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**Tesla, Inc. and Rochester Regional Joint Board,
Workers United.** Case 03–CA–312352

October 28, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MACY

On October 4, 2024, Administrative Law Judge Ira Sandron issued the attached decision. The General Counsel filed exceptions and a supporting brief,¹ and the Respondent filed an answering brief. The Respondent also filed cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions,² and briefs and has decided to affirm the judge's rulings, findings, and conclusions³ and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. October 28, 2026

James R. Murphy, Chairman

David M. Prouty, Member

James R. Macy, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ We grant the Acting General Counsel's unopposed motion, filed pursuant to GC Memorandum 25–05 (February 14, 2025), to withdraw General Counsel Exception 22 requesting that the Board reconsider its decision in *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino*, 368 NLRB No. 143 (2019), and General Counsel Exception 23 seeking additional remedies in this matter.

² The Respondent filed cross-exceptions alleging that certain provisions of the National Labor Relations Act were unconstitutional. In light of our dismissal of the complaint, we find it unnecessary to address those exceptions.

³ Chairman Murphy and Member Macy join in dismissing the complaint in light of the Board's decision in *Caesars Entertainment*. In doing so, they note that, in her exceptions, former General Counsel Abruzzo argued that *Stericycle, Inc.*, 372 NLRB No. 113 (2023), should apply to

Sarah Crowley, Esq., for the General Counsel.
David R. Broderdorf and Lauren M. Emery, Esqs. (Morgan
Lewis & Bockius LLP), for the Respondent.

DECISION

STATEMENT OF THE CASE

IRA SANDRON, Administrative Law Judge. This case arises from a complaint and notice of hearing (the complaint) issued May 8, 2024, stemming from charges that the Rochester Regional Joint Board, Workers United filed against Tesla, Inc. (Tesla or the Respondent), alleging that Tesla promulgated and maintained unlawful rules, as described below.

Pursuant to notice, I conducted a trial in Buffalo, New York, on July 23, 2024, during which I afforded the parties a full opportunity to be heard, to call witnesses, and to introduce evidence.

ISSUE

Has the Respondent violated Section 8(a)(1) of the Act by promulgating and maintaining, since on February 15, 2023, and revised on September 18, 2023, a facially unlawful Acceptable Use Policy (AUP) for Workplace Technology, which includes rules restricting the following: technology use for business purposes only; recording; unauthorized soliciting or promoting; email use; storing, sharing, and sending content; and creating channels and distribution lists (the policy or AUP).¹ More specifically, counsel for the General Counsel (the General Counsel) contends that certain specific provisions in these policies are overbroad in scope and therefore interfere with employees' rights to engage in protected activity.

At trial, I granted the General Counsel's unopposed motion to withdraw paragraph 6(b) of the complaint, alleging that the rule was promulgated and maintained to discourage employees from engaging in union or other protected concerted activities.²

FACTS

No witnesses were called, the evidence in this case being wholly documentary. Based on those documents, stipulations, and the thoughtful briefs that the General Counsel and the Respondent filed, I find the following.

At all material times, the Respondent has been a corporation with an office and place of business in Buffalo, New York, where it operates a manufacturing facility. The Respondent has admitted Board jurisdiction as alleged in the complaint, and I so find.

The Union is a labor organization within the meaning of Sec-

the Respondent's IT Use Policy. They agree with the judge that *Stericycle* is not applicable in this proceeding. They further note that they did not participate in that decision and do not pass on whether it was correctly decided. They would be open to reconsidering *Stericycle* in a future appropriate case.

Member Prouty joins his colleagues in applying *Caesars Entertainment* as extant law. In doing so, he expresses no opinion about whether *Caesars* was correctly decided and notes that he would be open to reconsidering it in a future appropriate case.

¹ All dates hereinafter occurred in 2023 unless otherwise indicated or clear from context.

² The Respondent's 10(b) affirmative defense related only to this paragraph in the complaint and was thus rendered moot. Accordingly, I need not address it further.

tion 2(5) of the Act.

On February 15, the Respondent issued and posted changes to its AUP, adding or updating certain sections. (Jt. Exh. 1.) The February policy, also called Version 1.3, is Joint Exhibit 2.

On September 18, the Respondent issued and posted, both physically and electronically, a revised AUP policy that rescinded and replaced the February policy. (Jt. Exhs. 4 and 5.) The September policy, also called Version 1.4, is Joint Exhibit 3.

February Policy

The policy was entitled “Acceptable Use Policy for Workplace Technology.” It states that it applies to, inter alia, all Tesla employees and to all Tesla IT systems, applications, networks and Tesla-issued devices (“Workplace Technology”); and Tesla’s confidential or proprietary information, “including but not limited to trade secrets, information about products and features, technology, pricing, customers, suppliers, non-public financial information, strategies and product launches, and intellectual property (“Tesla Business Information”).”

The following uses of workplace technology are prohibited and contended by the General Counsel to be overly broad. Those that are starred are identical in the September policy and similarly averred to be unlawful:

Conduct:

- (1) Recording a meeting (including phone calls) without the participant’s knowledge.
- (2) Storing, viewing, or sending content that is of harassing, defamatory, discriminatory, or otherwise, inappropriate nature.
- (3) *Engaging in mass transmission of unsolicited emails (SPAM).
- (4)*Soliciting or promoting religious causes or organizations, or for political candidates, groups or parties, unless authorized by Tesla.

Handling of Tesla Business Information:

- (1) Downloading, uploading, copying or transmitting Tesla Business Information from a Tesla-issued device or application to your personal device.
- (2) Sharing of Tesla Business Information with unauthorized external parties (such as journalists, bloggers, relatives, investment firms, etc.).

Email & Chat Communication:

- (1) Forwarding Tesla work documents, work emails and/or Teams chats to your personal email or any unauthorized email accounts.
- (2) *Creating channels or distribution lists (e.g., Teams or Matter most) using Company equipment or systems for communications that interfere with working time or the job performance of users that violate any Tesla Policy.

In the Miscellaneous section, it states, inter alia, that “Nothing in this Policy is intended to interfere with or restrict employee rights under local law to share information about their wages,

benefits or terms and conditions of their employment, or to share information/documents that contain same, to the extent that such documents do not include the trade secret, proprietary, or confidential business information of Tesla.”

September Policy

This superseding policy made the following changes.

(1) The description of the scope of the policy was modified; after describing confidential or proprietary information, this was added:

[A]ll of which have been created, acquired and/or compiled by Tesla at great effort and expense and must be protected from disclosure for legitimate and substantial business reasons. For US-based employees, Tesla Business Information does not include employed-related information accessible to employees, such as wages, benefits, and terms/conditions of employment, which are not restricted from disclosure by Company policy.

(2) The recording policy was changed to:

Recording any Tesla Business Information . . . during meetings, including phone calls, unless the recording is in furtherance of Tesla business purposes and appropriate protocols are followed (such as seeking participant’s consent, if required under applicable law).

(3) The prohibition against downloading, uploading, copying or transmitting Tesla Business Information was amended by the sentence: “This excludes accessing Tesla information on your personal mobile device through authentication and sign on.”

(4) In the prohibition regarding storing, viewing, or sending content, the language “otherwise inappropriate nature” was deleted.

(5) In the Miscellaneous section, “local law” was changed to “applicable law.”

ANALYSIS AND CONCLUSIONS

Affirmative Defenses

The proponent of an affirmative defense has the burden of establishing it. *Babcock & Wilcox Construction Co.*, 361 NLRB 1127, 1140 (2014), citing *Broadway Volkswagen*, 342 NLRB 1244, 1246 (2004).

The Respondent’s answer (GC Exh. 1(e)) raised 17 affirmative defenses. Inasmuch as they are incorporated by reference in the Respondent’s brief, I have duly considered them. Some are statements that require no discussion. I have already addressed the 10(b) affirmative defense. I will now address others that can be grouped into several categories: defects in the complaint; *Stericycle* is an improper decision and should not be applied; and assertions that these proceedings violate the United States Constitution.

Regarding alleged defects in the complaint, on May 24, 2024, the Respondent filed a motion for a bill of particulars, alleging that the complaint in this matter violates its due process rights because the allegations in the complaint are ambiguous. The General Counsel filed an opposition to the motion on June 13. On June 17, I issued an order denying the Respondent’s motion. On June 20, the Respondent filed a reply brief to the General Counsel’s opposition, and a motion for reconsideration. I con-

sidered the arguments that the Respondent raised in its reply brief and motion for consideration and concluded that they did not change the bases for my order denying its motion for a bill of particulars. Accordingly, I denied the motion for reconsideration on June 27.

Respecting the affirmative defenses that raise Constitutional questions, I have no authority to rule on them. Nor do I have the authority to address the affirmative defenses that object to the Board's decision in *Stericycle*.

Proper Standard for Analysis

Regarding work rules in general, the Board in *Stericycle, Inc.*, 372 NLRB No. 113 (2023), adopted a new legal standard to decide whether an employer's work rule that does not expressly restrict employees' protected concerted activity is facially unlawful. Under this standard, a challenged rule is deemed presumptively unlawful if the General Counsel proves that it has a reasonable tendency to chill employee's exercise of the rights, even if a contrary, noncoercive interpretation of the rule is also reasonable.

The employer may rebut that presumption by proving that the rule advances a legitimate and substantial business interest and that the employer cannot advance that interest with a more narrowly tailored rule. If the employer makes such a showing, the rule is found lawful to maintain.

As to rules concerning employee's use of company resources, *Caesars Entertainment*, 368 NLRB No. 143 (2018), overturned the Board's decision in *Purple Communications*, 361 NLRB 1050 (2014), and returned to its previous standard that an employer may maintain a rule restricting "the nonbusiness use of its IT resources absent proof that employees would otherwise be deprived of any reasonable mean of communicating with each other, or proof of discrimination."³ *Ibid* at slip op. 10. The Board noted that "in the typical workplace, employees do have adequate avenues of communication that do not infringe on employer property rights in employer-provided equipment" and that it expected to be "rare" those cases where an employer's property rights would be required to yield. *Ibid*.

In a series of subsequent cases, the Board applied *Caesars Entertainment* and held that facially neutral restrictions on employees' personal use of the company's IT resources were lawful, finding that there were no indications that employees did not have access to other reasonable means of communicating effectively with one another. See, e.g., *Verizon Wireless*, 370 NLRB No. 5 (2020); *Cellco Partnership*, 369 NLRB No. 130 (2020); *T-Mobile USA, Inc.*, 369 NLRB No. 90 (2020). There have been no decision finding to the contrary.

From those cases, it is clear that the General Counsel bears the burden of rebutting the presumption that in the modern world, employees have access to personal equipment that they can use to communicate with one another on matters encompassed by Section 7 without needing to rely on the use of company property.

Subsequent to the parties' filing of briefs, the Board in *Pro*

Residential Services, Inc., 373 NLRB No. 100, slip op. at 3 (Sept. 25, 2024), held that rules restricting employee use of company equipment and electronic communication resources are properly analyzed under *Caesars Entertainment*, not *Stericycle*.

The General Counsel does not aver discriminatory application of the policies or contend that employees do not have alternative means of communication. Rather, the General Counsel urges that the February and September policies as a whole should be analyzed under *Stericycle*, not *Caesars Entertainment*, because they are not limited to regulating use of employer-owned IT and resources but also seek to regulate the use and handling of Tesla Business Information.

However, Tesla's ITT policies and business information policies are integrally connected as a comprehensive workplace policy and cannot be dichotomized and treated separately in any meaningful fashion without contravening the clear import of *Caesars Entertainment*.

The General Counsel further argues that if *Caesars Entertainment* does apply, the February policy went beyond the use of company equipment because it prohibited the downloading, uploading, copying or transmitting of Tesla Business Information from a Tesla-issued device or application to personal devices, and prohibited forwarding Tesla work documents, work emails and/or Teams chats to personal emails or unauthorized email accounts. Therefore, the policy, infringed on employees' rights to use their personal or external devices to engage in Section 7 activity.

Although creative, this argument is unpersuasive. A transfer of information from company equipment to employees' personal equipment is by definition bilateral and necessarily entails utilization of company equipment, which clearly comes under *Caesars Entertainment*: a transfer without a transferor is by definition impossible.

In any event, in both policies, the types of information described as "Business Information" are clearly confidential or proprietary in nature and cannot be reasonably construed by employees as encompassing their Section 7 activities.

In conclusion, based on *Caesars Entertainment* and *Pro Residential Services*, above, the rules are lawful.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Rochester Regional Joint Board, Workers United is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has not committed any violations of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The complaint is dismissed.

Dated, Washington, D.C. October 4, 2024

³ The General Counsel contends that the Board should overrule *Caesars Entertainment* and return to and expand on the standard set forth in *Purple Communications*. However, I am bound by current Board law, and any changes to be made to it are the Board's prerogative, not mine.

⁴ 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.