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INTERNATIONAL UNION, LOCAL UNION NO. 232, AFL
CIO, CLC

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 28

BAKERY, CONFECTIONERY, TOBACCO
WORKERS' AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL UNION
NO. 232, AFL-CIO, CLC,

Charging Party,

And

SHAMROCK FOODS COMPANY,

Respondent.

No. 28-CA-150157

MOTION FOR RECONSIDERATION

Charging Party hereby requests that the Board, including member McFerran, grant reconsideration to the Board's decision dated July 29, 2020, *Shamrock Foods Co.*, 369 NLRB No. 140 (2020). In particular, the Motion addresses the rule in the handbook that states:

Shamrock discourages associates from linking to Shamrock's external or internal web site from personal blogs.

First, the Board dropped a meaningless footnote regarding the Charging Party's exceptions. The Board doesn't explain what theory of the case the Charging Party raised which was not encompassed within the complaint. The Board just cited a case without explaining the basis for its position, and we will address that in the Court of Appeals as appropriate. That is not meaningful adjudication.

The Board finds the following provision in the blogging policy lawful: "Shamrock discourages associates from linking to Shamrock's external or internal Web site from personal blogs." See 369 NLRB No. 140, slip op. at 1.

The Board's logic utterly fails.

The Board, in support of its decision, states:

Rather, [the employee] would understand it as simply discouraging employees from giving the impression that the employee was speaking on behalf of the Respondent or making statements that might be interpreted as coming from or endorsed by the Respondent.

Id. at 2.

The current Board failed to read the ALJ's decision or look at the record. The same company handbook deals expressly with this concern because it states that "associates of Shamrock are strongly encouraged to state explicitly, clearly, and in a prominent place on the site that the views expressed in their blogs are associates' own and not those of Shamrock..." See *id.* at 8. Shamrock thus deals with this issue, to the extent that it is even an issue, through other provisions in the handbook. If Shamrock finds this is sufficient to disclaim speaking on behalf of Shamrock but allowing employees to speak about Shamrock, a rule prohibiting linking is meaningless when it comes to discussion of working conditions.

The Board's rationale utterly fails when it considered that third parties, including employees of other employers, could freely link to the website. Thus, this rule only discriminates only against employees of Shamrock and doesn't apply to others, including employees of other employers. Thus, it focuses only on the Section 7 activity of Shamrock's own employees and is, on its face, unlawful. In case the current Board has forgotten, employees have a right to join with or ask for support from employees of other employers. See *Eastex Inc. v. NLRB*, 437 U.S. 556 (1978).

The provision is also unlawful because nothing can prohibit employees from putting on their social media sites extreme criticism of Shamrock's wages, hours and working conditions. Employees have every right to speak out and complain about working conditions on their social media site posts. Moreover, they can mention Shamrock by name. If the employee doesn't follow the admonition about expressly stating that her views are not those of Shamrock, the employee could be disciplined. The problem the Board incorrectly addresses is resolved by the other part of the employer's rules.

The Board also ignores the fact that the employer conceded that another provision of that same rule was invalid. See 369 NLRB No. 140, slip op. at 7.

Finally, employees have every right to mention Shamrock by name. They also have a right to encourage those who read their social media site posts to contact Shamrock to support employees' protected activity. That is a core and undisputed protected concerted activity. Linking is a form of concerted communication when employees of other employers are involved. Imagine a campaign of employees of all other employers to join in support of their campaigns about working conditions by asking employees of other employers to contact Shamrock's management. Linking to the website for that purpose is indisputably core Section 7 activity. So is asking supporters to write letters, send telegrams or carrier pigeons. Asking the public to do the same is protected activity. Asking the public to support their campaign by contact Shamrock is protected activity.

The easiest way to ask employees of other employers and the sympathetic public to contact Shamrock is through linking to the website where there is a contact location on Shamrock's website. Such a contact provision exists on virtually every website. Even the Labor Board has such a place on its website. NLRB, *Contact Us*, <https://www.nlr.gov/contact-us>. The employees thus have a right to link to that contact availability and do so by linking to the Shamrock website. This is a core form of organizing to ask employees of other employers, the public and other employees of Shamrock to link to the website and to complain to management or express their support.

If the Board has any doubt about this, here is the location on the website:
<https://www.shamrockfoods.com>. And, again, here is the Board's location:
<https://www.nlr.gov/contact-us>. And Littler-Mendelson also has such a location:
<https://www.littler.com/contact-us>.

We don't expect this Board will grant the Motion for reconsideration. We hope Member McFerran will write a dissent. Ultimately, the Charging Party just intends to wait until after President Biden fires the General Counsel and appoints a new General Counsel. The Charging Party will then seek review and have a new Board recall the case and correct this injustice. We file this Motion for Reconsideration to make plain on the record the Charging Party's position. We have a slim hope the Board will realize that it forgot that the employees of Shamrock have a right to ask employees of other employers to support them and to link to the Shamrock website. If not, a court of appeals will do it.

Dated: August 21, 2020

ORGANIZE AND RESIST,

WEINBERG, ROGER & ROSENFELD
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By:

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CERTIFICATE 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 August 21, 2020, I served the following documents in the manner described below:

MOTION FOR RECONSIDERATION

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

On the following parties in this action:

Via E-Filing

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 21, 2020, at Alameda, California.

/s/ Katrina Shaw
Katrina Shaw