**T-Mobile USA, Inc. *and* Communications Workers of America, AFL-CIO.** Cases 14–CA–155249, 14–CA–158446, 14–CA–162644, and 14–CA–166164

September 30, 2022

# SECOND SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS KAPLAN, RING, AND PROUTY

On April 2, 2020, the National Labor Relations Board issued its Decision, Order, and Notice to Show Cause in this proceeding reversing the administrative law judge, in relevant part, and finding that the Respondent did not discriminatorily enforce its Acceptable Use Policy, Enterprise User Standard, or No Solicitation or Distribution Policy against customer-service representative (CSR) Chelsea Befort for a union-related email that she sent to her coworkers using her work email.[1] On May 27, 2020, the Board issued its Supplemental Decision and Order finding that, because Befort did not have a Section 7 right to use her work email to send her union-related email, the Respondent acted lawfully when it announced two new work rules involving "mass communications" and social-media use in response to Befort's actions and told Befort that employees could not send union-related emails to employees' work addresses.[2]

Thereafter, Charging Party Communications Workers of America, AFL–CIO (the Union) filed petitions for review of the Board's Orders with the United States Court of Appeals for the District of Columbia Circuit. On July 23, 2021, the D.C. Circuit granted the Union's petitions for review and remanded the case to the Board for further proceedings consistent with the court's opinion.[3] On September 20, 2021, the D.C. Circuit denied the Respondent's petition for rehearing en banc. On January 13, 2022, the Board notified the parties to this proceeding that it had accepted the court's remand and invited them to file statements of position with respect to the issues raised by the remand. The General Counsel, the Respondent, and the Union filed position statements.

The Board has delegated its authority in this proceeding to a three-member panel.

We have carefully reviewed the record and the parties' statements of position in light of the court's opinion, which we accept as the law of the case. For the reasons explained below, we find that the Respondent violated Section 8(a)(1) by selectively and disparately enforcing its Acceptable Use Policy, Enterprise User Standard, and No Solicitation or Distribution Policy against Befort's union-related email; by promulgating rules, in response to Befort's union activity, prohibiting employees from sending "mass communications" for any non-business purpose and using social media during work; and by telling Befort that employees could not send union-related emails to employees' work addresses.

## I. FACTUAL BACKGROUND

The Respondent is a national wireless-telecommunications company. As part of its workplace policies, the Respondent maintains a nationwide Acceptable Use Policy, Enterprise User Standard, and No Solicitation or Distribution Policy. The Acceptable Use Policy prohibits the "distribut[ion of] junk mail and chain letters." The Enterprise User Standard provides that "[a]ll access [to information technology systems] that is not explicitly authorized is forbidden." The No Solicitation or Distribution Policy prohibits "solicitation of any kind by employees . . . during working time (of either the employees engaged in soliciting or the employees being solicited)" and the distribution "of non-work-related literature or materials of any kind by employees in working areas at any time." Under these policies, CSRs are not authorized to use the Respondent's facility-wide email distribution lists. Except by using an email distribution list, the Respondent's email system does not permit sending an email to more than 100 individual recipients.

The allegations in this case arose during a multiyear campaign by the Union to organize the 595 CSRs at the Respondent's Wichita, Kansas call center. The CSRs routinely use their company-provided computers and email to field customer calls and to communicate with management and their coworkers. The CSRs have also received emails from the Respondent on such nonwork subjects as free food and hockey tickets, nacho day in the cafeteria, upcoming salsa and lip-syncing contests, deaths in employees' families, condolence cards, baby showers, and invitations to bowling parties. A non-

[1] 369 NLRB No. 50, slip op. at 2-3 (2020) (*T-Mobile I*), supplemented 369 NLRB No. 90 (2020) (*T-Mobile II*), review granted sub nom. *Communications Workers of America, AFL–CIO v. NLRB*, 6 F.4th 15 (D.C. Cir. 2021). The Board affirmed the judge's findings that the Respondent violated Sec. 8(a)(1) by telling employees that they could not talk about the Union during worktime in working areas despite permitting discussions of other nonwork subjects during worktime in working areas, surveilling and interrogating employees about their union activity, and telling an employee that it was creating a seating chart to isolate employees because of their union activity. The Board reversed the judge's finding that the Respondent violated Sec. 8(a)(1) by telling an employee that she could not distribute union flyers outside the Respondent's building while off duty in light of the Respondent's effective repudiation of that conduct. No party sought court review of these Board findings and, accordingly, they are not at issue here.

[2] 369 NLRB No. 90, slip op. at 1.

[3] *Communications Workers of America, AFL–CIO v. NLRB*, 6 F.4th 15 (D.C. Cir. 2021).

supervisory employee, on at least one occasion, emailed the entire facility about a lost phone charger. Other times, the Respondent emailed the entire facility birth announcements and a message about signing a birthday card for the Respondent's CEO, and some CSRs have sent congratulatory responses to the entire facility using "Reply All." The Respondent had also permitted CSRs, when not answering calls, to access their social-media accounts.

On May 29, 2015, CSR Chelsea Befort emailed all of the other CSRs, encouraging them to join the Union, contact her outside of working hours with any questions, and attend a union event the following night.[4] Initially, during nonwork time, Befort searched for the email addresses of all the CSRs and pasted them into the "To" field of the message. However, after sending the email, she received an automated response that said the email was not delivered to anyone because it contained over 100 recipients and advised that she should "try to resend with fewer recipients." Throughout the course of the day, Befort successfully sent the email to all of the CSRs by sending eight separate messages. Befort was not working when she sent the emails, but some CSRs were working when they received them. Multiple CSRs forwarded the email to management, and the Respondent prepared a "Third Party Activity Report" flagging the prounion activity for upper management.

On June 2, Jeff Elliott, the director of the Wichita call center, emailed the entire facility about Befort's union-related email. He notified employees, in relevant part, that the Respondent did not allow employees to send "mass communication[s] for any non-business purpose," use social networks unless "off the job," or discuss the Union during worktime.[5] This was the first time the Respondent informed employees of these rules. Moreover, the Respondent's social-media policy provides that CSRs may use personal social media on their work computer during work hours if it does not interfere with their jobs.

That same day, Manager Lillian Maron called Befort into a closed-door meeting. The Respondent's chief of human resources provided Maron with talking points that stated that employees may use email to communicate with their coworkers about the Union, provided that none of the employees involved were working at the time and the communications were not otherwise disruptive. Nonetheless, at the meeting, Maron flatly told Befort that she was prohibited from sending union-related emails to employees' work addresses. Moreover, the Respondent subsequently asserted that Befort's email violated its Acceptable Use Policy, Enterprise User Standard, and No Solicitation or Distribution Policy.

## II. THE UNDERLYING DECISIONS AND THE D. C. CIRCUIT'S OPINION

The General Counsel alleged, among other things, that the Respondent violated Section 8(a)(1) by selectively and disparately enforcing its Acceptable Use Policy against Befort's email, by promulgating and maintaining overbroad work rules prohibiting employees from sending "mass communications" to other employees and using social media during work, and by manager Maron telling Befort that the Respondent prohibited employees from sending union-related emails to employees' work addresses.[6]

### *A. The Judge's Decision*

The judge found, in addition to other violations not at issue here, that the Respondent had violated Section 8(a)(1) by disparately enforcing its Acceptable Use Policy, Enterprise User Standard, and No Solicitation or Distribution Policy against Befort's email because it had permitted facility-wide emails about other social functions and other matters. *T-Mobile I*, 369 NLRB No. 50, slip op. at 14–16. The judge also found that the Respondent unlawfully promulgated, through Director Elliott's June 2 email, new work rules against employee "mass communications" and social-media use during work in response to Befort's email. Id., slip op. at 16–17. Furthermore, applying the Board case law in effect at the time, the judge found these rules against employee "mass communications" and social-media use during work were unlawfully overbroad because employees would reasonably interpret them as limiting their communications about Section 7–related matters, even though the Respondent's practice had been to permit personal facility-wide emails and social-media use during work hours. Id. Lastly, the judge found that the Respondent violated Section 8(a)(1) when manager Maron coercively told Befort that she could not send union-related emails to employees' work addresses because the Board case law in effect at the time held that employees had a presumptive right to use the Respondent's email system for Section 7 communications during nonwork time. Id., slip op. at 17–18.

### *B. The Board's Decisions*

The Board unanimously reversed the judge's finding that the Respondent had discriminatorily enforced its

[4] All dates hereinafter are in 2015 unless otherwise indicated.

[5] Again, the prohibition against discussing the Union during worktime was found unlawful in *T-Mobile I* and is not at issue here. See supra fn. 1.

[6] During the hearing before the judge, the Respondent claimed that Befort's email violated not only its Acceptable Use Policy but also its Enterprise User Standard and No Solicitation or Distribution Policy.

Acceptable Use Policy, Enterprise User Standard, and No Solicitation or Distribution Policy against Befort's Section 7 activity. Id., slip op. at 2–3. The Board noted that, in *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, 368 NLRB No. 143 (2019), it had overruled the case law that provided employees a presumptive right to use their employer-provided email for Section 7 communications during nonworking time.[7] *T-Mobile I*, 369 NLRB No. 50, slip op. at 2. The Board added that discrimination must be "'along Section 7 lines'" in order to be unlawful, and that "'unlawful discrimination consists of disparate treatment of activities or communications of a similar character because of their union or other Section 7-protected status.'" Id., slip op. at 3 (quoting *Register Guard*, 351 NLRB 1110, 1116–1119 (2007), enfd. in part and review granted in part sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009)). The Board determined that the General Counsel failed to show that the Respondent had discriminatorily enforced its policies against Section 7 activity because the Respondent had never permitted emails "in favor of a specific union or against union activity" and had never "permitted employees to send mass emails for their personal benefit, much less to further any organizational purpose." Id. The Board reasoned that the emails the Respondent had permitted "were, by and large, emails that the Respondent sent for its own business-related interests of improving the camaraderie among its work force or helping to reunite a lost item with its owner," and therefore were "not similar in character to Befort's emails." Id.

The Board severed the allegations that the Respondent violated Section 8(a)(1) by promulgating and maintaining the June 2 rules and by telling Befort that employees could not send union-related emails to other employees' work addresses. The Board explained that those allegations turned on whether Befort's emails constituted protected activity under the limited exception in *Caesars Entertainment*—giving employees the right to use their employer's email system for union communications where employees would otherwise be deprived of any reasonable means of communicating with each other—and that the Board could not decide those allegations without first giving the parties an opportunity to address whether that limited exception applied to the facts of this case. Id. Accordingly, to provide that opportunity, the Board issued a notice to show cause. Id., slip op at 4.

[7] Member Prouty was not a member of the Board when *Caesars Entertainment* issued, and he expresses no view on whether it was correctly decided. He notes that the Union did not challenge *Caesars* before the court and that no party has asked the Board to revisit it here.

The Board subsequently issued its Supplemental Decision and Order noting that the parties had declined to submit additional evidence regarding the limited *Caesars Entertainment* exception. *T-Mobile II*, 369 NLRB No. 90, slip op. at 1. As a result, the Board found that the Respondent had lawfully restricted employee access to its email system and that Befort lacked a Section 7 right to use the Respondent's email system when she sent her May 29 email. Because Befort had used the Respondent's email system without proper authorization, the Board reversed the judge and found that in response to Befort's actions, the Respondent had lawfully announced its new work rules prohibiting mass communications for any non-business purpose and the use of social media during work, and that Maron had lawfully told Befort that she could not send union-related emails to employees' work addresses. Id. The Board also rejected the judge's finding that the new work rules were unlawfully overbroad, explaining that employees would not reasonably interpret them to interfere with their NLRA rights as they reasonably knew that the rules were promulgated in response to Befort's improper use of the Respondent's email system. Id., slip op. at 1 fn. 1.

### *C. The D.C. Circuit's Opinion*

On review, the D.C. Circuit found that the Board had erred by failing to find that the Respondent unlawfully discriminated against Befort's email because of its union content. *Communications Workers of America*, 6 F.4th at 28. The Board had reasoned that Befort's email was not "'similar in character'" to emails that the Respondent had previously permitted because, "'by and large, emails that [T-Mobile] sent'" were "'for its own business-related interests,'" and "'[t]here is no evidence' that T-Mobile 'permitted employees to send mass emails for their personal benefit, much less to further any [non-T-Mobile] organizational purpose." Id. at 23 (quoting *T-Mobile I*, 369 NLRB No. 50, slip op. at 3) (alterations in court's decision). Relying on its earlier decision in *Guard Publishing*, the court rejected the Board's distinction as "'a post hoc invention.'" Id. at 24 (quoting *Guard Publishing v. NLRB*, 571 F.3d 53, 60 (D.C. Cir. 2009)). Concluding that the Board in this case "ignore[d] the lesson of *Guard Publishing*," the court commented that the Board's determination of whether an employer engaged in unlawful discrimination must not be based on "whether the employer or [the] Board can identify a legitimate, union-neutral distinction after the fact that the employer might lawfully have drawn, but by reference to the policies the employer actually had in place and the reasons on which it in fact relied for the action challenged as discriminatory." Id.

Turning to the policies and rationales in this case, the court determined that the Respondent's Acceptable Use Policy, Enterprise User Standard, and No Solicitation or Distribution Policy did not apply to Befort's email. Id. at 25–26. Likewise, the court rejected the Respondent's contemporaneous explanation that it reprimanded Befort because she sent a "mass" email. Id. at 26. The court reasoned that, even assuming the Respondent had a "preexisting, permissible, unwritten company practice or policy" against mass emails, it was "disparately enforced against Befort's email" because other nonsupervisory employees had sent or replied to facility-wide personal emails, and the Respondent sent its own mass, non-business-related emails. Id. at 27. The court rejected, as an impermissible post hoc rationalization, the Board's attempt to distinguish Befort's email by claiming that the Respondent had only allowed mass emails that it sent to further its business-related interests, in contrast to Befort's email, which she sent for her personal benefit and to further an organizational purpose. Id. Moreover, the court noted that the Respondent's only other explanation for reprimanding Befort for her email provides affirmative support for the Union's claim that the Respondent singled out Befort for her union activity: a manager told Befort that employees cannot send out union-related emails using the Respondent's email system, even though the Respondent permitted other personal uses of its email system. Id. at 28. The court also observed that the Respondent singled out Befort's union activity by generating a Third Party Activity Report, which the Respondent does only in response to union activity, and that Director Elliott told employees that they could not talk about the Union during worktime, for which the Board affirmed the judge's finding of a violation. Id.

Based on its conclusion that the Respondent had discriminated against union activity by reprimanding Befort for her May 29 email, the court determined that the Respondent, by Director Elliott's June 2 email, unlawfully promulgated new rules in response to that activity. Id. at 30. It also held that the Board erred by relying on the unprotected nature of Befort's email to find that employees would not reasonably interpret the newly promulgated rules prohibiting mass communications and social-media use during work to interfere with Section 7 activity. Id. Even though the Respondent could lawfully restrict Befort's use of its email system under *Caesars Entertainment*, it could not do so in a discriminatory fashion, which the court found that the Respondent had done. Id. Because the mass-communications and social-media rules were adopted in response to union activity, the court found it unclear how employees could interpret those rules not to interfere with their NLRA rights. Id. The court remanded to give the Board the opportunity to consider "the remainder" of the Board's test in *Boeing Co.*, 365 NLRB No. 154 (2017), for determining the lawfulness of maintaining workplace rules, i.e., to evaluate whether the Respondent's justifications for those two rules outweigh the adverse impact on employees' Section 7 rights. *Communications Workers of America*, 6 F.4th at 30–31.

The court also remanded to the Board the issue of whether manager Maron's statement to Befort that she "was prohibited from sending Union-related emails to employees' work email addresses" was unlawfully coercive. Id. at 31. The court rejected the Board's implicit finding that the statement was lawfully made in response to Befort's impermissible use of the Respondent's email system, noting that Maron's own talking points stated the Respondent permitted its employees to send union-related emails to work addresses. Id. The court concluded that Maron's statement lacked a basis in the Respondent's policies and that the Board failed to identify any ground for reversing the judge's finding of coercion. Id.

## III. DISCUSSION

We accept, as the law of the case, the court's conclusion that the Respondent engaged in discrimination within the meaning of *Register Guard* when it selectively and disparately enforced its Acceptable Use Policy, Enterprise User Standard, and No Solicitation or Distribution Policy against Befort for her May 29 email.[8] Based on

[8] Because applying the standard the General Counsel proposes would not affect the outcome, we find it unnecessary to pass on the General Counsel's argument that the Board should revisit the *Register Guard* discrimination standard. Our colleague would accept the General Counsel's invitation. Because it is unnecessary to reconsider *Register Guard* here, we decline to engage with his arguments. We observe, however, that to the extent our colleague relies on the D.C. Circuit's decision in this case and in *Guard Publishing*, supra, those decisions faulted only the Board's application of the *Register Guard* discrimination standard, not the standard itself.

Member Prouty would address that argument and would heed the D.C. Circuit's misgivings about the Board's application of its *Register Guard* standard by overruling it and replacing it with the discriminatory-enforcement standard set forth in *Fleming Cos.*, 336 NLRB 192, 193-194 (2001), enf. denied in relevant part 349 F.3d 968 (7th Cir. 2003), and earlier cases, in which the Board found that an employer violates Sec. 8(a)(1) by barring employees from using its equipment for union activities or communications while permitting employees to use that equipment for other personal, nonwork-related matters.

Member Prouty notes that the D.C. Circuit has again faulted the Board for its application of its *Register Guard* standard (the first time being *Guard Publishing* itself). The court stated that the Board's assertion that the Respondent had "never permitted emails in favor of a specific union or against union activity" was a "patently inadequate distinction" between Befort's email and the other emails that the Respondent had permitted. 6 F.4th at 23. The court recognized that "those are not the only scenarios that run afoul of the bar against discriminating against union-related activity." Id. The court then found

the Respondent's disparate treatment of Befort's union-related email, we also find that the Respondent violated Section 8(a)(1) by promulgating its rules in Director Elliott's June 2 email against mass communications for any non-business purpose and social-media use during work in response to Befort's union activity in sending her May 29 email.[9]

In addition, we find that the Respondent violated Section 8(a)(1) when manager Maron told Befort that employees could not send union-related emails to employees' work addresses. The court rejected the Board's rationale—that Maron's statement was a noncoercive response to Befort's impermissible use of its email system—as "fall[ing] short." 6 F.4th at 31. The court also noted that the talking points Maron brought to her meeting with Befort expressly acknowledged that employees could send union-related emails to work addresses. Id. As the judge recognized, even though Maron communicated conflicting messages, "[t]he main message Befort received . . . was that she could not use Respondent's email to send messages about the Union." 369 NLRB No. 50, slip op. at 18. Under the totality of the circumstances, we find that Maron's statement was coercive and had a reasonable tendency to interfere with Befort's right to communicate about the Union by causing Befort to

that "[t]he Board's analysis here—reliant on a post hoc line between permissible and impermissible conduct the employer had not itself established before the conduct at issue occurred—repeats the very error we identified in *Guard Publishing*." Id. at 24. The court noted that "*Guard Publishing* makes clear . . . that the consistency of an employer's responses to union-related and nonunion employee conduct is measured not by whether the employer or Board can identify a legitimate, union-neutral distinction after the fact that the employer might lawfully have drawn, but by reference to the policies the employer actually had in place and the reasons on which it in fact relied for the action challenged as discriminatory." Id.

Member Prouty therefore believes that the court's opinion demonstrates how the *Register Guard* standard is too restrictive in analyzing discriminatory-enforcement allegations, including by finding no discrimination without even considering the reasons purportedly relied upon by an employer at the time of its allegedly discriminatory action. Instead, the standard examines only whether the employer had previously permitted union or other organizational communications. For instance, the Board's underlying Decision and Order in this case, in applying the *Register Guard* standard, disregarded the Respondent's contemporaneous rationales for prohibiting Befort's May 29 union-related email, even though they failed to support the Respondent's claim that Befort's email was impermissible for nondiscriminatory reasons. This is precisely what the D.C. Circuit has—for the second time now—counseled the Board that it must not do.

Finally, Member Prouty notes that there are sound policy reasons under Sec. 7 for replacing the narrow *Register Guard* discrimination standard. Once an employer permits its equipment to be used for any nonwork-related reason, not just for organizational purposes, the employer has demonstrated its willingness to yield its property right in that equipment for nonwork purposes, which necessarily includes union and other Sec. 7-related content. In Member Prouty's view, the D.C. Circuit opinion in this case highlights the need for the Board to return to a discrimination standard that genuinely treats like cases alike: an employer allowing an employee to use its equipment for any nonwork-related reason must as part of that decision also let that same equipment be used, consistent with Sec. 7, for its employee's union activities or communications.

[9] We find it unnecessary to "consider the remainder" of the *Boeing* analysis, *Communications Workers of America*, 6 F.4th at 31—i.e., whether the adverse impact of these rules on the exercise of Sec. 7 rights is outweighed by legitimate justifications associated with the rules. It is the law of the case that the mass-communications and social-media rules were promulgated in response to union activity. This is an independently sufficient basis upon which to find these rules unlawful to maintain under the second prong of the standard set forth in *Lutheran Heritage Village–Livonia*, 343 NLRB 646, 647 (2004), which *Boeing* left intact. See *Boeing Co.*, supra, slip op. at 22 (clarifying that the standard set forth in *Boeing* replaced only the first, "reasonably construe" prong of the *Lutheran Heritage* test). Accordingly, there is no need to decide whether these rules are unlawful to maintain under *Boeing* as well. See, e.g., *Seven Seas Union Square, LLC*, 368 NLRB No. 92, slip op. at 1–2 fn. 5 (2019) (finding it unnecessary to pass on whether certain rules were unlawfully overbroad where Board found the rules unlawful on the basis that they were promulgated in response to Sec. 7 activity), enfd. mem. sub nom. *NLRB v. Key Food Stores Co-Operative, Inc.*, 2021 WL 4538590 (2d Cir. Oct. 5, 2021); *Youville Health Care Center*, 326 NLRB 495, 495 & fn. 3 (1998) (same).

Member Prouty differs again, would address this issue as well, and would find the Respondent's rules against mass communications and social media use during work unlawfully overbroad. Under extant Board law in *Boeing Co.*, if a rule, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights, the Board will determine whether it is unlawfully overbroad by evaluating: (i) the nature and extent of the potential impact on NLRA rights, *and* (ii) legitimate justifications associated with the rule. 365 NLRB No. 154, slip op. at 3. In the Supplemental Decision and Order, the Board found these two rules were not overbroad "[b]ecause the Respondent sent its email [promulgating the June 2 rules] in response to Befort's violation of several of its policies, . . . [and f]or that reason, when employees reasonably interpret the rules at issue here, they would understand that they do not prohibit or interfere with the exercise of NLRA rights." 369 NLRB No. 90, slip op. at 1 fn. 1. However, the court explicitly rejected the contention that Befort violated any of the Respondent's policies or that the Respondent lawfully promulgated its June 2 rules, which is now the law of the case. 6 F.4th at 30-31. The court noted that it is "unclear in what way employees could interpret the restrictions not to 'interfere with the exercise of NLRA rights,' such as communications about the Union like Befort's," and directed the Board on remand to address whether the rules are unlawfully overbroad. Id. The nature and extent of the potential impact of the Respondent's rules on NLRA rights is self-evident, as the court recognized that it is unclear how employees could interpret them to not interfere with their statutory rights. Moreover, because the Respondent only promulgated these rules in response to union activity, the Respondent lacked a legitimate justification for imposing them that is not tied to employees' Sec. 7 activity. Accordingly, Member Prouty believes, under these circumstances, that the Board should address the court's remand instructions and find the rules unlawfully overbroad.

To be clear, Member Prouty was not a member of the Board when *Boeing* issued, and he expresses no opinion as to whether it was correctly decided. He further notes that in *Stericycle, Inc.*, 371 NLRB No. 48 (2021), he joined Chairman McFerran and Member Wilcox in issuing a notice and invitation to file briefs regarding whether the Board should continue to adhere to the standard adopted in *Boeing* when analyzing the lawfulness of facially neutral employer work rules.

conclude that she could not send union-related emails to her coworkers' work addresses, even though the Respondent permitted employees to send such messages.

## ORDER

The National Labor Relations Board orders that the Respondent, T-Mobile USA, Inc., Wichita, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Selectively and disparately enforcing its Acceptable Use Policy, Enterprise User Standard, and No Solicitation or Distribution Policy against employees sending union-related emails or engaging in other union or protected concerted activities.

(b) Promulgating rules in response to employees' union activities.

(c) Telling employees that they may not send union-related emails to employees' work email addresses.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the rule prohibiting employees from sending "mass communications" for any non-business purpose, promulgated on June 2, 2015, in response to union activity, and notify employees in writing that the rule has been rescinded.

(b) Rescind the rule prohibiting employees from using social media during work, promulgated on June 2, 2015, in response to union activity, and notify employees in writing that the rule has been rescinded.

(c) Post at its Wichita, Kansas facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 2, 2015.[10]

(d) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2022

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Marvin E. Kaplan, Member

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John F. Ring, Member

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David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

[10] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT selectively or disparately enforce our Acceptable Use Policy, Enterprise User Standard, and No Solicitation or Distribution Policy against you for your union-related emails or your other union or protected concerted activities.

WE WILL NOT promulgate rules in response to your union activity.

WE WILL NOT tell you that you may not send union-related emails to employees' work email addresses.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the rule prohibiting you from sending "mass communications" for any non-business purpose, promulgated on June 2, 2015, in response to union activity, and notify you that the rule has been rescinded.

WE WILL rescind the rule prohibiting you from using social media during work, promulgated on June 2, 2015, in response to union activity, and notify you that the rule has been rescinded.

T-MOBILE USA, INC.

The Board's decision can be found at http://www.nlrb.gov/case/14-CA-155249 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.