

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

CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS

and

SARA PARRISH, an Individual

Case No. 28-CA-145221

**VERIZON WIRELESS' BRIEF IN SUPPORT OF THE GENERAL COUNSEL'S
MOTION TO WITHDRAW CERTAIN ALLEGATIONS FROM COMPLAINT
AND FOR REMAND TO THE REGIONAL DIRECTOR**

The General Counsel's Motion to Withdraw Certain Allegations should be granted. In a related case, Your Honor granted a similar motion. *See* Order Granting Motion to Withdraw Complaint and Remand to Regional Director, Case No. 21-CA-075867, at 3 (concluding that 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."). Here, the result should be no different. Like Case No. 21-CA-075867, this is a long-pending matter involving facial challenges to certain work rules. Once again, the General Counsel has correctly concluded that the challenged rules are lawful, Category 1 rules for purposes of the now-controlling *Boeing* standard, and that continued litigation would therefore serve no useful purpose. For that reason, and others articulated in the General Counsel's Motion and in the papers below, Your Honor should grant the General Counsel's Motion and dismiss Complaint paragraphs 4(e)(2), 4(e)(5), and 4(f) through 4(h).

I. BACKGROUND

Individual Sara Parrish filed the charge underlying this matter in January 2015. Among other things, Parrish alleged that Verizon Wireless violated the Act through its maintenance of

certain work rules, including but not limited to the following provisions of the Company’s Code of Conduct: Section 1.8 (2014 and 2015 versions), Section 2.1.3, and two bullets of the Conclusion. On February 24, 2017, the Board issued a decision, analyzing these allegations under the standards articulated in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). *See Verizon Wireless*, 365 NLRB No. 38 (Feb. 24, 2017). The Company petitioned for review, Parrish petitioned for review as to other aspects of the case, and the Board petitioned for enforcement. Through a random selection process, the case landed at the U.S. Court of Appeals for the Ninth Circuit.

While the case was pending at the Court of Appeals, the Board issued *Boeing*, which changed the standards applicable to challenges to facially neutral employer work rules. *See Boeing Co.*, 365 NLRB No. 154 (2017). Thereafter, the General Counsel asked the Ninth Circuit to return the complaint allegations related to Section 1.8, Section 2.1.3, and two bullets of the Conclusion to the Board for reconsideration under the new standards, and the court did so on September 7, 2018.

On May 18, 2020, the Board remanded those same allegations to an ALJ. On September 17, 2020, the General Counsel filed the instant Motion, requesting dismissal of Complaint paragraphs 4(e)(2), 4(e)(5), and 4(f) through 4(h), which are the only remaining allegations in the case.¹

II. ARGUMENT

Congress assigned the General Counsel “authority . . . in respect of the prosecution of . . .

¹ The Complaint contained allegations related to other rules besides the ones at issue here, and those allegations have been previously dismissed. In its February 24, 2017 decision, the NLRB assessed allegations relating to Code of Conduct Section 1.6 and 3.4.1 using the standard set out in *Purple Communications*, 361 NLRB 1050 (2014). The parties appealed that ruling. On January 30, 2020, however, the Ninth Circuit remanded the allegations related to Sections 1.6 and 3.4.1 for further consideration under *Ceasear’s Entertainment Corp.*, 368 NLRB No. 143 (Dec. 16, 2019). On July 22, 2020 the Board concluded that Sections 1.6 and 3.4.1 are lawful and dismissed the allegations relating to those provisions. *Verizon Wireless*, 369 NLRB No. 131 (July 22, 2020).

complaints before the Board,” 29 U.S.C. § 153(d), and the General Counsel’s discretion is particularly broad when he seeks to end prosecution of a matter. At least up to the point that evidence on the merits has been introduced in a case, the General Counsel has the unlimited right to withdraw a complaint. *See, e.g., Boilermakers Union Local 6 v. NLRB*, 872 F.2d 331, 334 (9th Cir. 1988). Even thereafter, the General Counsel’s interests as prosecutor necessarily outweigh any contrary wishes of the charging party. *See id.* (concluding an ALJ continuation of a case where the General Counsel seeks dismissal would either “severely compromise the prosecutorial independence of the General Counsel or in effect convert the proceeding into a two-party private litigation,” results that would be “inconsistent with Congress’s clear intent”).

Against this backdrop, Your Honor should grant the instant Motion. All of the rules at issue – both versions of Section 1.8, Section 2.1.3, and the challenged portions of the Conclusion – are lawful under the controlling *Boeing* standard, and therefore continued litigation would serve no useful purpose.

For starters, the 2014 and 2015 versions of Section 1.8 are plainly lawful. In a related case, Your Honor concluded that the language of the 2014 version “clearly shows that the rule[is] addressed to legitimate business concerns and not matters covered under Section 7 of the Act.” *See Order Granting Motion to Withdraw Complaint and Remand to Regional Director*, Case No. 21-CA-075867, at 3. And, in the instant case, the Board concluded that the 2015 version of 1.8 was lawful under the then-applicable – and more narrow – *Lutheran Heritage* test. *Verizon Wireless*, 365 NLRB No. 38, *slip op.* at 2 (Feb. 24, 2017). It is plainly lawful under *Boeing*.

Section 2.1.3 and the Conclusion are equally lawful. In *Boeing*, the Board identified three broad categories for employer work rules. Category 1 rules are the most plainly lawful,

and that category includes those that either do not prohibit or interfere with the exercise of Section 7 rights or whose potential adverse impact on employees' rights is outweighed by the justifications associated with the ruler. *See Boeing*, 365 NLRB No. 154, *slip op.* at 3. Both Section 2.1.3 and the challenged portions of the Conclusion fall into this category. Indeed, in approving dismissal of allegations regarding these provisions in a companion case, the Board noted that “none of these rules is comparable to the rules that the Board has previously found unlawful under *Boeing*.” *Verizon Wireless*, 369 NLRB No. 108, *slip op.* at 3 (June 24, 2020).

Section 2.1.3 is entitled “Activities Outside of Verizon” and is aimed at ensuring that employees avoid actual and apparent conflicts of interest in their civic and personal lives. It is without dispute that “Employers have a legitimate and substantial interest in preventing conflicts of interest such as nepotism, self-dealing, or maintaining a financial interest in a competitor.” Memorandum GC 18-04, at 15. And in any event, the Board has “historically interpreted rules banning disloyalty and blatant conflicts of interest to not have any meaningful impact on Section 7 rights.” *Id.* Section 2.1.3 does not interfere with protected rights, and thus the balance under *Boeing* is wholly one sided.

The same is true for the challenged portions of the Code's Conclusion. The first at-issue bullet at issue states that “[t]heft or unauthorized access, use or disclosure” of “employee, records, data, funds, property or information” is prohibited. The analysis here is the same applicable to Sections 1.8, which Your Honor has already found lawful in a related case. *See Order Granting Motion to Withdraw Complaint and Remand to Regional Director*, Case No. 21-CA-075867, at 3. Verizon Wireless has a clear interest in preserving and protecting the confidentiality of this information. Further, the Act does not entitle employees to access or disclose confidential employee records or documents. *See Macy's, Inc.*, 365 NLRB No. 116, *slip*

op. at 3 (2017) (finding lawful rules that restrict the use or disclosure of employee information “obtained from the Respondent’s own confidential records”). This bullet of the Conclusion does not interfere with protected rights, and again the balance under *Boeing* is wholly one sided.

The second at-issue bullet states that “[d]isparaging or misrepresenting the company’s products or services or its employees.” This bullet easily falls within *Boeing*’s Category 1. Verizon Wireless’ interest in preventing product disparagement is obvious. Its interest in prohibiting employees from disparaging one another is no less so. *See* Memorandum GC 18-04, at 15 (noting a company’s “legal responsibility to maintain a workplace free of unlawful harassment, its substantial interest in preventing violence, and its interest in avoiding unnecessary conflict or a toxic work environment that could interfere with productivity. . . and other legitimate business goals”). On the other hand, Section 7 does not protect product disparagement. *See In re Allied Aviation Serv. Co.*, 248 NLRB 229 (1980) (recognizing that Section 7 does not permit employees to “disparage[] or vilif[y]” their “employer’s product or reputation”). And a ban on employees demeaning one another has a comparatively slight impact on Section 7 rights. *See* Memorandum GC-04, at 5 (“Employees are capable of exercising their Section 7 rights without resorting to disparagement of their fellow employees; thus the impact of such a rule on NLRA-rights is comparatively slight.”); *Adtranz ABB Daimler-Benz Transp., N.A., Inc. v. NLRB*, 253 F.3d 19, 27-28 (D.C. Cir. 2001) (“It defies explanation that a law enacted to facilitate collective bargaining and protect employees’ right to organize prohibits employers from seeking to maintain civility in the workplace.”).

III. CONCLUSION

For the foregoing reasons, under the *Boeing* standards the Code provisions at issue are lawful and the General Counsel’s Motion to Withdraw Certain Allegations from Complaint and For Remand to the Regional Director should be granted.

Dated: September 25, 2020

Respectfully submitted,

/s/ E. Michael Rossman

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CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of September, 2020, I electronically filed the foregoing document with the Division of Judges. In addition, a copy of the document was sent via email to the following:

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