UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.

DIRECTV U.S. DIRECTV HOLDINGS, LLC

and

Case 21-CA-039546

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, DISTRICT LODGE 947
AFL-CIO

COUNSEL FOR THE ACTING GENERAL COUNSEL'S BRIEF IN SUPPORT OF LIMITED EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

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I. INTRODUCTION

On December 13, 2011, the Honorable Gerald A. Wacknov, Administrative Law Judge, herein referred to as the ALJ, issued a decision in the above-captioned case in which he concluded that Respondent discharged employee Gregory Edmonds because of his union and protected concerted activity in violation of Section 8(a)(1) and (3) of the Act. The ALJ also concluded that Respondent maintained certain rules in violation of Section 8(a)(1) of the Act.

The complaint upon which the ALJ's findings and conclusions are based also alleges that Respondent discharged Edmonds in violation of Section 8(a)(1) of the Act because of his protected concerted activity of complaining about working conditions. Finding that Edmonds' complaints included unprotected profanity, the ALJ dismissed this allegation. The ALJ held that each of the Atlantic Steel[1] factors weighs in favor of Respondent's contention that Edmonds' use of profanity removed him from the protection of the Act. (ALJD 12:28-13:19). It is Counsel for the Acting General Counsel's position that the ALJ incorrectly applied the standards set forth in Atlantic Steel and its progeny for determining whether an employee's use of profanity is protected by the Act. Had the ALJ correctly applied Atlantic Steel, he would have concluded that Edmonds was also discharged in violation of Section 8(a)(1) of the Act for engaging in protected concerted activity.

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[1] Atlantic Steel Co., 245 NLRB 814 (1979),

In recommending that Edmonds be reinstated and made whole for any loss of pay and other benefits resulting from his unlawful discharge in violation of Section 8(a)(1) and (3) of the Act,[2] it is Counsel for the Acting General Counsel's position that the ALJ erred by failing to order that Edmonds be reimbursed an amount equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. (ALJD 20: 39-42). In this regard, it is Counsel for the Acting General Counsel's position that the ALJ also erred by failing to order that Respondent submit appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

The complaint further alleges that Respondent unlawfully maintained several rules, including a rule restricting the use of company systems, equipment and resources. Although the ALJ held that other rules alleged in the complaint restrict an employee's right to engage in Section 7 activity in violation of Section 8(a)(1) of the Act, the ALJ found that the rule restricting the use of company systems, equipment and resources does not. (ALJD 19:27-34). Counsel for the Acting General Counsel's position is that the ALJ erred and that this rule, which bans use of Respondent's property to support all outside organizations, violates Section 8(a)(1) of the Act.

In finding and concluding that various rules maintained by Respondent violate Section 8(a)(1) of the Act, the ALJ ordered Respondent to modify its employee handbook provisions and other policy provisions found to interfere with

[2] The record contains substantial, credible evidence to support the ALJ's findings and conclusions that Edmonds was discharged because of his union and other protected concerted activity in violation of Section 8(a)(1) and (3) of the Act.

employees' Section 7 rights and "to advise its employees, nationwide, by appropriate means, that such provisions have been revised." (ALJD 21:1-5). The ALJ further ordered Respondent to post an appropriate notice to employees "at its facility" and, "when the appropriate handbook provisions and other policy provisions have been modified, notify its employees nationwide, by appropriate means, of the new modified handbook and policy provisions." (ALJD 21:7-17). However, the ALJ also held that "the remedial action to be taken will be relegated to the compliance stage of this proceeding." (ALJD 19:24-25). Counsel for the Acting General Counsel's position is that the remedial action to be taken should not be relegated to the compliance stage. Rather, in addition to rescinding and republishing the Employee Handbook and the Policy on Communications, Public Relations, and Corporate Events in accordance with Guardsmark, LLC., 344 NLRB 809, 811-812 (2005), the Board should order the notice to employees to be both physically posted nationwide and electronically distributed nationwide.

II. ISSUES PRESENTED

(1) Whether the ALJ erred in concluding that employee Gregory Edmonds' brief use of profanity caused him to lose the protection of the Act;

(2) Whether the ALJ erred in failing to conclude that Respondent's rule banning employee use of company systems, equipment and resources violates Section 8(a)(1) of the Act;

(3) Whether the ALJ erred in relegating the appropriate remedy for maintaining rules in violation of Section 8(a)(1) of the Act to the compliance stage

and in not ordering Respondent to rescind and republish its unlawful rules in accordance with Guardsmark, LLC., 344 NLRB 809, 811-812 (2005);

(4) Whether the ALJ erred in failing to order the Respondent to both physically post the notice to employees nationwide and to electronically distribute it nationwide;

(5) In recommending that Edmonds be reinstated and made whole for any loss of pay and other benefits resulting from his unlawful discharge, whether the ALJ erred in failing to order that Edmonds be reimbursed an amount equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination; and

(6) In recommending that Edmonds be reinstated and made whole for any loss of pay and other benefits resulting from his discharge, whether the ALJ erred in failing to order the Respondent to submit appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

III. STATEMENT OF FACTS

A. EDMONDS' DISCHARGE

1. Respondent's Operations.

Respondent, a California corporation, is engaged in the business of providing digital television entertainment services via satellite. While its principal offices are located in El Segundo, California, it has facilities throughout the

United States. (ALJD 2:7-9).[3] Several facilities are located in Southern California, including at Rancho Dominguez and Riverside. Operations Manager Freddy Zambrano is in charge of the Riverside facility. (Tr. 339). He reports to Scott Thomas, Regional Director of Operations for Southern California. Thomas reports to Adrian Dimech, Vice President of Operations for Southern California. (Tr. 288).

Employees at the Riverside facility where Edmonds was employed are divided into teams of about 15 individuals depending on whether they install or service satellite receivers. In July 2010 about 50 individuals were employed as installers at the Riverside facility. (ALJD 2:40). Each team is headed by an individual who holds the title of Field Supervisor.

While service technicians are paid solely by the hour, installers are paid on a combined hourly and piecework basis. There are three different grades of minimum hourly pay, grades 11, 12 and 13. To be paid at Grade 13, which is the highest grade, an installer must be certified to install internet service. (Tr. 43; ALJD 2:43 et seq.). Installers are paid a certain specified amount for each completed installation. If the total amount an installer earns for the installations completed in a pay period exceeds his minimum base pay, which represents the total amount he would earn if paid at his designated hourly rate for the hours he worked in that pay period, then he is paid only on a piecework basis. Installers generally earn more than their minimum base pay and, therefore, are mostly paid

[3] "ALJD" refers to the Administrative Law Judge's Decision. Citations will refer to the page number followed by the line numbers. The transcript will be referred to as "Tr." followed by the appropriate page number. General Counsel's exhibits will be referred to as "G.C. X" followed by the appropriate exhibit number and Respondent's exhibits will be referred to as "R. X" followed by the appropriate exhibit number.

on a piecework basis. However, if the total amount the installers earn for completed installations in a pay period is less than their minimum base pay, then they are compensated at their designated minimum hourly rates for the difference. (Tr. 41; ALJD 2:43 et seq.).

2. The Machinists' Union Files a Petition To Represent Rancho Dominguez Employees.

On March 8, 2010, the International Association of Machinists and Aerospace Workers, District Lodge 947, AFL-CIO, herein called the Union, filed a petition with the NLRB seeking to represent installers and service technicians at a nearby facility operated by Respondent in Rancho Dominguez, which is located in the Los Angeles metropolitan area about 50 miles west of Riverside. Soon after the petition was filed in Rancho Dominguez, Respondent began holding meetings to address its opposition to the Union. The first two meetings, which were held about two weeks apart, were conducted just for supervisors and managers but they were followed by numerous meetings with employees. (Tr. 261; ALJD 4:n. 5).

3. Respondent Seeks To Identify Union Supporters At Rancho Dominguez.

In addition to conducting group meetings at Rancho Dominguez, Respondent also conducted one-on-one meetings with Field Supervisors to identify union supporters. In addition to meeting with attorney Lydia Cossi, Field supervisors also met with Adrian Dimech, Vice President of Operations for Southern California, in one-on-one meetings. Field Supervisor Noe Gallegos,

whose testimony the ALJ credited, said that he was called to meet with Dimech in an office with the door closed. First promising him immunity, Dimech asked Gallegos to give him the names of union supporters on his team. Dimech also told Gallegos that if the Union was to come in, the site could possibly be closed and the work given to contractors. (Tr. 262; ALJD 4:n. 6).

4. The Union Wins the Election At Rancho Dominguez But The Region's Hearing Officer Recommends That The Election Results Be Set Aside.

An election was held on April 16, 2010. The Union won the election 85 to 80. Respondent filed objections to the election, claiming its field supervisors solicited union authorization cards. On May 11, 2010, the Regional Director for Region 21 issued a Report on Objections and Order Directing Hearing. On July 4, 2010, after conducting a hearing, the Region's Hearing Officer sustained Respondent's objections and recommended a new election. (G.C. X 2; ALJD 4: n.5).

5. The Board Certifies The Union.

The Union appealed the Hearing Officer's recommendation. On December 30, 2011, shortly after the ALJD issued in this matter, the Board issued a decision rejecting the Hearing Officer's recommendation and certifying the Union. [4]

6. Riverside Employees Begin Union Campaign.

[4] DirecTV U.S. DirecTV Holdings, LLC, 357 NLRB No. 149 (December 30, 2011).

After the union election at the Rancho Dominguez facility, Greg Edmonds, Matthew Webster and Brandon Ojeda, installers at Respondent's Riverside facility, met with representatives of the Union at Ojeda's home to explore union representation for employees at the Riverside facility. (Tr. 181; ALJD 4:2-6).[5] Webster said that he was interested in union representation because he thought employees should be paid on an hourly basis rather than piecework. (Tr. 241). Union authorization cards were signed that night and the three employees agreed to speak to their co-workers to see if they were interested in being represented by a union. (Tr. 79, 181). Edmonds said that after the meeting he spoke to about four employees about union representation. (Tr. 79; ALJD 4:6).

7. At A Mandatory Meeting Vice President Adrian Dimech Tries To Prevent Unionization From Spreading From Rancho Dominguez To Riverside.

Mandatory meetings for all the employees were held at the Riverside facility every Saturday to discuss various work issues. (ALJD 4:9-18). Generally, Site Manager Zambrano conducted the meetings. One Saturday Adrian Dimech came to speak to the employees about the union election at the Rancho Dominguez facility. This was the first time the subject of union representation had been brought up by a company official at a meeting at Riverside. (Tr. 85-6, 183, 201; ALJD 4:21). Dimech testified that his purpose was merely to "update" the employees about the "situation" in Rancho Dominguez. However, Edmonds and others, whose testimony the ALJ credited over Dimech's, testified that

[5] Ojeda is the only one of the three still employed by Respondent.

Dimech' s purpose in holding the meeting was to prevent unionization from spreading to the Riverside facility. (Tr. 290, 305; ALJD 4:23, 6:32, 13:26).

Conflicting evidence was introduced regarding when this meeting took place, and the ALJ concluded that it was unnecessary to determine the precise date that the meeting occurred. (ALJD 13; n. 28). Edmonds testified that the meeting at Ojeda's house took place about a month before he was discharged (Tr. 78) and that the meeting where Dimech spoke occurred about a week after the meeting with Union representatives at Ojeda's house. (Tr. 80). Ojeda testified that the meeting at his house took place on May 26, 2010[6] (Tr. 181) and that the company meeting at which Dimech spoke took place a few months before. (Tr. 196). Although Webster was not sure of the dates, he said that the meeting at which Dimech spoke took place about a week after the meeting with Union representatives. (Tr. 243).

On the other hand, Dimech and Zambrano both testified that the meeting at which Dimech spoke took place on May 22. Both of Respondent's witnesses also testified that the meeting could not have occurred in June because the company was preparing to move to a new, much larger, facility in early July. (Tr. 289, 349). However, Zambrano admitted that meetings were held every Saturday, including in May and June. (Tr. 378). While both of Respondent's witnesses further testified that they knew the meeting took place on May 22 because they saw it on their calendars (Tr. 288, 349, 378), neither calendar was produced at the hearing.

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[6] All dates hereafter will refer to 2010 unless otherwise indicated.

Respondent made a request, which was granted, that the hearing be recessed to afford it an opportunity to obtain calendars or whatever else was available to establish the date of the meeting. Instead of producing either Dimech's or Zambrano's calendars, emails from May 22 were produced between Scott Thomas and Zambrano with the subject line "Re: Meeting this morning": the first from Thomas inquiring whether Adrian was still there, and the second from Zambrano replying that Adrian left around 9 a.m. (R. X 7).

With regard to what was said at the meeting, Installer Greg Edmonds testified that when Dimech told the employees that he wanted to prevent unionization from spreading from the Rancho Dominguez facility to other sites, he, Edmonds, disagreed, explaining that he did not believe employees' concerns would be adequately addressed without unionization. (Tr. 85; ALJD 13:28 et seq.). Dimech recalled that although several employees advocated union representation at the meeting, Edmonds and one other employee were more vocal than the rest. (Tr. 291-2). Edmonds, Ojeda and Webster all testified that they spoke up in favor of unionization at the meeting.

The subject of union representation led to a discussion of other work issues. One issue was San Diego job assignments. Edmonds testified that he complained about San Diego assignments and how employees were paid for those jobs. (ALJD 5:4). He said that employees were being sent to jobsites in San Diego that substantially increased their drive time, and if employees went to San Diego jobs and could not complete the installation for some reason, they

weren't paid for their time. Dimech told him that he would see what he could do to change that. (Tr. 87; ALJD 5:2-11).

In addition to complaining to Dimech about pay for San Diego jobs, Edmonds testified that he complained generally about installers' pay. He said that he told Dimech that installers should be paid on an hourly basis rather than by piecework. (ALJD 5:16). Dimech's response, according to Edmonds, was that decisions on pay were made by people so far above him in the management hierarchy that all he could do was make suggestions, no promises. Edmonds then replied that maybe if the employees were a collective body, the company might hear them. (Tr. 88). At that point, according to Edmonds, Dimech turned red-faced but didn't have much of a response. (Tr. 87-8). While Dimech denied becoming flustered or angry at the meeting (Tr. 292), he did not specifically deny the employees' accounts of what was said. (Tr. 246-7; ALJD 5:27-31, 47-50).

This meeting lasted about an hour. After the meeting, the employees obtained what they needed from the warehouse, walked to their vans and then went to work. Edmonds testified that as he left the meeting, employees told him he was their hero for speaking up at the meeting. He recalled in particular that one of his co-workers, Eber Urrutia, told him he was his hero for speaking up. (Tr. 90; ALJD 6:2-3). Urrutia, a current employee who was a reluctant witness, admitted that he said something to Edmonds about speaking up at the meeting, but he couldn't recall exactly what he said. However, he claims that the gist was that he told Edmonds not to try to be a hero because "that's going to bite him in

the butt." (Tr. 218; ALJD 6:2-3, n.9). Webster also confirmed that employees told Edmonds that he was their hero for speaking up. (Tr. 248).

8. Dimech Follows Edmonds To His Van After the Meeting.

After the meeting, as Edmonds reached his van, Dimech approached him. Dimech told Edmonds that he was going to address the issues that Edmonds raised at the meeting and see if he could take care of them. Edmonds volunteered that it wouldn't be necessary for a union to come in if the Employer could take care of the issues the employees were concerned about and that he knew Dimech's purpose in having the meeting was to discourage unionization. Dimech explained that there were things "in the works" but he refused to elaborate on what he meant. (Tr. 91-2; ALJD 13:30). As Dimech was leaving, he gave Edmonds his business card and asked Edmonds if he could take Edmonds' trash back to the facility and throw it away for him. Edmonds agreed and Dimech left, carrying Edmonds' empty boxes. Although Edmonds and Dimech disagreed about how long they spoke, as the ALJ noted, Dimech did not deny or contradict Edmonds' account of the conversation. (ALJD 7:2-4).

9. Respondent Improves Pay For San Diego Job Assignments.

In the week immediately following the meeting at which Edmonds complained to Dimech about pay, Respondent increased the pay for San Diego jobs for all the installers. (ALJD 14:2-3). Edmonds was personally notified of the change. One morning as Edmonds was leaving the facility for his first

installation, he was stopped by a secretary who showed him a paper stating that Respondent was going to increase installers' pay for their travel time to San Diego (Tr. 93; ALJD 7:21). Later that day Dimech called Edmonds to tell him that he was going to be paid for San Diego work. (Tr. 94; ALJD 7:25).[7]

10. Zambrano Threatens to "QC" Edmonds Jobs.

The Monday or Tuesday following the Saturday meeting conducted by Dimech, according to Edmonds' testimony, which the ALJ credited, Site Manager Zambrano told him that he was going to "QC," meaning perform a quality control inspection, all his jobs that day. (Tr. 93; ALJD 14:4-9). Webster confirmed that Zambrano told Edmonds that he was going to "QC" his jobs and said that he didn't think Zambrano was joking. (Tr. 248, 251). Webster also said that he remembered Zambrano's comment because it was so bold. (Tr. 249). Zambrano, whom the ALJ discredited, denied telling Edmonds that he was going to "QC" his jobs. (Tr. 373).

11. Edmonds Expresses His Frustration At The Wait For Supplies to Zambrano.

One of the thorniest issues employees at the Riverside facility had to face was the time spent waiting for supplies before they could begin their work. According to the Daily Agenda distributed to all employees, installers were supposed to: report to the facility each day at 6:30 a.m.; check-in with their supervisors and receive their daily route; fill out their time cards at 6:35; check out their equipment from the warehouse no later than 6:50; turn in their

[7] Dimech did not deny making this call.

paperwork by 7:00; and ensure that they exit the premises and are enroute to their first appointments by 7:15-7:30. (G.C. X 4). However, they often were forced to wait for supplies at the warehouse.

Edmonds, along with several of his co-workers, frequently complained about the wait for supplies. (ALJD 7: 29 et seq.). According to Edmonds, although there was supposed to be a line, everybody bunched in and cut in front of each other. (Tr. 96). Edmonds and Urrutia said that everybody complained about the wait every day. (Tr. 96, 210-211). Ojeda also said that employees had to wait for supplies every day and that they talked about the wait. (Tr. 173). Employees complained to their supervisors, and to Zambrano, who said that there was nothing they could do. (Tr. 97). Zambrano also said that when the facility moved to larger space, which it did in early July 2010, employees would have lockers and they would not have to stand in line. (Tr. 97; ALJD 7:34). Although employees were assigned lockers after the facility was relocated, the time waiting for supplies did not change. (Tr. 98; ALJD 7:38 et seq.).

On July 21, when Edmonds arrived at the facility, after meeting with his supervisor and completing his paperwork, as he usually did, he went to the warehouse to obtain the supplies he needed for the day's assignments. A crowd of people were waiting for supplies when he arrived. According to Edmonds, about 40-60 people were talking to each other while waiting for supplies. (Tr. 100; ALJD 8:8). Edmonds continued to wait "quite some time," and he became increasingly frustrated. (ALJD 8:9). As he saw Zambrano enter the warehouse about 20-25 feet from where he was standing, he called out to him in a voice loud

enough for Zambrano to hear. He said, "Hey Freddy, can't you do something about this fucking line? I stand in this fucking line 10 hours every day." (ALJD 8:14-15). Zambrano walked over to Edmonds, stretched his arms out as if to block people and said, "Oh, Greg. Nobody cut in front of Greg. Okay." Nothing much more was said, according to Edmonds, and Zambrano immediately left the warehouse. Edmonds eventually obtained his supplies and went to work. (Tr. 100-101; ALJD 8:5-18). Edmonds' outburst lasted a matter of seconds. (ALJD 8:18).

Zambrano, whom the ALJ generally discredited, did not testify directly about what was said in this exchange. (ALJD 9: n.17). Rather, he testified that he caused to be prepared an Employee Consultation Form (ECF) immediately after his conversation with Edmonds, and what is in quotation marks on the portion of the form designated the supervisor's statement accurately reflects what Edmonds said. The Supervisor's Statement in the ECF contains the following:

> On Wednesday, July 21, 2010 at 7:30 AM, Greg Edmonds started yelling towards Freddy Zambrano (Operations Manager) that he needed to "Fuckin do something about this fucken line", and that it was "Bullshit!" that he had to wait for like 10 hours, while other techs cut in front of him . I told him that I did not think that he was waiting in line for 10 hours, and that the lockers should be ready for use by this upcoming Saturday. He then continued to curse in line in front of other technicians. Thus creating an uncomfortable and hostile work environment (G.C. X 19).

12. Edmonds Is Suspended Until July 28 For Using Profanity When Complaining About The Wait For Supplies.

The day after the incident in the warehouse, Zambrano summoned Edmonds to his office and advised him that he was being suspended. Zambrano

testified that he was upset with Edmonds because he cursed at him in front of other employees, not because he was complaining about the line. (Tr. 366). Although employees use profanity in the workplace, according to Zambrano, they don't direct it at a supervisor "in this fashion." (Tr. 366). Zambrano showed Edmonds the ECF he had prepared. (G.C. X 19). The "Action Plan" section of the ECF contains preprinted language stating "Immediate and sustained improvement must be shown or further disciplinary action may be taken up to and including termination." It also states that the suspension was to end on July 28. Edmonds signed the form as requested and apologized. He suggested to Zambrano that he install poles in the warehouse to make sure that there were lines rather than just a big crowd of people waiting for supplies, but Zambrano refused, saying that employees wouldn't obey regardless of what rules were imposed. (Tr. 106). When Edmonds asked if he was going to be fired, Zambrano assured him that he would not be fired and that he would be returning to work after his suspension. (ALJD 9:2-8, 42-45).

13. Employees Regularly Used Profanity In The Warehouse.

Profanity was a normal, and regular, part of the shop talk at the Riverside facility. Employees used profanity when speaking to each other as well as when speaking to supervisors and managers. Four-letter words were the norm, not the exception and at no time were employees told by their supervisors or managers to watch their language. (ALJD 3:13-26). Edmonds testified that he used profanity on a daily basis the entire time he worked for Respondent when talking

with his co-workers as well as with supervisors and managers. (Tr. 35-38; ALJD 3:13-17).

Other employees corroborated Edmonds in this regard. Installer Webster, whose testimony the ALJ credited, confirmed that it was not unusual to use profanity, that it was part of the "shop talk." (Tr. 235; ALJD 3:28-37, n.2). When meeting with Field Supervisor Lamar Wilson, who was also Edmonds' supervisor, Webster said that installers would use profanity to complain to Wilson about working conditions. For example, he said that installers would say "this is fucking bullshit" and "why do we have to deal with this crap. Fuck." (Tr.234-235). Webster said that Wilson used the same language the installers used. (ALJD 3:33-35).

Webster further testified that sometimes, while he was waiting in line for supplies in the warehouse, he would see Zambrano. He said that he used profanity when speaking to Zambrano just as he did when speaking to other employees and supervisors and that Zambrano used profanity when speaking to him as well. (Tr. 238; ALJD 3:38-35). For example, when he saw Zambrano, he would ask Webster how it was going and Webster said that he would reply "This fucking sucks" and Zambrano would respond, "Well, you've got to fucking deal with it." (Tr. 238; ALJD 3:32-33). He testified that Zambrano and employees would use profanity not just in the warehouse or in meetings with field supervisors but also in the weekly meetings Zambrano conducted. (Tr. 239). For example, he recalled that at one meeting Zambrano complained about

employees not keeping their vans clean by saying "Why aren't these fucking vans clean?" (Tr. 240; ALJD 3:34-35).

Webster also testified that Zambrano's boss, Scott Thomas, would use profanity when speaking to employees. He said that Thomas frequently would say: "We got to do our fucking jobs. These vans should be cleaned. You know, this is how we represent the company." (Tr. 240; ALJD 3:35-37).

Zambrano was the only witness for Respondent who testified about the use of profanity. Although he said that he was not aware of employees using profanity at the facility, he did not deny Webster's specific testimony, which the ALJ credited. (ALJD 3:n.2).

Zambrano further testified that, besides Edmonds, the only other employee who used profanity "against" him "in a group setting" was John Berrios, and he was fired. Zambrano said that Berrios was fired for telling off a supervisor and for using profanity after snatching a company gas card from a supervisor's hand. (Tr. 343-344; R.X. 6; ALJD 11:46-12:21).

14. Edmonds Is Told That He is Being Discharged Because of His Use of Profanity On July 21 And His History Of Allegedly Poor Performance.

a) Edmonds Is Told That He Is Being Fired Because Of The July 21 Incident And His Performance History.

On July 28 Edmonds was called to a meeting with Zambrano. As before, Cienfuegos was present as a witness for Respondent. Zambrano advised Edmonds that he was being fired because of the July 21 incident and because of his performance history. (Tr. 372; ALJD 9:17-21). According to Zambrano, even if Edmonds didn't have a single discipline in his file, he "probably" would have

fired him anyway. However, he said that he took into account Edmonds' prior discipline and the fact that he was "on final warning." (Tr. 372; ALJD 10:20-30).[8] He also testified that in making the decision to fire Edmonds, he consulted with his boss, Scott Thomas, and a Human Resources Representative. He said that he neither advised Scott Thomas about what happened at the Dimech meeting nor received a call from Thomas asking what happened at the meeting. (Tr. 369).

b) Edmonds' Performance History

Although Edmonds was disciplined several times before he was discharged, he was never once disciplined for anything related to conduct toward a supervisor, a co-worker, or a customer. (Tr. 51; ALJD 1032-36). With one exception, he was disciplined only for issues related to his installation skills. The first time he was disciplined, on March 3, 2008, he received a "final warning" and suspension for causing 10 repeat service calls on jobs in two weeks. (G.C. X 8; ALJD 10:38-40). The second time he was disciplined, on February 5, 2009, he received a "written warning" for using unnecessary equipment and not grounding a system properly (G.C. X 9; ALJD 10:40-42). The third time, on March 20, 2009, he was issued a "final warning" for using existing cable on a new install (G.C. X 10; ALJD 10: 42-11:2).

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[8] As the ALJ noted, the record contains substantial evidence that Respondent does not have a progressive discipline procedure in the sense that the step after a "final"warning would be termination. (ALJD 10: n. 20).

In the middle of June 2009 Edmonds was promoted from Installer to Service Technician. However, on October 23, 2009, after his promotion, he was issued a "written warning" for failing to replace all unapproved connectors. causing a repeat service call. (G.C. X 11). Next, on November 4, 2009, he received a "verbal warning" for a driver's call report. (G.C. X 12 (a) and 12(b)). In November 2009 Edmonds, along with four other service technicians, was demoted from service technician to installer for failing to complete the requisite number of installations. Next, on January 8, 2010, he received a "final warning" for an unsatisfactory satellite installation. (G.C. X 13; ALJD 11:6-8). On January 21, 2010, he was suspended for failing to pre-call customers. (G.C. X 14; ALJD 11:8-9). On March 13, 2010, he received a verbal warning for failing to acknowledge his time sheet. (G.C. X 15 (a) and 15(b); ALJD 11:8-9). Finally, on June 17, 2010, Edmonds was suspended pending investigation for causing an "OOP escalation"[9] for a certain account, but he was reinstated with pay after an investigation.[10]

Edmonds testified that some of the discipline he received was deserved and some was not. (ALJD 11:10-11). For example, he did not believe it was fair that he was issued a "final warning" and a suspension the first time he was disciplined; and the discipline was for causing excessive service calls, because service calls are caused by a variety of reasons, many of which have nothing to do with the quality of the employee's work. (Tr. 51). However, other than

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[9] An "OOP escalation" refers to a complaint made by a customer to the office of Respondent's president (Tr. 354).

[10] Although Edmonds was reinstated with pay as a result of Respondent's investigation, he was compensated at his designated hourly rate which is less than Edmonds would have earned on a piecework basis if he had not been suspended (Tr. 450).

speaking to Zambrano who, according to Edmonds, usually sided with the supervisor, he was not aware that he had any recourse. (Tr. 63, 74). The open-door policy described in the employee handbook states that if an employee believes that he has not been treated in accordance with company policy, the employee may bring his concerns to another manager or a human resources representative. While acknowledging that he was given a copy of the employee handbook, Edmonds testified that he was not aware of this possibility. (Tr. 127). Zambrano confirmed that there were no human resources representatives employed at the Riverside facility. (Tr. 406).

Although Edmonds was disciplined for performance deficiencies while employed by Respondent, Edmonds was also commended in several ways. His hourly wage increased from the starting grade of 11, to 12 in February 2008 (G.C. X 6), and to the top grade of 13 just before he was discharged. (Tr. 112; ALJD 2:48, 11:20). In addition to being promoted to service technician in June 2009 for approximately five months, he was also commended for his performance on June 21, 2009, at a staff meeting. (G.C. X 18).

Edmonds also testified that in about May 2010 Zambrano suggested that he apply for a supervisory position. Edmonds said that he considered applying but decided not to apply after completing the application. Although Zambrano denied suggesting that Edmonds apply for a supervisory position, the ALJ credited Edmonds. (ALJD 11: n. 23).

Employees' performance is measured every pay period, both individually and as a facility, for the past 30-, 60- and 90-day periods. In the pay period

immediately preceding Edmonds' discharge, as well as one in March 2010, Edmonds' customer satisfaction rating was 100, whereas the facility's rating was only 89. (G.C. X 21 and 22, Tr. 108-111; ALJD 11:35-44).

B. THE COMPANY RULES.

1. The Rules in the Home Service Employee Handbook.

On May 22, 2010, by distributing to employees at the Riverside facility a handbook, entitled Home Services Employee Handbook, Respondent promulgated and since then has maintained the following rules:[11]

> **2.4 Use of Company Systems, Equipment, and Resources**
>
> Occasional and reasonable personal use of company property is permitted. Examples of reasonable use include use that is moderate and appropriate in duration and frequency, use that does not involve obscene or questionable subject matter, use that does not conflict with the company's Anti-discrimination/Harassment and/or conflict of interest policies, and use that is not in support of any religious, political, or outside organization activity.
>
> **3.4 Communications and Representing DIRECTV**
>
> To ensure the company presents a united, consistent voice to a variety of audiences, these are some of your responsibilities related to communications:
>
> - Do not contact the media, and direct all media inquiries to the Home Services Communications department.
>
> - If law enforcement wants to interview or obtain information regarding a DIRECTV employee, whether in person or by telephone/email, the employee should contact the Security department in El Segundo, Calif., who will handle contact with law enforcement agencies and any needed coordination with DIRECTV departments.
>
> **4.3.1 Confidentiality**

[11] ALJD 16:12-17:13.

- Never discuss details about your job, company business or work projects with anyone outside the company, especially in public venues, such as seminars and conferences, or via online posting or information-sharing forums, such as mailing lists, websites, blogs, and chat rooms

- Never give out information about customers or DIRECTV employees. In particular, customer information must never be transmitted through regular unencrypted email, even internally within DIRECTV. If you have additional questions regarding data transmission guidelines, check with the IT department.

2. The Rules in the DirecTV Policy Communications Public Relations, and Corporate Events.

Since at least on or about July 1, 2010, Respondent has maintained, in the DirecTV Policy Communications, Public Relations, and Corporate Events document, the following rules:

Employees

Employees may not blog, enter chat rooms, post messages on public websites or otherwise disclose company information that is not already disclosed as a public record.

Public Relations

Employees must direct all media inquiries to a member of the Public Relations team, without exception. Employees should not contact or comment to any media about the company unless pre-authorized by Public Relations. These rules are in place to ensure that the company communications [sic] a consistent message and to ensure that proprietary information is not released.

3. Respondent's Attempted Repudiation

In a memo directed to DTVHS Riverside Employees that was posted on the notice board in the warehouse at the Riverside facility on about May 11, 2011,[12] Dimech clarified Respondent's intent in enforcing policies set forth in the employee handbook and company policies posted on the DEN, which is Respondent's intranet. (Tr. 286, R.X 4 (a); ALJD 17:15-18:32). The DEN is accessible to all home-services employees throughout the United States. (Tr. 311). Dimech's memo was also posted on the DEN at approximately the same time. (Tr. 320, R. X 4(b), 4(c), 5). The memo states the following:

> Employee Handbook
> The policies contained in the DTVHS Employee Handbook previously distributed to you (including but not limited to confidentiality, using social media) will not be used to prohibit, discourage, or otherwise retaliate against employees who engage in conduct or communications protected by Section 7 of the National Labor Relations Act (such as lawful discussions whether with co-workers or third parties about wages, hours or working conditions.)
>
> Company Policies
> The company policies posted on the DEN (including but not limited to confidentiality, using social media) will not be used to prohibit, discourage or otherwise retaliate against employees who engage in conduct or communications protected by Section 7 of the National Labor Relations Act (such as lawful discussions whether with co-workers or third parties about wage, hours or working conditions.)
>
> If there should be any questions regarding this, please see your Human Resources Representative.

[12] The Complaint in this case issued on April 25, 2011.

IV. ARGUMENT

A. THE ALJ ERRED IN CONCLUDING THAT EMPLOYEE GREGORY EDMONDS' BRIEF USE OF PROFANITY CAUSED HIM TO LOSE THE ACT'S PROTECTION.

In the few seconds exchange that precipitated Edmonds' discharge, Edmonds used the "f" word twice when complaining about the long wait for supplies. Although the ALJ correctly concluded that Edmonds' union activity was a motivating factor in Respondent's decision to discharge him, the ALJ erred in concluding that Edmonds' brief use of profanity on that occasion caused him to lose the Act's protection.

It is well-settled that not all union and concerted activity is protected. When an employee is discharged for using language that is part of the *res gestae* of protected activities, the Board looks to whether the language is so egregious that it renders the employee unfit for further employment. Dickens, Inc., 352 NLRB 667, 672 (2008). Employees are given leeway for impulsive language when engaged in concerted activity because the "language of the shop" is not the language of polite society. Dries & Krump Manufacturing, 221 NLRB 309, 315 (1975). For example, protection is not forfeited when an employee makes stinging or harsh remarks about his employer, regardless of the merit or accuracy of the employee's remarks, as long as they aren't deliberately false or malicious. CKS Tool & Engineering, Inc., of Bad Axe, 332 NLRB 1578, 1586 (2000). Similarly, when an employee is discharged purportedly for using obscene language to complain about working conditions, as here, the employee forfeits the Act's protection only if the employee's language amounts to "opprobrious

conduct." Atlantic Steel Company, 245 NLRB 814, 816 (1979). In the Atlantic Steel case, the Board identified the following four factors for evaluating whether employees have crossed the line:

(1) the place of the discussion;

(2) the subject matter of the discussion;

(3) the nature of the employee's outburst; and

(4) whether the outburst was, in any way, provoked by an employer's unfair labor practice.

In the Atlantic Steel case itself, an employee who complained to his supervisor on the production floor about assignment of overtime, calling him a "lying son of a bitch," lost the protection of the Act. On the other hand, in Media General Operations, 351 NLRB 1324 (2007), an employee who used profanity when he complained to two supervisors about the way the employer's vice president was responding to contract negotiations, did not lose the Act's protection. Similarly, in Corrrections Corporation of America, 347 NLRB 632 (2006), the Board held that an employee who used one obscene word to express his frustration with his co-workers' behavior at a company meeting did not exceed the bounds of what is protected under the Act. And, in Plaza Auto Center, Inc., 355 NLRB No. 85 (2010), aff'd in part and rev'd and remanded in part 192 LRRM 2340 (9th Cir. December 19, 2011), the Board reversed an ALJ and concluded that an employee who berated the employer's owner, calling him an asshole and other profane names, when complaining about wages and working conditions, did not lose the Act's protection.

Although the ALJ herein found that Edmonds' complaints about waiting on line constituted concerted activity, he concluded, providing a minimal explanation, that each of the foregoing Atlantic Steel factors weighs in favor of Respondent's contention that Edmonds' use of profanity caused him to forfeit the Act's protection. As shown below, the ALJ incorrectly applied Atlantic Steel.

a) The Place of the Discussion

In determining whether the place of the discussion, like the other Atlantic Steel factors, favors protection, the Board balances an employer's right to maintain order with the employee's Section 7 right to speak out about working conditions. Because the discussion between Zambrano and Edmonds took place "in a workplace setting in the presence of some 40 or 50 employees, and Edmonds' comments were likely overheard by many if not all of the employees," the ALJ held that Edmonds' use of profanity caused him to lose the Act's protection. (ALJD 13:7-9). Unlike the employee in the Atlantic Steel case who spoke out on the factory floor while regular work was going on, the remarks at issue here were not made in a location where regular production was taking place. Production for Respondent's employees takes place at jobsites, not at the warehouse where employees are waiting to go to work.

The Board finds that the place of the discussion favors protection when the discussion takes place away from the normal working area so that it unlikely to disrupt normal production or workplace discipline. In Stanford Hotel, 344 NLRB 558 (2005), the Board held that the location favored protection where the discussion took place in an employee lunchroom. Likewise, when the discussion

takes place during a grievance meeting, the location clearly favors protection. Kiewit Power Construction Co., 355 NLRB No. 150 (2010), enf'd. __ F.3d ___, 191 LRRM 2242 (D.C. Cir. August 3, 2011). But a formal grievance setting and a lunchroom are not the only locations where the Board accords protection. Where the discussion takes place in a company meeting at a facility, the Board also accorded protection to an employee's outburst that contained profanity. Corrections Corporation of America, supra. Moreover, when the employer picks a public scene in the workplace for what is likely to cause complaints, the place is not held against the employee even though the discussion is likely to cause a disturbance because it occurs in the presence of other employees. Kiewit Power Construction Co., 355 NLRB No. 150, slip op. at 2.

The ALJ held that because Edmonds' remarks were made in a "workplace setting" in the presence of other employees, the location factor argues against protection. However, while the discussion took place in Respondent's facility, it did not take place in a work location where production was taking place. Because production for Respondent's employees takes place at jobsites, not at the warehouse, the location where Edmonds spoke did not have the same potential for disrupting production or workplace discipline as it could in the usual factory setting. Accordingly, the location factor argues in favor of protection even though it occurred at Respondent's facility.

b) The Subject Matter of the Discussion

When the subject matter of the employee outburst in question relates to a term or condition of employment, it weighs in favor of protecting the remarks. For

example, in CKS Tool & Engineering Inc., of Bad Axe, supra, the Board agreed with an administrative law judge's conclusion that an employee's outburst at a meeting about employee productivity was protected. Employee complaints about break policy are protected. Kiewit Power Construction Co., 355 NLRB No. 150, slip op. at 2. Employee criticism of an employer's bargaining tactics and positions, and the employer's practice of sending employees letters about bargaining is also a subject matter that favors protection. Media General Operations, 351 NLRB 1324 (2007). Because Edmonds' statements to Zambrano involved working conditions, this factor favors finding his comments protected.

c) The Nature of the Employee's Outburst

The Board has recognized that not every impropriety committed during concerted activity places the employee outside the protection of Section 7 of the Act. Corrections Corporation of America, supra. The employee's right to engage in concerted activity must permit some leeway for impulsive behavior especially when the intemperate language is part of the "*res gestae*" of the concerted activity. NLRB v.Thor Power Tool Co., 351 F.2d 584 (7th Cir. 1965). In evaluating the nature of the employee's outburst, the Board looks at whether the profanity was brief or prolonged, and whether it was accompanied by insubordination, physical contact or a threat of physical harm. Beverly Rehabilitation Services, Inc., 346 NLRB 1319, 1322-1323 (2006). The Board also considers whether the

language used far exceeded that which was common and tolerated in his workplace. Aluminum Company of America, 338 NLRB 20, 22 (2002). When the employee's statement is not repeated, and does not contain any confrontational element like insubordination or physical contact, it is generally protected. Media General Operations, Inc. supra.

Because Edmonds' remarks were brief, lasting only a few seconds, and were unaccompanied by insubordination, physical contact or threatened physical contact, this factor favors protection. Moreover, as explained above, the use of profanity was common in the warehouse. In the course of saying two sentences, Edmonds merely used the "f" word twice when asking Zambrano to do something about the long wait for supplies.[13] Edmonds, whose testimony the ALJ credited, testified that that was all he said.

Unlike the employee in the Aluminum Company of America case, whose profanity was "repeated, sustained, ad hominem," Edmonds' use of profanity was brief and contained no ad hominem element. Edmonds, for example, did not personally disparage Zambrano or call him any obscene names. Like the employee in the Media General Operations, Inc., case, Edmonds did not insult Zambrano to his face, and there were no other confrontational aspects to his complaints, such as physical conduct or threats. He was simply venting his frustration at the length of the wait. Unlike Berrios, the only other employee discharged at the Riverside facility for profanity, there was no physical contact or

[13] Although Zambrano's statement in the form he prepared states that Edmonds also used the word "bullshit" when referring to the ten-hour wait and continued to curse, Zambrano, whose testimony the ALJ generally discredited, did not testify directly about what Edmonds said. In response to leading questions from Respondent's attorney, he merely testified about what he wrote on the form. ALJD 9 at n. 17.

threatened physical contact between Edmonds and Zambrano. All Edmonds did was use the "f" word twice when briefly expressing his frustration at the wait for supplies.

The ALJ concluded that Edmonds' use of profanity caused him to forfeit the Act's protection because his comments would "tend to diminish Zambrano's status and authority in the eyes of the other employees and have a deleterious effect on his 'right to maintain and respect in the workplace.'" (ALJD 13:14-16). However, opprobrious statements do not lose the Act's protection just because they may be somewhat disrespectful. Rather, they must challenge the employer's authority to run his workplace by refusing to engage in production or to perform a work assignment or otherwise serve to directly challenge the employer's authority. Media General Operations, Inc., supra at 1326. Because Edmonds merely complained about a working condition and did not refuse to follow any direction or otherwise challenge the Respondent's authority, his statements to Zambrano do not lose the Act's protection as insubordinate.

Zambrano's immediate response to Edmonds demonstrates that Zambrano's ability to control the workplace was not affected by Edmonds' comments and that at the time Zambrano did not perceive that his ability to maintain control and order was affected. According to Edmonds' credited testimony, after he complained about the wait, Zambrano approached him and spread his arms as if to block everyone and said, "Oh Greg. Nobody cut in front of Greg. Okay?" (Tr. 101; ALJD 8:15-18). If Zambrano had felt that Edmonds

had seriously threatened his authority, presumably he would not have made fun of Edmonds as he did and then walk away.

d) Whether the Outburst Was Provoked by Unfair Labor Practices

Because Respondent did not commit any unfair labor practices to provoke Edmonds, this factor is neutral when considering whether Edmonds' complaints about the wait are protected. In sum, the credited evidence establishes that Edmonds' protected concerted activity was a motivating factor in Respondent's decision to discharge him, and under Atlantic Steel and its progeny, Edmonds' use of the "f" word twice in the course of a three-sentence outburst about the long wait for supplies did not cause him to lose the Act's protection.

B. THE ALJ ERRED IN FAILING TO CONCLUDE THAT RESPONDENT'S RULE BANNING EMPLOYEE USE OF COMPANY SYSTEMS, EQUIPMENT AND RESOURCES VIOLATES SECTION 8(A)(1) OF THE ACT.

Although the ALJ concluded that various rules maintained by Respondent violate Section 8(a)(1) of the Act, relying on the Board's decision in Register Guard, 351 NLRB 1110 (2007), the ALJ concluded that Respondent's rule banning personal use of company systems, equipment and supplies was lawful. However, the ALJ noted that this is a policy matter to be addressed by the Board. (ALJD 19: n. 33). In Register Guard, supra, the Board held that employer bans on personal use of its property are lawful as long as the employer does not discriminate against Section 7 activity. Because Respondent's rule regarding personal use of company property prohibits all personal use of company

equipment, the ALJ held that Respondent's use-of-property rule was lawful and dismissed this allegation of the complaint. (ALJD 19:27-34).

The Acting General Counsel's position is that if an employer bans personal use of its property to support all outside organizations, it violates Section 8(a)(1) of the Act on its face because it reasonably tends to interfere with an employee's right to engage in Section 7 activity. Under Republic Aviation Corp. v. NLRB, 324 U.S. 793, 803 n.10 (1945), employees presumptively have a statutory right to use their employer's communications systems, subject to their employer's need to maintain production and discipline. Therefore, a rule that bans employees' personal use of such company equipment without a showing of special circumstances interferes with employees' Section 7 communication at work and is unlawful.

Respondent's employee handbook contains the following rule:

> **2.4 Use of Company Systems, Equipment, and Resources**
> Occasional and reasonable personal use of company property is permitted. Examples of reasonable use include use that is moderate and appropriate in duration and frequency, use that does not involve obscene or questionable subject matter, use that does not conflict with the company's Anti-discrimination/Harassment and/or conflict of interest policies, and use that is not in support of any religious, political, or outside organization activity.

Respondent's rule regarding personal use of its property prohibits employee personal use of its equipment in support of any outside organization. Because employees would most reasonably view the ban on using company communications equipment to support "any... outside organization activity" as including unions, the rule clearly interferes with employees' rights to engage in union and other protected concerted activity. No exception is made or can be

inferred from the language of the rule itself. Accordingly, Respondent's maintenance of this rule violates Section 8(a)(1) of the Act.

C. THE ALJ ERRED IN RELEGATING THE APPROPRIATE REMEDY TO THE COMPLIANCE STAGE OF THIS PROCEEDING AND IN FAILING TO ORDER A NATIONWIDE POSTING.

Based on his conclusion that certain of Respondent's rules violate Section 8(a)(1) of the Act, the ALJ ordered Respondent to modify employee handbook provisions and other policy provisions found to interfere with employees' Section 7 rights, to advise employees, nationwide, by appropriate means, that such provisions have been revised, to post an appropriate notice at its Riverside facility and when the provisions have been modified, to notify employees nationwide of the new modified provisions. However, he relegated matters related to employee handbook and other policy provisions to the compliance stage. (ALJD 20:15-17, 21:2-5).

It is Counsel for the Acting General Counsel's position that the ALJ erred in relegating issues to the compliance stage and in failing to order a nationwide posting. In accordance with Guardsmark, LLC, 344 NLRB 809, 811-812 (2005), as the Board recently noted in 2 Sisters Food Group, 357 NLRB No. 168, slip op. at 8 n.32 (December 29, 2011), the standard remedy for rule and policy violations is to require a respondent to rescind the unlawful provisions and republish employee handbook and policy provisions without them. Recognizing that republishing could entail significant costs, the Board permits an employer to supply employees either with handbook and policy provision inserts stating that the unlawful rules have been rescinded or with lawfully worded rules on adhesive

backing which will cover the old and unlawful rules until it republishes its handbook and other policy provisions. Moreover, as noted in Mastec Advanced Technologies, 357 NLRB No. 17, slip op at 7 (July 21, 2011), when a handbook containing unlawful rules is in effect at all of an employer's facilities nationwide, the appropriate remedy includes physical posting of a paper notice nationwide as well as electronic distribution nationwide. Accordingly, the ALJ erred in relegating the remedy to the compliance stage and in failing to order a nationwide posting.

V. REMEDY

Counsel for the Acting General Counsel submits that the following order is the appropriate remedy:

1. That Respondent, DirecTV U.S. DirecTV Holdings, LLC, its officers, agents, successors and assigns, be ordered to cease and desist from engaging in any of the following because employees engaged in activity in support of International Association of Machinists and Aerospace Workers, District Lodge 947, AFL-CIO, herein called the Union, or any other labor organization, or any other protected concerted activity:

(a) Discharging employees;

(b) Cease maintaining rules that interfere with employees' rights to engage in activity protected by Section 7 of the Act; and

(c) In any similar way frustrating employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. That Respondent be ordered to take the following affirmative action:

(a) Offer, in writing, immediate and full reinstatement to Greg Edmonds to his former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and make him whole for any loss of pay and other benefits resulting from his discharge with interest including reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination;[14]

(b) Submit appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods;[15]

(c) Expunge from its files any reference to the discharge of Greg Edmonds, and notify him in writing that this has been done and that evidence of this unlawful conduct will not be used against him in any way;

(d) Rescind the following rules contained in its Employee Handbook at every location where the Employee Handbook has been distributed and on its intranet and notify employees that the rules have been rescinded to the same extent that the unlawful rules were publicized:

> **2.4 Use of Company Systems, Equipment, and Resources**
> Occasional and reasonable personal use of company property is permitted. Examples of reasonable use include use that is moderate and appropriate in duration and frequency, use that does

[14] The ALJ failed to include this provision in his recommended order.
[15] The ALJ failed to include this provision in his recommended order.

not involve obscene or questionable subject matter, use that does not conflict with the company's Anti-discrimination/Harassment and/or conflict of interest policies, and use that is not in support of any religious, political, or outside organization activity.

3.4 Communications and Representing DIRECTV

To ensure the company presents a united, consistent voice to a variety of audiences, these are some of your responsibilities related to communications:

- Do not contact the media, and direct all media inquiries to the Home Services Communications department.
- If law enforcement wants to interview or obtain information regarding a DIRECTV employee, whether in person or by telephone/email, the employee should contact the Security department in El Segundo, Calif., who will handle contact with law enforcement agencies and any needed coordination with DIRECTV departments.

4.3.2 Confidentiality

- Never discuss details about your job, company business or work projects with anyone outside the company, especially in public venues, such as seminars and conferences, or via online posting or information-sharing forums, such as mailing lists, websites, blogs, and chat rooms
- Never give out information about customers or DIRECTV employees. In particular, customer information must never be transmitted through regular unencrypted email, even internally within DIRECTV. If you have additional questions regarding data transmission guidelines, check with the IT department.

(d) Furnish all current employees with inserts for the Employee Handbook that (1) advise that the unlawful rules and policy have been rescinded, or (2) provide the language of lawful rules or policy; or publish and distribute a revised Employee Handbook and (1) do not contain the unlawful rules and policies, or (2) provide the language of lawful rules or policy.

(e) Rescind the following rules contained in the DirecTV Policy Communications, Public Relations, and Corporate Events at every location where the said Policy has been distributed and on its intranet and notify

employees that the rules have been rescinded to the same extent that the unlawful rules were publicized:

> **Employees**
> Employees may not blog, enter chat rooms, post messages on public websites or otherwise disclose company information that is not already disclosed as a public record.
>
> **Public Relations**
> Employees must direct all media inquiries to a member of the Public Relations team, without exception. Employees should not contact or comment to any media about the company unless pre-authorized by Public Relations. These rules are in place to ensure that the company communications [sic] a consistent message and to ensure that proprietary information is not released.

(f) Furnish all current employees with inserts for the DirecTV Policy Communications, Public Relations, and Corporate Events that (1) advise that the unlawful rules and policy have been rescinded, or (2) provide the language of lawful rules or policy; or publish and distribute a revised Employee Handbook and (1) do not contain the unlawful rules and policies, or (2) provide the language of lawful rules or policy.

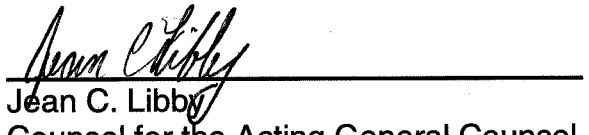
(g) Post, within 14 days after service by the Region, at every location where the Employee Handbook Communications Policy has been distributed and on its intranet an appropriate notice to employees delineating the Section 8(a) (3) and (1) violations;

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all

other records necessary to analyze the amount of backpay owed under the terms of this Order; and

(i) Notify the Regional Director for Region 21, in writing, within 20 days from the date of the Administrative Law Judge's Order, what steps have been taken to comply with the Order.

Respectfully submitted,



Jean C. Libby
Counsel for the Acting General Counsel
National Labor Relations Board, Region 21

STATEMENT OF SERVICE

I hereby certify that a copy of the Counsel for the Acting General Counsel's **Brief In Support of Limited Exceptions to the Administrative Law Judge's Decision** in Case 21-CA-039546 was submitted by E-filing to the National Labor Relations Board, Washington, D.C., on February 6, 2012. The following parties were served with a copy of the same Brief by electronic mail:

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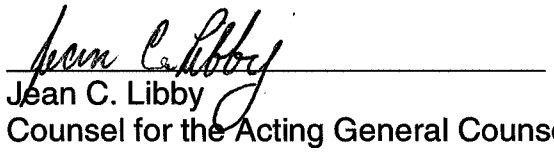
Respectfully submitted,



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