UNITED STATE OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

TEXAS DENTAL ASSOCIATION	§		
	§		
and	§		
	§		
NATHAN CLARK, an Individual	§	**Cases Nos.**	**16-CA-25349**
	§		**16-CA-25445**
and	§		**16-CA-25383; and**
	§		**16-CA-25840.**
BARBARA JEAN LOCKERMAN,	§		
an Individual	§		
	§		
and	§		
	§		
PATRICIA ST. GERMAIN, an Individual	§		

TEXAS DENTAL ASSOCIATION'S AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT

Texas Dental Association ("TDA") files this, its Amended Motion for Partial Summary Judgment ("Motion") against Nathan Clark's claim that TDA violated the National Labor Relations Act (the "Act") by maintaining its electronic communications policy. In support of the Motion, TDA would show the court the following:

I.
Introduction

1. Nathan Clark claims that TDA violated section 8(a)(1) of the Act by maintaining its electronic communications policy, which prohibits employees from using TDA's e-mail system except for TDA business (the "Policy").

2. In a recent opinion, the National Labor Relations Board (the "Board") clarified its position that an employer may prohibit all personal use of its e-mail by employees. *See The Guard Publishing Co.*, 351 NLRB 70 (Dec. 16, 2007). Therefore, TDA is entitled to judgment as a matter of law, and the Court should grant this Motion. FED. R. CIV. P. 56.

II.
Facts

3. On February 28, 2007, Nathan Clark filed a charge against TDA alleging that "[w]ithin the past six months and continuing thereafter, [TDA] has maintained and enforced an electronic communication policy which prohibits any personal use of its email system in the work place." Clark alleges that by this and other acts, TDA "has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the [National Labor Relations Act.]"

4. In the Second Consolidated Complaint, the Board alleges that by maintaining its electronic communications policy, TDA "maintained a facially over broad rule that unlawfully interferes with protected employee communications."[1]

5. TDA's electronic communication policy states, in relevant part, that:

> The TDA provides electronic communications, including e-mail, as communications tools for conducting Association business. No other use of Association electronic communications is authorized. In addition, the electronic communications tools provided by the TDA may not be used to solicit or proselytize for commercial ventures, religious or political causes, outside organizations, or other non-job-related solicitations.

III.
Arguments and Authorities

6. The National Labor Relations Board ("Board") has held that employees have no statutory right to use an employer's equipment or media. *Mid Mountain Foods, Inc.* 332 NLRB 229, 230 (2000). Thus, the Board has upheld non-discriminatory limits on the use of employer bulletin boards, in *Honeywell, Inc.*, 262 NLRB 1402 (1982), *enf'd by* 422 F.2d 405 (8th Cir. 1983),

employer telephones, in *Union Carbide Corp.*, 259 NLRB 974, 980 (1981), *enf'd in relevant part by* 714 F.2d 657, 663-64 (6th Cir. 1983), employer public address systems, in *The Health Co.*, 196 NLRB 134 (1972), and employer video equipment, in *Mid Mountain Foods, Inc.*, *supra.*

7. Following the reasoning in these cases, that "employees have no statutory right to use an employer's equipment or media as long as the restrictions are non-discriminatory," the Board recently held that an employer can bar its employees from using its computers and electronic communications systems, including e-mail, for personal use. *Register Guard*, 351 NLRB 70. The employer in *Register Guard* maintained an electronic communications policy that stated that "[c]ommunications systems are not to be used to solicit or proselytize for commercial ventures, religious or political causes, outside organizations, or other non-job-related solicitations." 351 NLRB 70. The Board held that this policy was not a violation. *Id.*

8. TDA's policy is materially indistinguishable from that addressed in *Register Guard.* Both policies restrict employee use of electronic communications to uses related to the business of the employer. Therefore, TDA's policy must be upheld pursuant to the Board's decision in *Register Guard.*

IV.
Conclusion

9. The policy in *Register Guard* is indistinguishable from TDA's policy. Thus, TDA's policy is not overbroad and does not violate the Act.

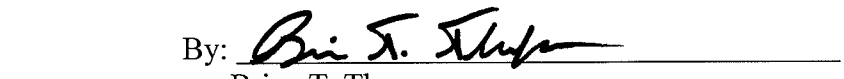
10. For this reason, TDA is entitled to judgment as a matter of law against Clark's claim that TDA violated the Act by maintaining its electronic communications policy.

---

[1] The Board also alleges in the Consolidated Complaint that TDA "selectively and disparately" applied the electronic communications policy in violation of the Act. This Motion does not address these allegations and is limited to the allegation that TDA's electronic communications policy was a violation of the Act on its face.

Respectfully submitted,

McGINNIS, LOCHRIDGE & KILGORE, L.L.P.
William H. Bingham
State Bar No. 02324000
Lin Hughes
State Bar No. 1021100
Brian T. Thompson
State Bar No. 24051425
600 Congress Avenue
Suite 2100
Austin, Texas 78701
(512) 495-6000
(512) 495-6093 FAX

By: 
Brian T. Thompson

ATTORNEYS FOR TEXAS DENTAL ASSOCIATION

CERTIFICATE OF SERVICE

I herby certify that on January 10, 2007 a true and correct copy of the above was filed electronically through the Board's e-filing system. In addition, the original and four paper copies were sent via regular mail to:

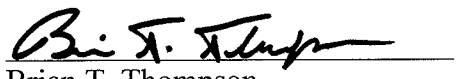
National Labor Relations Board
H.F. Garcia Federal Building & Courthouse
615 E. Houston Street, Suite 401
San Antonio, Texas 78206-2039

Copies were also sent via regular mail to:

Barbara Jean Lockerman
209 Byrne Street
Austin, Texas 78957

Nathan Clark
8801 La Cresada Drive, Apt 1536
Austin, Texas 78749

Pat St. Germain
601 Davis Ranch Road
San Marcos, Texas 78666



Brian T. Thompson