

**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**

**ORDER GRANTING MOTION TO WITHDRAW
COMPLAINT AND REMAND TO REGIONAL
DIRECTOR**

On July 25, 2014, Administrative Law Judge William N. Cates issued an initial decision in this case, finding a number of violations of Section 8(a)(1) of the Act and dismissing other alleged violations in connection with Respondent's Rules of Conduct.¹ More specifically, Judge Cates found that Rule 1.8, Employee Privacy, and Rule 3.7, Handling External Communications, were unlawful, but that Rule 1.6, Solicitation and Fundraising, Rule 1.8.2, Use of Recording Devices, Rule 3.2.1, Protecting Non-public Company Information, Rule 3.4.1, Prohibited Activities, and Rule 4.6 Relationships with and Obligations of Departing and Former Employees, were lawful.

Each of the parties thereafter filed exceptions to Judge Cates's decision. On March 26, 2019, the Board issued a notice to show cause as to why the complaint allegations should not be severed and remanded for further proceedings in light of the Board's intervening decision in *Boeing Company*, 365 NLRB No. 154 (2017), which changed the law regarding work rules such

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

as those in this case. The old standard, utilized by Judge Cates, provided that, where rules on their face could be “reasonably construed” by employees to interfere with Section 7 rights, they would be found unlawful. See *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). In *Boeing*, the Board set forth a new standard which provides that “facially valid” handbook rules must be analyzed by balancing the impact on employee Section 7 rights against the employer’s “legitimate justifications” for the rules.

On May 15, 2020, in accordance with its earlier notice to show cause, the Board issued an order remanding the complaint allegations involving Rules 1.8, 1.8.2, 3.2.1, 3.7, and 4.6 to me since Judge Cates had, by then, retired and was unavailable to handle the remand. The order also severed from the remand and retained for the Board’s consideration the complaint allegations involving Rules 1.6 and 3.4.1. On July 22, 2020, the Board issued a decision in *Verizon Wireless*, 369 NLRB No. 130 on the latter allegations, which were dismissed.

I held two telephone conference calls with the parties, during which the General Counsel stated an intention to withdraw the remaining complaint allegations, a view with which Respondent agreed. The Charging Party indicated an intention to oppose any withdrawal request.

On August 11, 2020, the General Counsel filed a motion to withdraw the remaining complaint allegations covered by the remand order. The motion was based on the assertion that the allegations could not be sustained under the new *Boeing* standard and that withdrawal would maintain consistency with current Board law. The motion also asks that the case be remanded to the Regional Director for further action consistent with *Boeing*. The Charging Party filed an opposition, referring to its exceptions and briefs to the Board in the original appeal. The Charging Party also asserted a desire to submit evidence on lack of business justification for the rules, without offering any specifics on the matter.²

Respondent filed a reply in support of the withdrawal request. It asserted that Judge Cates had dismissed allegations that Rules 1.8.2, 3.2.1, and 4.6 were unlawful under the then-applicable *Lutheran Heritage* test that was more favorable to findings of rules violations than the now-applicable *Boeing* test. It also pointed out that the Board itself, in a recent related case, upheld the withdrawal of allegations regarding the same rules (1.8.2, 3.2.1, and 4.6) involved here, citing *Verizon Wireless*, 369 NLRB No. 108, slip op. 3 (2020). Respondent further defended the withdrawal of the allegations dealing with Rules 1.8 and 3.7, as to which Judge Cates found violations under the now-inapplicable *Lutheran Heritage* test. It asserts that Rule 1.8 was replaced more than six years ago. But, in any event, Respondent asserts that the rule was directed to protection of “personal information” in company files, such as social security numbers and other confidential information, as opposed to interfering with Section 7 rights, none of which were mentioned in the rule. As to Rule 3.7, Respondent asserts that the rule is expressly aimed at preventing employees from speaking on behalf of the company, which does not impact Section 7 rights.

Respondent also challenges the Charging Party’s attempt to develop a “full record” on the alleged lack of a business justification for the rules at issue. It asserts that there is no need to balance the business justification for the rules because the rules do not interfere with employee

² The General Counsel has unlimited discretion to withdraw complaint allegations prior to litigation before an administrative law judge. But, once adjudication of a case has begun, the decision whether to dismiss all or part of a complaint is left to the Board’s discretion. *Dilling Mechanical Contractors*, 357 NLRB 544, 545 (2011).

rights, and, in any event, the business justifications are plain in the language of the rules and they would outweigh any alleged impact on employee rights.

I have read and considered the submissions of the parties on the General Counsel's motion. I have also read and considered the rules themselves, Judge Cates's original decision, and the Charging Party's exceptions to Judge Cates's findings of violations with respect to Rules 1.8 and 3.7, which were filed prior to the Board's issuance of its *Boeing* decision. For the reasons stated by the General Counsel and the Respondent, I grant the motion to withdraw the allegations as to Rules 1.8 and 3.7, as well as the allegations as to Rules 1.8.2, 3.2.1 and 4.6, which Judge Cates dismissed. That conclusion is well supported by consideration of the Board's *Boeing* decision, which substantially undercuts the General Counsel's original position on this matter. The language of the rules clearly shows that the rules are addressed to legitimate business concerns and not matters covered under Section 7 of the Act.

Accordingly, the motion to withdraw is GRANTED and the case is REMANDED to the Regional Director.

It is so ORDERED.

Dated, at Washington, D.C., September 10, 2020.


Robert A. Giannasi
Chief Administrative Law Judge