Purple Communications, Inc. *and* Communications Workers of America, AFL–CIO. Cases 21–CA–095151, 21–RC–091531, and 21–RC–091584

March 24, 2017

SUPPLEMENTAL DECISION AND ORDER

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

On March 16, 2015, Administrative Law Judge Paul Bogas issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party each filed answering briefs. The Charging Party also filed a reply to the General Counsel's answering brief. The Charging Party filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has considered the supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Purple Communications, Inc., Corona and Long Beach, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. March 24, 2017

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

ACTING CHAIRMAN MISCIMARRA, dissenting.

Again before the Board is the issue whether the Respondent's Internet, Intranet, Voicemail, and Electronic Communications Policy (Policy) is lawful under the National Labor Relations Act (NLRA). In its prior decision in this case, a Board majority, overruling in relevant part *Register Guard*, 351 NLRB 1110 (2007),[1] held that if employees have been granted access to their employer's email system for work-related purposes, the Board will presume that they have a right to use that email system to engage in NLRA-protected communications on nonworking time, unless the employer demonstrates that special circumstances warrant restricting that presumptive right.[2] The majority in *Purple Communications I* remanded the case to the administrative law judge to give Respondent an opportunity to demonstrate special circumstances. On remand, the Respondent notified the judge that it would not mount a special circumstances defense. The judge then issued a supplemental decision, finding that the Respondent had not rebutted the presumption that its Policy is unlawful. On exceptions, the Respondent concedes the issue of special circumstances but contends that *Purple Communications I* was wrongly decided and should be reconsidered.

I find merit in the Respondent's exceptions. As I explained in my dissenting opinion in *Purple Communications I*, I believe the standard adopted by the Board majority in that decision is incorrect and unworkable.

- The *Purple Communications* standard improperly presumes that when an employer reserves the use of its email system for business purposes, this unreasonably impedes employees' NLRA-

[1] In its initial decision in this case, *Purple Communications, Inc*., 361 NLRB No. 126 (2014) (*Purple I*), the Board partially overruled *Register Guard*, 351 NLRB 1110 (2007), enfd. in part and remanded in part 571 F.3d 53 (D.C. Cir. 2009), and held that "employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email systems." 361 NLRB No. 126, slip op. at 1. The Board further held that "[a]n employer may rebut the presumption by demonstrating that special circumstances necessary to maintain production or discipline justify restricting its employees' rights." Id., slip op. at 14. The Board remanded the proceeding to the judge to "allow[] the parties to introduce evidence relevant to a determination of the lawfulness of the Respondent's electronic communications policy" under the Board's new standard. Id., slip op. at 17. On remand, the Respondent notified the judge that it would not contend that special circumstances exist justifying its electronic communications policy. The judge issued the attached supplemental decision, finding that the Respondent had not rebutted the presumption that its policy is unlawful. On exceptions, the Respondent concedes that it did not show special circumstances justifying its policy but contends that *Purple I* was wrongly decided and should be reconsidered. Our dissenting colleague finds merit in those exceptions. We reject his position for the reasons stated in the majority decision in *Purple I*. Id., slip op. at 6 fn. 18, 14–15 fn. 71. See also *Cellco Partnership d/b/a Verizon Wireless*, 365 NLRB No. 38, slip op. at 1 fn. 3 (2017).

[1] Enfd. in relevant part and remanded sub nom. *Register Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009).

[2] *Purple Communications, Inc.*, 361 NLRB No. 126, slip op. at 11–16 (2014) (*Purple Communications I*).

protected activities.[3] Far from balancing the "undisputed right of self-organization assured to employees" with "the equally undisputed right of employers to maintain discipline in their establishments,"[4] the Board in *Purple Communications I* assumed that restricting an employer's email system to business-related uses constitutes "an unreasonable impediment to self-organization,"[5] notwithstanding the widespread availability of multiple digital platforms (e.g., social media, text messaging, and personal email accounts)—not to mention old-fashioned face-to-face conversation—through which employees may engage in NLRA-protected communications separate and apart from their employer's email system.

- The *Purple Communications* standard fails to accommodate employers' property rights in their information technology resources, which typically cost a great deal to acquire, maintain, and secure.[6]
- The *Purple Communications* standard makes it enormously difficult for employers to enforce a valid rule prohibiting solicitation during working time, where, by the very nature of emails, it is likely that an email sent during one employee's nonworking time will be received and read by employees during their working time. The *Purple Communications* standard also makes it extremely difficult for employers to avoid unlawful surveillance of NLRA-protected activities, even though employers often have legitimate reasons to search and retrieve employee work emails.[7]
- The *Purple Communications* standard, which gives employees a *presumptive* right to use their employer's email system for NLRA-protected communications and places the burden on the employer to demonstrate "special circumstances" warranting restricting that right, fails to give employers and employees "certainty beforehand"[8] concerning what they may and may not do, since what qualifies as a "special circumstance" will only be determined after the fact and case by case, following potentially years of Board and court litigation.[9]

For the above reasons, I believe *Purple Communications I* was wrongly decided, and I would return to the rule of *Register Guard* that employers may lawfully control the uses of their email systems, provided they do not discriminate against NLRA-protected communications by distinguishing between permitted and prohibited uses along Section 7 lines.[10] It is undisputed that the Respondent's Policy is lawful under *Register Guard*, and I would so find. In addition, although *Register Guard* dealt specifically with an employer's policy regarding use of its email system, the Board in *Register Guard* relied on cases in which it more broadly held that there is "no statutory right . . . to use an employer's equipment or media."[11] I agree with this rationale, and I would apply the holding of *Register Guard* not just to employer-provided email systems, but to employers' information technology equipment and resources generally.

Accordingly, for these reasons, I respectfully dissent.

Dated, Washington, D.C. March 22, 2017

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Philip A. Miscimarra, Acting Chairman

NATIONAL LABOR RELATIONS BOARD

Cecelia Valentine, Esq., for the General Counsel.
Robert J. Kane, Esq. (Stradling, Yocca, Carlson & Rauth), of Newport Beach, California, for the Employer.
Lisl R. Duncan, Esq. (Weinberg, Roger & Rosenfeld), of Los Angeles, California, and *David A. Rosenfeld, Esq. (Weinberg, Roger & Rosenfeld),* of Alameda, California, for the Charging Party.

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[3] Id., slip op. at 20–22 (Member Miscimarra, dissenting).

[4] *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 797–798 (1945).

[5] Id. at 803 fn. 10.

[6] *Purple Communications I*, supra, slip op. at 22–24 (Member Miscimarra, dissenting).

[7] Id., slip op. at 24–26 (Member Miscimarra, dissenting).

[8] *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 679 (1981).

[9] *Purple Communications I*, supra, slip op. at 27–28 (Member Miscimarra, dissenting).

[10] *Register Guard*, 351 NLRB at 1114–1116.

[11] *Mid-Mountain Foods*, 332 NLRB 229, 230 (2000), enfd. 269 F.3d 1075 (D.C. Cir. 2001). See also *Eaton Technologies*, 322 NLRB 848, 853 (1997) ("It is well established that there is no statutory right of employees or a union to use an employer's bulletin board."); *Champion International Corp.*, 303 NLRB 102, 109 (1991) (stating that an employer has "a basic right to regulate and restrict employee use of company property" such as a copy machine); *Churchill's Supermarkets*, 285 NLRB 138, 155 (1987) ("[A]n employer ha[s] every right to restrict the use of company telephones to business-related conversations . . . ."), enfd. 857 F.2d 1474 (6th Cir. 1988), cert. denied 490 U.S. 1046 (1989); *Union Carbide Corp.*, 259 NLRB 974, 980 (1981) (employer "could unquestionably bar its telephones to any personal use by employees"), enfd. in relevant part 714 F.2d 657 (6th Cir. 1983); cf. *Heath Co.*, 196 NLRB 134 (1972) (employer did not engage in objectionable conduct by refusing to allow prounion employees to use public address system to respond to antiunion broadcasts).

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

PAUL BOGAS, Administrative Law Judge. I issued my initial decision in these consolidated cases on October 24, 2013. The General Counsel, the Respondent/Employer (Purple Communications, Inc.) and the Charging Party/Union (Communications Workers of America, AFL–CIO) all filed exceptions to that decision and, on September 24, 2014, the National Labor Relations Board (the Board) issued a Decision that, inter alia, severed and held for further consideration the question of whether the Respondent had violated Section 8(a)(1) of the National Labor Relations Act (the Act) by maintaining its electronic communication policy. 361 NLRB No. 43 (2014). On December 11, 2014, a majority of the full Board issued a Decision and Order remanding that issue to me "to reopen the record and afford the parties an opportunity to present evidence relevant to the standard we adopt today, and for the judge to prepare a supplemental decision." 361 NLRB No. 126, slip op. at 2 (2014). In its remand decision, the Board explicitly "overrul[ed] *Register Guard's*[1] holding that, under ordinary circumstances, even employees who have been given access to their employer's email system have no right to use it for Section 7 purposes."[2] Slip op. at 5.[3] In its place, the Board adopted a presumption, based on the Supreme Court analysis in *Republic Aviation*,[4] that employees who have been given access to the employer's email system in the course of their work are entitled to use the system to engage in statutorily protected Section 7 discussions while on nonworking time. Slip op. at 5. The Board stated that "[a]n employer may rebut the presumption by demonstrating that special circumstances necessary to maintain production or discipline justify restricting its employees rights." Slip op. at 14. Explaining how this standard was to work in practice, the Board stated that "[a]n assertion of special circumstances will require that the employer articulate the interest at issue and demonstrate how that interest supports the email use restrictions." Slip op.at 5. The Board "anticipate[d] that it w[ould] be the rare case where special circumstances justify a total ban on nonwork email use by employees" such as the ban involved here. Slip op. at 14.

The Board stated that absent a justification for a total ban on employee use of a company email system for Section 7 purposes, the employer may apply uniform and consistently enforced controls over its email system if it can establish that such controls are necessary to maintain production and discipline. Its decision, the Board said, applies to company email systems, but not to any other type of electronic communications systems. Slip op. at 1. Regarding remedy, the Board stated that "[i]f the Respondent's policy is ultimately found unlawful, its remedial obligations will be limited to rescission of the policy and standard notifications to employees." Slip op.at 17.

In my original decision, I applied *Register Guard* and held that the Respondent's restrictions on employee use of its email system were not a violation of the Act. Pursuant to the Board's remand decision, I now evaluate the same restrictions under the standard set forth in that decision.

Facts

The Respondent provides real-time sign language interpretation during video calls. Its employee-interpreters communicate orally with the hearing participant on the video call and by sign language with the deaf or hard of hearing participant. It offers these services 24 hours a day, 7 days a week. The Respondent has 16 call center facilities across the United States, two of which—one in Corona, California, and one in Long Beach, California—are involved in this litigation. The interpreters use company-provided workstation computers to access the Respondent's intranet system and various work programs. These workstation computers have limited, if any, access to the internet and nonwork programs. At the Corona and Long Beach facilities, the Respondent also maintains a small number of shared computers that are located in common areas and from which employees are able to access the internet and nonwork programs.

The Respondent assigns an individual email account to each interpreter and the interpreters are able to access these accounts from the workstation computers as well as from their home computers and personal smart phones. Employees use the company email system on a daily basis while at work for communications among themselves. The company email is also used for communications between managers and employees.

Since June 19, 2012, the Respondent has maintained a handbook policy that prohibits employees from using the company email system for nonbusiness purposes.[5] That policy states:

INTERNET, INTRANET, VOICEMAIL AND

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[1] *Register Guard*, 351 NLRB 1110 (2007), enfd. in relevant part and remanded sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009).

[2] Sec. 7 of the Act, 29 U.S.C. Sec. 157, states:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this Title].

[3] Prior to issuing its remand decision, the Board, on April 30, 2014, invited the parties and interested *amici* to file briefs on questions relating to the possibility of overruling *Register Guard*. The Board's remand decision includes extensive analysis in support of its conclusion that *Register Guard's* holding was "clearly incorrect" and could not be permitted to stand given, inter alia, the dramatically expanded use of email in recent years and the Board's "obligation to accommodate the competing rights of employers and employees." Slip op. at 1 and 14. Rather than risk oversimplifying or misstating the Board's analysis here, I refer the reader the discussion in the Board's remand decision. See slip op. at 1 and 4–17.

[4] *Republic Aviation*, 324 U.S. 793 (1945).

[5] The General Counsel, Charging Party, and Respondent all entered into a stipulation that the handbook containing this policy was in effect at the Corona and Long Beach locations. Jt. Exh. 2; see also Tr. at pp. 13 and 18 (Counsel for the General Counsel represents that Jt. Exh. 1—the handbook—was in effect at the Corona and Long Beach locations). It may well be that the handbook was in effect at other locations, or even companywide, but the record does not show that it was.

> ELECTRONIC COMMUNICATION POLICY
>
> Computers, laptops, internet access, voicemail, electronic mail (email), Blackberry, cellular telephones and/or other Company equipment is provided and maintained by the [sic] Purple to facilitate Company business. All information and messages stored, sent, and received on these systems are the sole and exclusive property of the Company, regardless of the author or recipient. All such equipment and access should be used for business purposes only.
>
> . . .
>
> Prohibited activities
>
> Employees are strictly prohibited from using the computer, internet, voicemail and email systems, and other Company equipment in connection with any of the following activities:
>
> . . .
>
> 2. Engaging in activities on behalf of organizations or persons with no professional or business affiliation with the Company.
>
> . . .
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> 5. Sending uninvited email of a personal nature.

The handbook provides that the Respondent may punish an employee's violation of this policy with discipline up to and including termination.

Tanya Monette, vice president for human resources, testified that the Respondent prohibits employees from using the email system for non-business purposes in order to protect against: computer viruses, the transmission of inappropriate information, and the release of confidential company information. John Ferron, the Respondent's president and chief executive officer, testified that the reason employees are prohibited from using their workstation computers for nonbusiness purposes is to prevent computer viruses from contaminating the call center.

2. Analysis

a. Respondent's Electronic Communication Policy interfered with employees' Section 7 rights in violation of Section 8(a)(1)

In the instant case, there is no dispute that the Respondent (1) grants employees access to the company email system and (2) maintains a prohibition on nonbusiness use of the company email system that is broad enough to encompass employees' use of the email system for Section 7 activities during nonworking time. Under the standard set forth in the Board's remand decision, this prohibition presumptively interferes with employees' Section 7 rights and violates Section 8(a)(1) of the Act[6] unless the Respondent rebuts that presumption by showing that the restrictions are justified by special circumstances necessary to maintain production or discipline.

In this case, the Respondent has declined to attempt to establish special circumstances to rebut the presumption that it violated the Act. By letter dated February 3, 2015, the Respondent represented to me that it would not be "submitting any argument to the Administrative Law Judge either by brief or otherwise, contending that special circumstances, as defined in the Board's decision, exist to justify the business use only restriction that Respondent places on non-working time use of its e-mail system by employees." Attachment A. The Respondent further stated that it "w[ould] not be presenting any additional evidence on the special circumstances issue remanded by the Board for hearing." Ibid. Given that the Respondent has the burden of establishing special circumstances to rebut the presumption, and has not done so, I find that the Respondent's electronic communications policy violates Section 8(a)(1) of the Act.[7]

In reaching the conclusion that the Respondent's policy violated the Act, I considered the testimony of Monette and Ferron, who summarily listed reasons for portions of the electronic communications policy. However, the Respondent does not assert that any of those concerns rise to the level of special circumstances necessary to maintain production or discipline, nor has it demonstrated that the stated concerns justify the email use restrictions. To the contrary, as discussed above, the Respondent has stated that it does not contend that special circumstances exist to justify the restrictions. Thus the Respondent has not rebutted the presumption that those restrictions are unlawful.[8]

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[6] Sec. 8(a)(1) of the Act provides:

> It shall be an unfair labor practice for an employer –
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [section 157 of this title].

Section 8(a)(1), 29 U.S.C. Sec. 158(a)(1).

[7] Subsequent to the remand, the Respondent submitted a brief arguing that the Board erred by overturning *Register Guard*, supra, replacing it with a standard based on *Republic Aviation*, and applying the new standard retroactively to this case. If these arguments have merit they are for the

Board to consider, not me. I am bound to follow Board decisions that have not been reversed by the Board or the Supreme Court. See *Pathmark Stores*, 342 NLRB 378 fn. 1 (2004); *Hebert Industrial Insulation Corp.*, 312 NLRB 602, 608 (1993); *Lumber & Mill Employers Assn.*, 265 NLRB 199 fn. 2 (1982), enfd. 736 F.2d 507 (9th Cir. 1984), cert. denied 469 U.S. 934 (1984). The same goes for the arguments that the Charging Party makes in its post-remand brief calling for modifications to elements of the Board's remand decision.

[8] Given that it is the Respondent's burden to articulate special circumstances and demonstrate that those circumstances justify its email restrictions, I believe that the Respondent's express disclaimer of any such contentions ends the present inquiry. Nevertheless, in its post-remand brief the General Counsel devotes considerable energy to arguing that the record evidence cannot support a special circumstances defense. Even assuming that, despite the Respondent's disclaimer, I am required to investigate whether a special circumstances defense can be conjured on the Respondent's behalf, I would find that the evidence here does not begin to support such a defense. I note, first, that there is nothing "special" about Monette's and Ferron's stated concerns with confidentiality, inappropriate communications, and computer viruses. The record does not show that these generic concerns are in any way different for the Respondent than for employers in general. Indeed, the fact that the Respondent permits employees to access the company email system from their home computers and personal smart phones indicates that its concerns are not particularly heightened. Nor does record provide a basis on which to conclude that such concerns justify restricting employees' Section 7 rights because other available measures (for example, anti-virus software or workplace rules specifically ad-

b. Decision not to take additional evidence on remand

As discussed above, under the standard set forth in the Board's remand decision, the Respondent violated Section 8(a)(1) because its electronic communications policy presumptively violated employees' Section 7 rights and the Respondent has not established special circumstances that rebut that presumption. Nevertheless, the Charging Party seeks to introduce additional evidence and filed an objection and offer of proof in response to my decision not to take additional evidence.[9] Neither the General Counsel nor the Respondent has joined the Charging Party's call for a further hearing or the submission of additional evidence.

The Charging Party objects that it should be permitted to present additional evidence for essentially three reasons: first, it hopes to show that the Respondent's email restrictions are unlawful because they discriminate in violation of Section 8(a)(3), not only because they interfere with employees' Section 7 rights in violation of Section 8(a)(1); second, it hopes to show that the Respondent's email policy is unlawful not only because it restricts employees' email use during nonworking time, but also because it restricts email use during working time; and third, it hopes to show that certain unusual remedies (e.g., requiring the Respondent to read the Board notice to employees) are warranted.

The matters that the Charging Party invites me to wade into are not only outside the parameters of this remand proceeding, but are explicitly or implicitly excluded from it by the Board's decision. The Charging Party's desire to introduce evidence of discrimination in violation of Section 8(a)(3) is precluded by the Board's remand order, which states that the allegation it is remanding is that the "Respondent violated Section 8(a)(1) by maintaining the Electronic Communications Policy." Slip op. at 17 (Emphasis Added). Moreover, a Section 8(a)(3) contention has never been part of this proceeding because the complaint alleges only that the policy violates Section 8(a)(1), not that it was discriminatorily maintained or enforced in violation of Section 8(a)(3). As to the Charging Party's contention that the remand decision requires consideration of whether the electronic communications policy is unlawful to the extent that it restricts the use of email for Section 7 activity during working time, the Board's decision not only does not require such an inquiry on remand, but forecloses it. The Board repeatedly stated that the standard it was applying to the instant case only concerned Section 7 activity during *nonworking time*. See slip op. at 5 ("we adopt a presumption that employees . . . are entitled to use the system to engage in statutorily protected discussion . . . while on nonworking time), slip op. at 15 ("the presumption we apply is expressly limited to nonworking time"); see also slip op. at 1 (the Board's "decision is carefully limited" and with respect to "total bans" it concerns those that extend to "Section 7 use on nonworking time.") Regarding the Respondent's insistence that it should be permitted to present evidence to justify certain special remedies, this endeavor is explicitly ruled out by the Board's remand decision. The decision states: "If the Respondent's policy is ultimately found unlawful, its remedial obligations will be limited to rescission of the policy and standard notifications to employees." Slip op. at 17. At any rate, the Board's remand decision did not make changes to remedial standards and so any evidence that the Respondent believed was necessary on that subject could, and should, have been presented at the hearing that was held prior to the remand.

CONCLUSION OF LAW

The Respondent has violated Section 8(a)(1) of the Act since June 19, 2012, by maintaining an overly broad electronic communications policy that unlawfully restricts employees' use of the Respondent's email system for Section 7 purposes

REMEDY

In its remand decision, the Board stated: "If the Respondent policy is ultimately found unlawful its remedial obligations will be limited to rescission of the policy and standard notifications to employees." Slip op. at 17. Consistent with the Board's decision, and having found that the electronic communications policy contains overly broad restrictions on employees' ability to use the Respondents email system for Section 7 purposes, I will require the Respondent to rescind its unlawful policy. The Respondent may comply with this order by rescinding the email usage restrictions in the electronic communications policy. In addition, the Respondent must either furnish employees with an insert for the current employee handbook that (1) advises that the unlawful electronic communications policy has been rescinded, or (2) provides a lawfully worded electronic communications policy on adhesive backing that will cover the one containing the unlawful email restrictions; or publish and distribute to employees revised employee handbooks that (1) do not contain the unlawful electronic communications policy, or (2) provide a lawfully worded electronic communications policy. *World Color (USA) Corp.*, 360 NLRB No. 37, slip op. at 2 (2014) (citing *2 Sisters Food Group*, 357 NLRB 1816, 1823 fn. 32 (2011); *Guardsmark, LLC*, 344 NLRB 809, 812 & fn. 8 (2005), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007); see also 361 NLRB No. 43, slip op. at 5–6 (Board's order regarding the handbook provision previously found unlawful in this case).

The General Counsel and the Charging Party both seek an order requiring that the notice posting be directed not just to

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dressing confidentiality and inappropriate communications) are inadequate. If employers are permitted to negate the presumption regarding email usage simply by proffering generic concerns such as those listed by Monette and Ferron, then then the exception would instantly swallow a rule that the Board just took pains to consider and adopt, and would stand on its head the Board's expectation "that it will be the rare case where circumstances justify a total ban on nonwork email use by employees."

[9] In addition, the Charging Party filed a request that the Board grant special permission to appeal my order setting a briefing schedule without taking additional evidence. On March 4, 2015, the Board denied the Charging Party's appeal on the merits, stating that "[i]n light of the Respondent's representation that it will not contend that any special circumstances, as defined in the Board's Decision . . . , exist to justify its electronic communications policy, the judge reasonably determined that no additional evidence on this issue need be presented." The Board noted that this denial was without prejudice to the Charging Party "raising on exceptions, if appropriate, its argument that it should have been permitted to develop the record evidence regarding the other matters described in its offer of proof."

employees at the Corona and Long Beach, California, facilities, but to employees companywide. A companywide posting is appropriate when the record shows that the policy was maintained companywide. See *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), enfd. in relevant part 475 F. 3d 369 (D.C. Cir. 2007). In this case the record does not show that the policy was maintained companywide. The stipulation that all three parties entered into at the start of the hearing states that the handbook was in effect at the Corona and Long Beach locations. The parties did not introduce testimony or other evidence showing that the handbook or the relevant policies were in effect companywide. See, supra, footnote 5. Therefore, companywide posting is not appropriate. Indeed, earlier in this litigation, the Board ordered posting only at the Corona and Long Beach locations regarding another unlawful provision in the same handbook. 361 NLRB No. 43, slip op. 6. The Board observed that the parties' stipulation in this case only reached the handbook's effectiveness at those two locations. Id., slip op. at 1 fn. 4, 5 fn. 18 and 4 fn. 22.

ORDER

The Respondent, Purple Communications, Inc., Corona and Long Beach, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining an overly broad electronic communications policy that unlawfully interferes with employees' use of the Respondent's email system for Section 7 purposes.

(b) 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 overly broad electronic communications policy in its employee handbook.

(b) Furnish employees with an insert for the current employee handbook that (1) advises that the unlawful electronic communications policy has been rescinded, or (2) provides a lawfully worded electronic communications policy on adhesive backing that will cover the one containing the unlawful email restrictions; or publish and distribute to employees revised employee handbooks that (1) do not contain the unlawful electronic communications policy, or (2) provide a lawfully worded electronic communications policy.

(c) Within 14 days after service by the Region, post at its Corona and Long Beach, California, facilities copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 21, 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. Reasonable steps shall be taken by the Respondent 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 a facility 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 19, 2012.

(d) Within 21 days after service by the Region, file with the Regional Director 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. March 16, 2015

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

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 maintain an overly broad electronic communications policy that unlawfully interferes with your use of the Respondent's email system for Section 7 activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the overly broad electronic communications policy in our employee handbook.

WE WILL furnish you with an insert for the current employee handbook that (1) advises that the unlawful electronic communications policy has been rescinded, or (2) provides a lawfully worded electronic communications policy on adhesive backing that will cover the one containing the unlawful email restrictions; or WE WILL publish and distribute to you revised employee handbooks that (1) do not contain the unlawful electronic communications policy, or (2) provide a lawfully worded electronic communications policy.

PURPLE COMMUNICATIONS, INC.

[10] 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."

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CA-095151 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

ATTACHMENT A

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February 3, 2015

Via Overnight Delivery

Honorable Paul Bogas
Administrative Law Judge
Washington, D.C. Office
1099 14th Street, NW, Room 5400 East
Washington, DC 20570-0001

Re: *Purple Communications, Inc. and Communications Workers of America, AFL-CIO*
Cases: 21-CA-095151; 21-RC-091531; and 21-RC-091584

Dear Judge Bogas:

As I informed your honor and counsel for the other parties in this matter in our conference call today, Respondent Purple Communications, Inc. will not be presenting any additional evidence on the special circumstances issue remanded by the Board for hearing in the above-referenced case.

Respondent also will not be submitting any argument to the Administrative Law Judge either by brief or otherwise, contending that special circumstances, as defined in the Board's decision, exist to justify the business use only restriction that Respondent places on non-working time use of its e-mail system by employees.

Very truly yours,

Robert J. Kane

RJK:*lmw*
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