UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

UNITED STATES POSTAL SERVICE

and

Case 14-CA-195011

ROY YOUNG, an Individual

COUNSEL FOR THE ACTING GENERAL COUNSEL'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO TRANSFER COMPLAINT TO THE BOARD AND/OR TO REVOKE ORDER OF REMAND

On March 11, 2021, Counsel for the United States Postal Service (Respondent) filed a Motion to Transfer Complaint to the Board and/or Revoke Order of Remand. The underlying case is currently pending before Administrative Law Judge (ALJ) Melissa Oliviero pursuant to a Board remand. Counsel for the Acting General Counsel (General Counsel) urges the Board to deny Respondent's motion.

I. Procedural History

On September 28, 2018, citing *Purple Communications, Inc.*, 361 NLRB 1050 (2014), the ALJ issued a decision finding that the Respondent violated Section 8(a)(1) and (3) of the Act in multiple respects in application of work rules relating to employee use of its e-mail systems for protected, concerted and union activities. While the Respondent's exceptions were pending before the Board, the Board issued its decision in *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino*, 368 NLRB No. 143 (December 16, 2019), overruling *Purple Communications*. On April 3, 2020, the Board remanded this case to the ALJ for further consideration in the light of its holding in *Caesars Entertainment* and

issuance of a supplemental decision and recommended Order. On remand the parties stipulated that the record and evidence from the September 27, 2017, trial was complete and no additional evidence was necessary to decide the issues. Thereafter, the parties filed briefs to the ALJ on May 26, 2020, and the ALJ's decision remains pending. On March 11, 2021, Respondent filed its Motion to Transfer Complaint to the Board and/or to Revoke Order of Remand. General Counsel and Charging party Roy Young oppose Respondent's motion.

II. Argument

Respondent's motion to transfer the case to the Board and/or revoke the remand order is neither supported by good cause or evidence and should be denied. Respondent's motion appears grounded on no more than an unwillingness to wait for the ALJ to issue her decision. *Caesars Entertainment*, supra, held that an employer does not violate the Act by restricting nonbusiness use if its IT resources (including email), absent proof that employees would be deprived of any reasonable means of communicating with each other, or proof of discrimination. Id. Thus, the precise issue now under consideration by the ALJ is whether the evidence from the trial back in September 2017 establishes Respondent's employees would be deprived of any reasonable means of communicating with each other, and whether Respondent has applied its information technology policies in a discriminatory manner, as the General Counsel has urged.

Respondent's reliance on Section 102.15 and 102.33 of the Rules and Regulations of the Board is misplaced as Respondent offers no evidence on how denying the ALJ the opportunity to analyze the issues and abruptly transferring the case to the Board would effectuate the policies and purposes of the Act, or otherwise avoid unnecessary costs and

delay. Respondent's bare assertion of delay and prejudice by passage of time are insufficient reasons to take the case away from the ALJ in a case where a decision could be issued any day, if not imminently. A remand of the case at this late date threatens to undo a significant amount of work and time the ALJ has already invested in preparing a decision, and all for no adequate, articulable reason. Furthermore, the Board particularly disfavors direct transfer of a case to the Board for a decision, where as here, the General Counsel and the Charging Party are opposed. See, *Machinists Lodge 1129 (Sunbeam Appliance Co.,)*, 216 NLRB 630 (1975).

As Respondent notes, the entire record in this case dates back to a September 2017. The entire evidence for a decision was available to the Board when it remanded the case to the ALJ. It was well within the Board's purview not to remand the case to the ALJ at all but to reach a decision and enter a Board order, accordingly. The Board, however, notably declined to do so. The ALJ's decision is essential to a thorough adjudication of the issues and eventual consideration of the issues by the Board, and this case should continue to proceed through regular Board procedures consistent with the Board's ordered remand.[1]

III. Conclusion

Counsel for the Acting General Counsel respectfully requests the Board to deny Respondent's Motion to Transfer Complaint to the Board and/or Motion to Revoke Remand.

Dated at St. Louis, Missouri, this 16th day of March 2021.

[1] This case primarily involves application of e-mail work rules to a single employee who continues to be employed by Respondent. There are no emergent circumstances that justify vaulting the case to the Board.

/s/ Rotimi Solanke
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Counsel for the General Counsel's Response in Opposition to Respondent's Motion to Transfer Complaint to the Board and/or to Revoke Order of Remand was served on March 16, 2021, on the following parties:

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