*, 269 NLRB 546, 552 (1984); *American Cast Iron Pipe Co.*, 234 NLRB 1126 (1978), *enfd.* 600 F.2d 132 (8th Cir. 1979). Employees' critique of their employer is a core Section 7 right, subject only to the requirement that employees' communications not be so

“disloyal, reckless or maliciously untrue as to lose the Act’s protection.” *Emarco, Inc.*, 284 NLRB 832, 833 (1987); *Lafayette Park Hotel*, 326 NLRB at 828; *Beverly Health & Rehabilitation Services*, 332 NLRB 347, 348 (2000), *enfd.* 297 F.3d 468 (D.C. Cir. 2012). See also, *NLRB v. Electrical Workers Local 1229 (Jefferson Standard Broadcasting Co.)*, 346 U.S. 464, 477 (1953), and *Linn v. Plant Guards Local 114*, 383 U.S. 53, 62-63 (1966).

While the Board has found rules prohibiting the disparagement of co-workers to be lawful Category 1(a) rules, see *Boeing*, 365 NLRB No. 154 slip op. at 3–4 fn. 15, the Board has not similarly categorized rules prohibiting communications between employees that might disparage the employer. In *Union Tank Car Co.*, 369 NLRB No. 120, slip op. at 2-3 (July 17, 2020), the Board found a non-disparagement rule prohibiting statements “that are intended to injure the reputation of the [c]ompany or its management personnel with customers or employees” to be unlawful, emphasizing the prohibition on disparaging statements *to other employees*. The Board explained that the rule potentially interferes with a core Section 7 right—employee discussions about terms and conditions of employment—because such discussions are often inseparably linked to complaints about the employer and managers. The Board found that no justification could outweigh this significant impairment of Section 7 rights.

In *Motor City Pawn Brokers*, 369 NLRB No. 139, slip op. at 5-7 (July 24, 2020), the Board found facially neutral rules against disloyalty and disparagement to non-employees are lawful *Boeing* Category 1(b) rules because the potential adverse impact on protected rights is outweighed by the substantial legitimate justifications associated with the rules. The policies in *Motor City Pawn Brokers* specifically applied to disparaging or disloyal employee communications to customers or other third parties. 369 NLRB No. 132, slip op. at 3. The Board found it significant that the non-disparagement rules at issue were “reasonably drafted to warn employees that . . .

disparaging statements about it or its customers *to customers and the public* would not be tolerated,” and further noted that “the Respondent’s non-disparagement rules do not restrict employee communications with other employees.” *Id.*, slip op. at 6 & fn. 15 (emphasis added). Thus, although an employer is justified in preventing statements to third parties that could injure its reputation or that of management, an employer’s expectation of loyalty is inapplicable to a rule that prohibits employee discussions among themselves. See *Teletech Holdings, Inc.*, 342 NLRB 924, 931–32 (2004) (finding unlawful rule that employees were not to speak negatively about their job) (citing *Lexington Chair Co.*, 150 NLRB 1328, 1341 (1965), *enfd.* 361 F.2d 283, 287 (4th Cir. 1966) (holding unlawful rule prohibiting employees from criticizing company rules and policies).

1. The Personal Conduct Policy

Although Respondent’s Personal Conduct Policy lawfully prohibits employees from engaging in conduct that “maliciously harms” Respondent, it also broadly prohibits conduct that “intends to harm [Respondent’s] reputation,” including prohibiting employees from “engaging in behavior which is harmful to Respondent’s reputation.” Unlike in *Motor City Pawn Brokers*, this rule is not limited to employees disparaging Respondent or its products to Respondent’s customers or third parties but includes conduct between or among employees that is intended to disparage Respondent. An objectively reasonable employee would read this language as prohibiting criticism by employees to other employees of Respondent on safety issues, managerial issues, or any other employment issues, that may disparage or discredit Respondent’s labor practices since such criticism could harm Respondent’s reputation. See *Southern Maryland Hospital*, *supra* (unlawful to ban “derogatory attacks” on employer representatives; such prohibition necessarily encompasses protected conduct “such as an assertion that an employer overworks or underpays its

employees”); *Teletech Holdings, Inc.*, supra. Moreover, Respondent has not limited its rule to speech but has expanded it to conduct that damages Respondent’s reputation. An objectively reasonable employee would also read this language as including core Section 7 activity, such as wearing buttons or engaging in a strike, which would arguably harm the reputation of Respondent.

Respondent’s proffered reason for maintaining its rule is that it proscribes clearly harmful conduct that employees reasonably understand to be legitimately opposed to the interest of Respondent such as moral turpitude, illegal acts, and unethical behavior. In this regard, it notes that the immediately preceding rule prohibits violence and the rule immediately following prohibits falsification of company documents. While Respondent has a legitimate business justification for seeking to proscribe this type of conduct, the non-disparagement rule read in context of the other proscriptions would still be read by an objectively reasonable employee to limit criticism of Respondent by employees and other protected concerted conduct that would be protected by the Act. Respondent’s justification for the policy does not outweigh its potential impact on employee NLRA-protected rights. See, *Union Tank Car Co.*, supra, slip op. at 2-3.

As noted above, the Personal Conduct non-disparagement provision at issue here, unlike those in *Motor City Pawn*, does not specifically reference customers or third parties. Rather, it is a general restriction on conduct that harms Respondent’s reputation. Although it does not directly reference communications between co-workers, as in *Union Tank Car Co.*, it is nonetheless broad enough to encompass such communications. In other words, since the provisions do not merely regulate speech that is directed at customers or critical of the services Respondent provides, they have the potential to infringe on core protected discussions and criticisms amongst employees, including those that may not be accurate but are not knowingly false so as to be unprotected. *Beverly Health & Rehabilitation Services*, supra. No justification would be sufficient

to outweigh the significant restriction on such a central right under the Act. *Union Tank Car Co.*, supra. The impact on Section 7 rights is magnified by the fact that “[e]ngaging in behavior which is harmful to Stericycle's reputation” can “be grounds for corrective action, up to and including termination.” This plainly threatens employees who engage in potential protected concerted activity with termination. As such, the rule significantly undermines core employee Section 7 rights and outweighs any legitimate interests the policy serves. Accordingly, Respondent has unlawfully maintained the non-disparagement portion of the Personal Conduct policy, in violation of Section 8(a)(1) of the Act.

2. *The Conflict of Interest Policy*

Applying the *Boeing* standard to this rule, Respondent’s Conflict of Interest policy is unlawful for similar reasons as the non-disparagement portion of the Personal Conduct Policy. Here, employees would not interpret the rule as solely focusing on genuine business conflicts of interest. The phrase “*adversely reflects upon the integrity of the Company or its management*” would be understood by an objectively reasonable employee to refer to Section 7 activity such as criticism by employees to other employees of Respondent on safety issues, managerial issues, or any other employment issues, that may disparage or discredit Respondent. See *Union Tank Car Co.*, supra. Like the Personal Conduct policy, this rule is not limited to employees disparaging Respondent or its products to Respondent’s customers or third parties but includes communication between or among employees that is intended to disparage Respondent.

Respondent justifies this policy as one which employees reasonably would understand to deal solely with their financial and business activities—such as if an employee accepted part-time work with, or assisted, a competitor of Respondent, or used his or her association with Respondent to further personal interests. There is no question that Respondent has a legitimate business interest

in protecting against these types of conflict of interests. However, Respondent's policy is written so broadly that it not obvious that it is limited to such legitimate business interests. Indeed, the entire rule is so broadly worded that it is not clear that it relates to outside work activities at all. Cf. *G&E Real Estate Management Services, Inc. d/b/a Newmark Grubb Knight Frank*, 369 NLRB No. 121, slip op. at 2 (July 16, 2020)(Conflict of interest rule that prohibited employees from participating in outside *work activities* without permission—including employment, consulting, or board memberships—not mere membership in outside organizations or run-of-the-mill volunteering found to be lawful rule).

The Conflict of Interest policy, unlike those in *Motor City Pawn Brokers*, does not specifically reference customers or third parties. Nor does the provision make clear as in *G&E Real Estate Management Services* that it applies to outside work activities. Rather, the conflict of Interest policy is a general restriction on conduct that harms Respondent's reputation. Although it does not reference communications between co-workers, as in *Union Tank Car Co.*, the Conflict of Interest policy is nonetheless broad enough to encompass such communications. In other words, like the Personal Conduct policy discussed above, since the rule does not merely regulate speech that is directed at customers or critical of the services Respondent provides, it has the potential to infringe on core protected discussions and criticisms amongst employees, including those that may not be accurate but are not knowingly false so as to be unprotected. *Beverly Health & Rehabilitation Services*, supra. No justification would be sufficient to outweigh the significant restriction on such a central right under the Act. *Union Tank Car Co.*, supra. See also *Teletech Holdings Inc.*, supra. Moreover, the impact on Section 7 rights is magnified by the fact that the statement is accompanied by a threat of discipline. This plainly threatens employees who engage in protected concerted activity with termination. In these circumstances, the non-disparagement

portion of the Conflict of Interest policy is unlawful to maintain because its potential to interfere with the exercise of Section 7 rights outweighs any legitimate business justification. Accordingly, for the reasons stated above, Respondent's non-disparagement provision, maintained in Respondent's Conflict of Interest policy interferes with, restrains, and coerces employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act.

3. *Remedy*

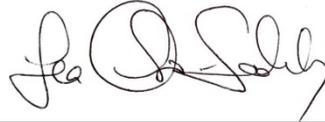
The standard affirmative remedy for maintenance of unlawful work rules and policies is immediate rescission of the offending rules; this remedy ensures that employees may engage in protected activity without fear of being subjected to the unlawful rule. *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), *enfd.* in relevant part 475 F.3d 369 (D.C. Cir. 2007). Given that the Personal Conduct and Conflict of Interest policies identified above are unlawful, Respondent should be required to rescind those rules. Furthermore, the unlawful rules in the handbook have been or are in effect at Respondent's facilities nationwide. “[W]e have consistently held that, where an employer's overbroad rule is maintained as a companywide policy, we will generally order the employer to post an appropriate notice at all of its facilities where the unlawful policy has been or is in effect.” *Mastec Advanced Technologies*, 357 NLRB 103, 109 (2011) (quoting *Guardsmark*, *supra*, 344 NLRB at 812). As the D.C. Circuit observed, “only a company-wide remedy extending as far as the company-wide violation can remedy the damage.” *Guardsmark, LLC v. NLRB*, 475 F.3d 369, 381 (D.C. Cir. 2007). Accordingly, Respondent should be required to rescind the Personal Conduct and Conflict of Interest policies and post a Notice nationwide.

IV. CONCLUSION

For the reasons set forth above, Counsel for the General Counsel respectfully urges the Administrative Law Judge to (1) dismiss the allegations that Respondent violated Section 8(a)(1)

by maintaining the confidentiality clause in the Retaliation policy; (2) find that Respondent violated Section 8(a)(1) by maintaining the non-disparagement clauses in the Personal Conduct and Conflict of Interest policies.

Respectfully submitted,



Dated: August 5, 2020

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CERTIFICATE OF SERVICE

I hereby certify that a copy of **Counsel for the General Counsel's Supplemental Brief on Remand to the Administrative Law Judge** in *Stericycle, Inc*, Cases 04-CA-137660, et al., was served by E-Filing and Email on the 5th day of August 2020, on the following persons:

Via E-Filing:

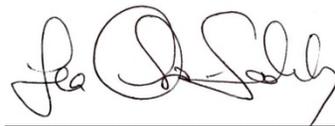
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