From: (b) (6), (b) (7)(C)
To: Hadsall, Jennifer A.; Mandelman, Benjamin; O"Neil, Anita C.; Gibson, Jessica M
Cc: Bock, Richard; Compton, Kayce R.; Dodds, Amy L.; (b) (6), (b) (7)(C) Shorter, LaDonna
Subject: DLP Marquette General Hospital LLC D/B/A UP Health System Marquette, 18-CA-277763
Date: Monday, August 23, 2021 3:41:50 PM

The Region submitted this case for advice on whether an email from the Employer's marketing department to all employees regarding media contacts is facially unlawful under *Boeing Co.,* 365 NLRB No. 154 (2017), as clarified by *LA Specialty Produce Co.,* 368 NLRB No. 93 (2019), and whether this case would be an appropriate vehicle for the General Counsel to urge the Board to overrule *Boeing* and/or *LA Specialty Produce*. We conclude that since the email was lawful under extant law and the Employer has committed no outstanding unfair labor practices, this case is not a good vehicle for seeking to overrule extant Board law. Accordingly, the Region should dismiss the charge, absent withdrawal.

The Employer operates an acute-care hospital in Marquette, Michigan. On May 4, 2021, the Employer's marketing department sent a seven-page email to all employees entitled "UP Health System/Marketing Update." The part of the email alleged to be unlawful, at page 6, addressed "Media Relations":

> If you receive a phone call, email inquiry, or an unexpected visit from anyone from the media (newspaper, TV, radio station, reporter, etc.), please send them directly to Marketing by calling [Director of Marketing and Communications], 906.449.3568 or emailing marketing1@mghs.org. All media inquiries must start with Marketing, and our department will take the media through the proper steps of story appropriateness, story preparation, and getting them connected to the proper team members. In an effort to protect our patient's [sic] privacy and the safety and security of our patients - the media is not to contact departments, personnel, or patients directly.

The email's first three pages introduce the marketing department staff, complete with names, titles, contact information, and photographs. Page 4 of the email states, "We're looking for inspiring, encouraging, motivating patient stories!" It also states "[w]hether it's a[s] big as a trip to the emergency room with a bone fracture, or as small as a child braving an immunization shot, we want to hear about your success stories," and the "community needs to be reminded that we're here for them, especially if someone is faced with a medical emergency." Page 5 of the email asks employees to email the marketing team if they have good stories, provides links to the Employer's social media sites, and includes instructions for accessing the Employer's mobile app. Page 6 contains the aforementioned media-contact policy, as well as restrictions on use of the Employer's logo. Page 7 solicits marketing ideas and notes that "[a]ll advertising and marketing requests must start with" the marketing department.

The Board in *LA Specialty Produce* found lawful a media policy that restricted employees from providing information when contacted by the media. This was premised on the view that an "objectively reasonable employee who is aware of his legal rights but who also interprets work rules as they apply to the everydayness of his job" would interpret the rule, viewed in context, to address only situations where the media was seeking an official response on behalf of the employer, even though the policy did not explicitly state that. 368 NLRB No. 93, slip op. at 2, 4-5 (internal quotation

marks and citations omitted). Significantly, the provision stated that the employer's president was the "only person *authorized and designated* to comment on Company policies or any event that may affect our organization." *Id.*, slip op. at 5 (emphasis added).

Although the media contact rule in question here contains broad language—"[a]ll media inquiries must start with Marketing"—we conclude it is lawful, when viewed under the standard in *LA Specialty*. Thus, the objectively reasonable employee aware of his/her legal rights would read this language to apply to media contacts concerning "patient stories" and similar types of promotional content—for which members of the marketing department are the Employer's official spokespersons—rather than employee communications with the media concerning Section 7-protected subjects. Indeed, the rule is even less limiting on Section 7 rights than the rule in *LA Specialty*, and given the hospital setting and the Employer's legitimate patient confidentiality concerns, employees would not see this rule as applying to their Section 7 communications. Because the rule is lawful under extant Board law and the Employer has not committed other violations of the Act (aside from a merit dismissal from about six months ago), this case does not present an appropriate vehicle to seek to overrule *Boeing* or *LA Specialty Produce*. Accordingly, the Region should dismiss the charge, absent withdrawal.

This email closes this matter in Advice.

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