UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED PARCEL SERVICE, INC.

and **Case 12-CA-340701**

JAMES H. COTTER, an Individual

Cristina Ortega, Esq., for the General Counsel.
Cynthia Little, Esq. and Steve Ensor, Esq. on the stipulation and
John F. Ring, Esq. and Lauren M. Emery, Esq. on the brief, for the Respondent.

DECISION

STATEMENT OF THE CASE

JEFFREY P. GARDNER, Administrative Law Judge. After the issuance of the original complaint in this case, the parties settled all but one allegation.[1] The only remaining allegation, which Respondent denies, is that Respondent violated Section 8(a)(1) of the Act by maintaining, since January 30, 2025, its "Use of Recording Devices" policy. The policy is set forth in Respondent's Information and Privacy Manual applicable to its employees in the United States and its territories. (GC Exhs. 1(a)-1(o)).[2]

The General Counsel[3] and Respondent filed post-hearing briefs, which I have read and considered. Based on those briefs, the stipulations, and the entire record in this case, I make the following[4]

FINDINGS OF FACT

I. JURISDICTION

It is stipulated, and I find, that Respondent, an Ohio corporation and a New York

[1] The original complaint alleged that Respondent violated the Act by discriminating against the Charging Party, including by discharging him, for, among other things, violating the rule that is now the subject of this case.

[2] Abbreviations used in this decision use the following conventions: "Tr." for the Transcript, "GC Exh." for the General Counsel's exhibits and "R. Br." for Respondent's Brief. Specific citations are included only where appropriate to aid review and are not necessarily exclusive or exhaustive.

[3] I use the term General Counsel in this decision even though the case was submitted by the then-Acting General Counsel.

[4] The record herein includes the formal papers (GC Exh. 1), my order of July 28, 2025, granting the joint motion to approve stipulation, the stipulation itself, and Joint Exhibits 1-3. I also grant the agreed upon motion to correct stipulated record.

corporation with its principal office and place of business in Atlanta, Georgia and with places of business located throughout the United States, including a facility located at 45154 US Highway 27, Davenport, Florida (Respondent's Davenport facility), has been engaged in the business of interstate transportation of freight for companies and individuals. It is also stipulated, and I find, that in a representative one-year period, Respondent, in conducting its business operations, derived gross revenues in excess of $50,000 from the transportation of freight in interstate commerce from the State of Florida directly to points outside the State of Florida.

I therefore find that, at all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and, (7) of the Act. I also find, as further stipulated, that, at all material times, Teamsters Local No. 79 (Local 79), International Brotherhood of Teamsters (IBT), and Teamsters United Parcel Service National Negotiating Committee (TUPSNNC), referred to herein collectively with IBT, Local 79, and other local Unions of IBT as "the Union," have been labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Stipulated Facts

The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Where already recognized, feeder drivers, package drivers, sorters, loaders, unloaders, porters, office clerical, clerks, customer counter clerks, mechanics, maintenance personnel (building maintenance), car washers, United Parcel Service employees in the Employer's air operation, and to the extent allowed by law, employees in the export and import operations performing load and unload duties, and other employees of the Employer for whom a signatory Local Union is or may become the bargaining representative; employees of CSI and UPS Latin America, Inc. as specified in the PAD Supplement and the Challenge Air Cargo Supplement, respectively; effective August 1, 1987, clerks who are assigned to package center operations, hub center operations, and/or air hub operations whose assignment involves the handling and progressing of merchandise, after it has been tendered to United Parcel Service to effectuate delivery, covering package return clerks, bad address clerks, post card room clerks, damage clerks, rewrap clerks, and hub and air hub return clerks; the classifications covered in Article 39—Trailer Repair Shop; and effective February 1, 2003, FDC/ODC clerks, international auditors, "smart label" clerks and revenue auditors who work in the operations facilities.

Since on or before August 1, 2023, and at all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in a collective-bargaining agreement between Respondent and the Union, which is effective by its terms from August 1, 2023, until July 31, 2028. (GC Exhs. 1(k), 1(m) and 1(n), and Jt. Exh. 1). The Davenport facility at issue in this matter is also covered by a supplemental agreement between the Union and Respondent that covers the Southern Region of the United States, including all of Florida, effective by its terms from August 1, 2023 through July 31, 2028. (Jt. Exh. 2).

At all times since August 1, 2023, and at all material times, based in Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

Since on or about January 30, 2024, Respondent has maintained the following "Use of Recording Devices" policy in its Information Security and Privacy Manual applicable to its employees in the United States and its territories:

> 4.5 Use of Recording Devices
>
> …..
>
> **For UPS employees:** UPS seeks to encourage and foster spontaneous and honest dialogue, practical problem-solving, and direct and ethical dealings with its employees, vendors, and partners, all as a means to successful working relationships and effective customer service within today's fast-moving and competitive environment.
>
> As a result, the use of any recording devices in its facilities (whether cell phones, cameras, or other devices capable of recording pictures, video, or audio) while on work time and in work areas is subject to several important and business-driven limitations. Individuals who record are personally responsible for respecting these limitations.
>
> One business reason for limiting recording is to eliminate the chilling effect that may inhibit the free exchange of information when one person is concerned that another is recording. Individuals who seek to record are responsible for respecting these important concerns.
>
> Another business reason to limit recording is protecting UPS's, its strategic partners' and its customers' proprietary information and trade secrets, protecting employees' health related, background check, familial, or other information deemed private by applicable law, and protecting employees' privacy in locker, changing, nursing, or rest rooms. Individuals who seek to record should ensure their recording will not interfere with these important business interests.
>
> Finally, in some states or localities, creating or using recordings of conversations or information without the consent of others may violate the law. Individuals who record are personally responsible for understanding and complying with any applicable laws, and individuals who seek to record will be responsible for any failure to do so.
>
> Examples of activities or work areas in which employees should be especially aware of the above limitations include, but are not limited to, pre-load, hub, center, yard, or ramp operations; warehouse activities; while on-car, or in PCMs, business meetings, or on conference calls involving UPS confidential/proprietary information of customers or partners. Individuals may possess recording devices while on UPS facilities, provided that the recording capabilities and recorded information are used in a manner consistent with this and other UPS policies regarding confidential/proprietary equipment, systems or

> information. In order to protect our company's and our customers' assets, UPS employees may be required to obtain and display a registration sticker from Security or provide other proof of ownership of their device prior to bringing it on to UPS property.
>
> (Jt. Exh. 3).

B. The Legal Framework

The test for evaluating an employer's conduct or statements with respect to violations of Section 8(a)(1) of the Act is "whether they have a reasonable tendency to interfere with, restrain, or coerce employees who may engage in activities protected by Section 7." *American Freightways Co.*, 124 NLRB 145, 147 (1959). This applies to work rules which explicitly restrict Section 7 rights. But even if the rules do not explicitly restrict those rights, the rules may still be unlawful based on broad language where:

> (1) employees would reasonably construe the language to prohibit Section 7 activity, (2) the rule was promulgated in response to union activity, or (3) the rule has been applied to restrict the exercise of Section 7 rights.
>
> *Karl Knaus Motors, Inc.,* 359 NLRB 1754, 1754 (2012).

The present case does not involve a rule that explicitly restricts Section 7 rights or one that has been unlawfully promulgated or discriminatorily applied. Rather, the allegation before me is simply that the language itself is so broad that it reasonably could be read as restricting protected rights.

In *Stericycle*, *Inc*., 372 NLRB No. 113 (2023), the Board stated that it would begin its analysis of such rules by "assessing whether the General Counsel has established that a challenged work rule has a reasonable tendency to chill employees from exercising their Section 7 rights," interpreting the rule from "the perspective of the reasonable employee who is economically dependent on her employer and thus inclined to interpret an ambiguous rule to prohibit protected activity she would otherwise engage in." The Board continued by stating that "the reasonable employee interprets rules as a layperson not as a lawyer." *Id.* at 9-10.

According to the Board, once the showing that the rule has a reasonable tendency to chill Section 7 rights is made, the General Counsel has satisfied that the rule is presumptively unlawful, even though the rule could "also be interpreted *not* to restrict Section 7 rights and even though the employer did not intend for the rule to restrict Section 7 rights." The employer may rebut that presumption by "proving that the rule advances a legitimate and substantial business interest, and that the employer is unable to advance that interest with a more narrowly tailored rule. *Id.*

However, employer work rules for employees should not be read in isolation, but rather in context with the entire document and surrounding circumstances. See *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004); *Tradesmen International*, 338 NLRB 460, 461-462 (2002); and *Aroostook County Regional Ophthalmology Center v. NLRB*, 81 F.3d 209, 213 (D.C. Cir. (1996) (reversing Board's reading of a rule for failing to "properly take account of the employment context" of the matter).

Based upon my reading of the stipulations and the briefs of the parties, I find that the General Counsel has not met the initial burden to show that the language alone of the rule at issue can reasonably be read to prohibit Section 7 activity.

C. The Specific Provisions Alleged to be Unlawful

The General Counsel's brief titles the section of the brief that deals with the initial burden of proof under *Stericycle* as follows: "A. Respondent's No Recording Devices policy is presumptively unlawful." (GC Brief at 7). That is an incomplete statement of the *Stericycle* requirement. As explained above, the presumption only attaches if and when the General Counsel meets the initial burden of proof that the rule can be read by a reasonable employee to restrict protected activity.

After setting forth general principles, the brief discusses an analysis of the language that allegedly violates the Act. Of the cases cited in the analysis, only 2 involve rules about cameras or recordings—*Rio All-Suites Hotel & Casino*, 362 NLRB 1690 (2015) and *Whole Foods Market, Inc.*, 363 NLRB 300 (2015). Both are distinguishable from this case, and their differences support the finding that the rule in this case is not unlawful.

The ban on audio and visual recording devices found unlawful in *Rio All-Suites* was, unlike the rule in the instant case, a broad and sweeping ban without regard to use on non-work time or in non-work areas. The *Rio All-Suites* rule also did not contain the accommodations set forth in the rule in this case. *Rio All-Suites* 362 NLRB at 1692.

The rule found unlawful in *Whole Foods Market* was similarly broad. It was unlimited in time and location, and subjected violators to discipline and discharge. In addition, there, the Board specifically relied on the respondent vice-president's testimony that the challenged rule applied to protected activity. *Whole Foods*, 363 NLRB at 800-801. By contrast, the challenged rule in the instant case has no such broad restrictions, penalties, or admission that the rule covers protected activity.

The General Counsel's assertion that the rule does not contain language "carving out exceptions for activities protected by Section 7" (GC Brief at 10-11) is not determinative. Whether or not there is "carve out" language in the rule, the General Counsel must affirmatively and persuasively show that the language itself has a chilling effect on Section 7 rights. It is not the Respondent's burden to show a carve out.

Nevertheless, the Respondent here has indeed carved out such an exception. In its brief in this case, Respondent specifically states that "the URD does not apply to any recording activity that would be protected under the NLRA." R. Brief at p. 8. That statement is unequivocal and unconditional. It is not tied to its reading of the language that is discussed later in Respondent's brief. Such a statement by Respondent's lawyers—its obvious agents—is as binding on the Respondent as it would be in any position statement or an opening statement at the hearing. See *Tracy Toyota*, 372 NLRB No. 101, slip op. at 4-5 (2023); and *Performance Friction Corp*., 335 NLRB 1117, 1149 (2001).

Indeed, such a statement is as relevant to the resolution of a rules case like this one as the opposite statement made in *Whole Foods Market* - namely that the rule does apply to

Section 7 activities – upon which the Board relied there. See *Whole Foods Market*, 363 NLRB at 803.[5]

Nor has the General Counsel shown that the rule is sufficiently ambiguous to allow me to construe it against Respondent. The General Counsel's brief cites to cases setting forth the legal effect of an ambiguous rule. But the brief does not mention the allegedly ambiguous language or discuss how it leads to an inference that it chills Section 7 rights. (GC Brief at 10-11).

In recognition of the limited nature of this rule, which clearly permits use of recording devices in non-work areas and during non-work time, the General Counsel's brief simply points out that certain protected activity could also take place in work areas and work time. (GC Brief at 8-9). But that speculation is irrelevant. Significantly, the rule's application to work time and locations comports with existing law that bans solicitations, including protected solicitations, during work times and in work areas. See *Our Way*, Inc., 268 NLRB 394 (1983) ("working time is for work is a long-accepted maxim of labor relations," quoting from *Peyton Packing Co*., 49 NLRB 828, 843 (1943)). That maxim is also quoted in *Republic Aviation, Corp. v. NLRB,* 324 U.S. 793, 803 n. 10 (1945), the lead case in this area of the law.

Moreover, as the Respondent points out (R. Brief at 8-10), the rule does not prohibit recording devices even in work areas and on work time. Indeed, it affirmatively and broadly permits them "while on UPS premises." The rule simply asks the users to consider and respect the targets of the recordings - a matter of basic civility and practicality for an activity that could be viewed as an invasion of privacy and potential interference with work. I find Respondent's analysis in this respect and elsewhere in its brief very persuasive in demonstrating that the General Counsel has failed to show that the rule as written unduly restricts protected rights under the Act.

Because the General Counsel has failed to meet its initial burden of proof under *Stericycle*, the complaint allegation is dismissed.

Conclusions of Law

1. Respondent, United Parcel Service is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate the Act in the manner alleged.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

[5] Although technically not a statement against interest the Respondent's statement that the rule does not cover protected activities binds the Respondent as if the statement were included in the rule. And it is consistent with Board law.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed in its entirety.

Dated, Washington, D.C. January 13, 2026

Jeffrey P. Gardner
Administrative Law Judge