

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Division of Judges**

**CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS**

and

**Cases 21-CA-075867
21-CA-098442**

**COMMUNICATIONS WORKERS OF
AMERICA DISTRICT 9, AFL-CIO;
COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO**

AIRTOUCH CELLULAR

and

Case 21-CA-115223

**COMMUNICATIONS WORKERS OF
AMERICA DISTRICT 9, AFL-CIO;
COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO**

**COUNSEL FOR THE GENERAL COUNSEL’S MOTION TO WITHDRAW
CERTAIN ALLEGATIONS FROM COMPLAINT AND
FOR REMAND TO THE REGIONAL DIRECTOR**

Counsel for the General Counsel hereby moves the Honorable Robert Giannasi, Chief Administrative Law Judge (ALJ), to approve the withdrawal of paragraphs 5(b), 6(a), 6(b), 6(d) and 6(e) from the Second Order Consolidating Cases, Amended Consolidated Complaint and Amended Notice of Hearing (“Consolidated Complaint”) in these matters that issued on

January 14, 2014, and respectfully requests that the ALJ remand these matters to the Regional Director for further action.

On July 25, 2014, William Nelson Cates, Administrative Law Judge, issued his decision in these matters, finding that some, but not all of the alleged rules violate the Act. Specifically, he found that the following rules (with corresponding Consolidated Complaint paragraphs) in Respondent's¹ Code of Conduct were unlawful:

- 1.8 Employee Privacy ¶5(b)
- 3.7 Handling External Communications ¶6(d)

And the following rules in Respondent's Code of Conduct were lawful:

- 1.6 Solicitation and Fundraising ¶5(a)
- 1.8.2 Use of Recording Devices ¶6(a)
- 3.2.1 Protecting Non-public Company Information ¶6(b)
- 3.4.1 Prohibited Activities ¶6(c)
- 4.6 Relationships with and Obligations of Departing and Former Employees ¶6(e)

Thereafter, Counsel for the General Counsel, Charging Party, and Respondent each filed their respective exceptions to that decision. On March 26, 2019, the Board issued a Notice to Show Cause on, "why the complaint allegations involving the maintenance of allegedly unlawful work rules or policies should not be severed and remanded to the administrative law judge for further proceedings consistent with the Board's decision in *Boeing*², including reopening the record if necessary."

On May 15, 2020, the National Labor Relations Board ("Board") issued an Order Remanding and Notice to Show Cause in which the Board remanded to the ALJ the following

¹ Both Verizon and AirTouch are referred to collectively as Respondent.

² *The Boeing Company*, 365 NLRB No. 154 (2017)

complaint allegations involving rules: Sections 1.8, 1.8.2, 3.2.1, 3.7, and 4.6 and severed and retained the complaint allegations involving Sections 1.6 and 3.4.1. On July 22, 2020, the Board issued its decision in *Verizon Wireless*, 369 NLRB No. 130 on Code of Conduct rules 1.6 and 3.4.1, dismissing Consolidated Complaint paragraphs 5(a) and 6(c).

Counsel for the General Counsel seeks withdrawal of the remaining Consolidated Complaint allegations based on a significant change in case law that affects the legality of the respective portions of Respondent’s Code of Conduct. More particularly, subsequent to the appeal of the ALJ’s decision, the Board issued its decision in *Boeing*, explicitly overturning the “reasonably construe” standard for assessing handbook rules and policies, as previously set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). While the Board in *Lutheran Heritage* held that employers could violate the Act by the mere maintenance of work rules and policies that might “reasonably be construed” to chill employees’ Section 7 rights, in *Boeing*, the Board articulated a new analytical framework that evaluates facially-neutral handbook policies and rules by balancing their potential impact on employee rights under the Act against the employer’s “legitimate justifications” for maintaining the subject rules or policies.

Applying the new *Boeing* standard to the policies alleged in Consolidated Complaint paragraphs 5(b), 6(a), 6(b), 6(d) and 6(e), Counsel for the General Counsel has concluded that the following portions of the Code are not unlawful under current precedent and thus do not violate Section 8(a)(1) of the Act:

- 1.8 Employee Privacy ¶5(b)
- 1.8.2 Use of Recording Devices ¶6(a)
- 3.2.1 Protecting Non-public Company Information ¶6(b)
- 3.7 Handling External Communications ¶6(d)

4.6 Relationships with and Obligations of Departing and Former Employees ¶6(e)

Accordingly, based upon the Board's decision in *Boeing*, and in the interest of maintaining consistency with current Board law, Counsel for the General Counsel respectfully moves to withdraw paragraphs 5(b), 6(a), 6(b), 6(d) and 6(e) from the Consolidated Complaint and requests that the ALJ remand these allegations to the Regional Director for further action consistent with *Boeing*.

Respectfully submitted,

/s/ Lisa McNeill

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STATEMENT OF SERVICE

I hereby certify that a copy of **COUNSEL FOR THE GENERAL COUNSEL'S MOTION TO WITHDRAW CERTAIN ALLEGATIONS FROM COMPLAINT AND FOR REMAND TO THE REGIONAL DIRECTOR** has been submitted by e-filing to the Division of Judges of the National Labor Relations Board on August 11, 2020.

The following parties were served with a copy of said document by e-mail, on August 11, 2020.

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Respectfully submitted,

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