

Matthew Bruenig (“Charging Party”) is a labor lawyer. Mr. Bruenig frequently represents individuals and unions at the National Labor Relations Board (“Board”), but he is filing this charge for himself as a concerned member of the public, not as a legal representative for anyone else. Mr. Bruenig is the current legal representative for Daniel McDowell and Jacob Kemp in charges 16-CA-322680 and 16-CA-322654, but he is not filing this charge as their legal representative and received the information on which the charge is based from other individuals who work for Cumulus Media, Inc. (“Employer”).

The Charged Party, Cumulus Media, is a radio station conglomerate that owns over 300 radio stations, including 22 in Texas. Susquehanna Radio LLC, which is the Charged Party in charges 16-CA-322680 and 16-CA-322654, is a wholly-owned subsidiary of Cumulus Media. Based on these circumstances, the Charging Party has chosen to file this charge in Region 16 as Region 16 is already processing some related cases against the Employer, or specifically its subsidiary.

On January 13, the Charging Party posted a Tweet on the X platform (formerly Twitter) that stated: “If you work for Cumulus Media (most likely because you work in one of the radio stations in the Cumulus network) or know someone who does, DM [Direct Message] me.”¹



Matt Bruenig
@MattBruenig



If you work for Cumulus Media (most likely because you work in one of the radio stations in the Cumulus network) or know someone who does, DM me.

11:40 AM · Jan 13, 2024 · **30.3K** Views

 View post engagements



Multiple individuals who represented themselves as current or former Cumulus employees sent the Charging Party direct messages. The Charging Party explained to these individuals that he was looking to get a copy of the current Cumulus Employee Handbook. One of these individuals provided the contact information of a current Cumulus employee. The Charging Party contacted

¹ <https://twitter.com/MattBruenig/status/1746210620909699275>

that Cumulus employee and asked for a copy of the Cumulus Employee Handbook. That Cumulus employee then emailed the Charging Party the requested handbook.

This process took 2.5 hours from the initial Tweet to the receipt of the Cumulus Employee Handbook.

The Charging Party is confident that this is the authentic Cumulus Employee Handbook as it was provided to him by a current Cumulus employee and it is unlikely that this employee somehow fabricated a 131-page document full of technical handbook rules in such a short period of time.

Another reason to believe that this is the authentic Cumulus Employee Handbook is that, on page 89, the Handbook contains the following no-recording/no-camera rule:

Cumulus Media prohibits any sort of non-authorized video or audio recording of the workplace by its employees. This includes but is not limited to, recording conversations with or involving Cumulus Media employees, customers, potential customers, vendors or members of the general public, without written consent by each party to the conversation. This prohibition also includes disseminating such materials even if the employee was not the individual who recorded the conversation. Management employees who are authorized by Corporate Legal are permitted to make video and/or audio recordings consistent with Company business interests and in compliance with applicable laws. Any employee who is found to have engaged or assisted in any unauthorized recording will be subject to appropriate disciplinary action, up to and including dismissal from employment. Further, to the extent such recording violates applicable criminal and/or civil law, Cumulus Media may assist with prosecution or enforcement of all rights under such laws.

This text of this rule is identical to the no-recording/no-camera rule that the Employer recently filed a lawsuit attempting to enforce. (See attached Complaint, p. 10).

The Charging Party has read through the handbook and discovered 17 different rules that violate Section 8(a)(1) of the Act under the Board's *Stericycle* standard.

1. Confidentiality Rules

The Handbook contains multiple unlawful confidentiality rules.

The first such rule, on page 31 of the Handbook, states that:

Confidentiality

We protect Cumulus Media’s confidential information. Confidential information includes proprietary information such as our trade secrets, trademarks, copyrights, business, marketing plans, sales forecasts, designs, databases, records, **salary information**, and unpublished financial data and reports, as well as **any nonpublic information that might be of use to competitors or harmful to us or our customers if disclosed**. It also includes information that suppliers and customers have entrusted to us on a confidential basis. Our personal obligation not to disclose confidential information continues even after employment ends.

The second such rule, on page 50 of the Handbook, states that:

Under no circumstances should any Company information of a confidential, sensitive or otherwise proprietary nature be placed on any public information server, chat room or Cumulus Media bulletin board.

The third such rule, on page 79 of the Handbook, states that:

The Company considers employee compensation information to be confidential and requires that employees also consider this information confidential.

The fourth such rule, on page 103 of the Handbook, states that:

The following are examples of behavior that may result in immediate dismissal: ...
Unauthorized disclosure of any confidential Company information.

The fifth such rule, on page 120 of the Handbook, states that:

Employees must not post on Internet venues confidential or proprietary information of the Company or its clients, potential clients and/or vendors without receiving prior written permission from an officer of the Company.

For a recent case applying *Stericycle* to confidentiality rules, see *United Electrical Contractors, Inc.*, No. JD-74-23, 2023 WL 7461184 (Nov. 9, 2023).

2. Courtesy/Obscenity Rules

The Handbook contains multiple unlawful courtesy/obscenity rules.

The first such rule, on page 39 of the Handbook, states that:

In addition to excelling at their job duties and complying with all Cumulus Media policies, some expectations of Cumulus Media employees include: ... Treating fellow employees, clients, potential clients, vendors and others at Cumulus Media with professionalism, respect and care, including speaking in a polite, reasonable tone without sarcasm or anger.

The second such rule, on page 102 of the Handbook, states that:

The following are examples of behavior that may result in immediate dismissal: Rudeness to co-workers, clients, potential clients, vendors and guests; Using obscene, abusive, or threatening language or gestures (whether directed specifically to third parties or not).

The third such rule, on page 119 of the Handbook, states that:

Employees must refrain from using obscenities, profanity or vulgar language in all communications on Internet venues related to or referencing Cumulus Media or its employees, clients, potential clients, vendors and/or third parties.

For a recent case applying *Stericycle* to courtesy rules, see *United Electrical Contractors, Inc.*, No. JD-74-23, 2023 WL 7461184 (Nov. 9, 2023).

3. False Information Rules

The Handbook contains multiple unlawful false information rules.

The first such rule, on page 41 of the Handbook, states that:

All employees must cooperate with the Company's investigation efforts and provide complete, accurate and truthful information. Anyone who is found to have provided false information, omitted important facts or been uncooperative, will be subject to appropriate discipline, up to and including dismissal from employment.

The second such rule, on page 103 of the Handbook, states that:

The following are examples of behavior that may result in immediate dismissal: ... Falsification of Company records; False statements.

For a recent case applying *Stericycle* to a false information rule, see *United Electrical Contractors, Inc.*, No. JD-74-23, 2023 WL 7461184 (Nov. 9, 2023) (individuals have a right to provide false information about union-affiliated work history).

4. Email Rules

The Handbook contains multiple rules restricting the use of company communication systems like email.

The first such rule, on page 43, states that:

Cumulus Media requires that employees respect the equipment, systems and resources that they have access to in their employment, and that all functions, facilities and resources be designed, built and operated in such a way as to ensure the Company's technology and information assets are protected from **unauthorized use**, access, disclosure, modification, damage or removal, either intentional or accidental. Cumulus Media information ("Information Assets") includes documents, computer systems, mobile devices, **e-mail**, communication systems, databases, network files, software programs and printers. All data or Cumulus Media-provided media that is provided for or relates to Cumulus Media business and is stored on personal or Cumulus Media-owned computing or technology devices is the property of Cumulus Media.

The second such rule, on page 48 of the Handbook, states that:

Sensitive legal or **personnel matters should not be discussed via electronic mail**, as e-mail messages may be considered evidence by the courts and can be taken out of context or misinterpreted. Further, **employees should not use their Company e-mail account for personal communications** or forward e-mails from their Company e-mail address to their personal e-mail or external email account. Corporate and each market reserve the right to regularly back up and store email messages, including deleted e-mails, as part of their recovery policy. E-mails sent and received from an employee's Company account remain solely Company property, and employees may not delete e-mails from the system without prior written approval from an authorized Company manager.

The GC is currently attempting to replace the current Board law on email rules with a standard that would make these particular email rules unlawful. See GC Brief in Support of Exceptions, p. 48 in *Garten Trucking*, 10-CA-279843 (Overturn *Caesars* to reinstate an expanded *Purple Communications*).

5. Outside Employment Rule

The Handbook, on page 82, contains an unlawful outside employment rule that states:

The Company's intent is not to restrict outside employment so that if an employee is in need of additional income by taking outside work, the employee will be allowed to work outside of Cumulus Media if it is possible to do so without undue effect on the Company, unless an employee is restricted from other employment under a written employment agreement or compensation plan. To be fair to everyone, the employee must first meet the demands of their job at Cumulus Media, which includes meeting the responsibilities and requirements of the role, as well as the availability for overtime or flexible schedule when necessary. Any outside position must in no way be detrimental to the interests of the Company and will be assessed based on the requirements of the full-time or part-time role within the Company.

To avoid any misunderstanding, full-time employees are required to obtain written permission from their manager (with approval by an authorized member of Company management) if they intend to work outside of Cumulus Media.

Stericycle explicitly overruled the finding that these outside employment rules are categorically lawful. When applying *Lutheran Heritage*, outside employment rules like this were deemed facial violations. See, e.g., *Tpi Iowa, LLC*, No. JD-93-16, 2016 WL 5340240 (Sept. 22, 2016).

6. Uniform Rule

The Handbook, on page 87, contains an unlawful uniform rule that states:

Clothing with the Company's logo is encouraged, and clothing referencing sports teams, educational institutions and fashion brand names is generally acceptable but **not items that have words or pictures that may be offensive to others.**

This restriction could be interpreted as forbidding wearing certain union insignia with slogans that could be "potentially offensive." *AT&T*, 362 NLRB No. 105 (2015) (Buttons stating "Cut the Crap! Not My Healthcare." and "WTF Where's the Fairness" deemed protected). Slogans that are "unquestionably vulgar and obscene" can be prohibited. *Leiser Construction, LLC*, 349 NLRB 413 (2007). But a slogan could be "potentially offensive" (a vague term that could include any kind of union message) without being "unquestionably vulgar and obscene." The current controlling Board law on this is *Tesla*, 371 NLRB No. 131 (2023).

7. Media Contact Rule

The Handbook, on page 105, contains an unlawful media contact rule:

Employees should not provide statements of information to the media regarding Cumulus Media, its employees, its practices or its activities unless explicitly authorized in writing from the Chief Executive Officer's office. Members of the media requesting information about Cumulus Media, its employees and its practices should instead be referred to the Chief Executive Officer's office.

This is illegal under *Tesla, Inc.*, 370 NLRB No. 101, slip op. at 4 (2021) and under the new *Stericycle* standard.

8. Social Media Policy

The Handbook, on pages 119-120, contains an unlawful social media policy that states:

Therefore, Cumulus Media requires that employees observe the following guidelines when representing themselves on or through Internet venues:

- Employees must refrain from using obscenities, profanity or vulgar language in all communications on Internet venues related to or referencing Cumulus Media or its employees, clients, potential clients, vendors and/or third parties.
- Employees must not use Internet venues in a way that could be considered malicious or abusive to Cumulus Media or its employees, clients, potential clients, vendors and/or third parties.
- Employees must not use Internet venues in a manner that may cause public discredit to Employee or to the Company.
- Employees must not post on Internet venues confidential or proprietary information of the Company or its clients, potential clients and/or vendors without receiving prior written permission from an officer of the Company.
- Employees must not improperly pressure any Company employee, client, potential client or vendor to "friend" or otherwise connect with the employee on a social networking site.

Despite these requirements, nothing in this Policy is intended to or should in fact prohibit employees from discussing the terms and conditions of their employment or otherwise exercising rights provided by applicable law.

For a case applying *Lutheran Heritage* to overly broad social media policies, see *Georgia Auto Pawn*, 365 NLRB No. 26 (Feb. 8, 2017). Some of the elements of this social media policy are also quoted above as examples of some of the types of illegal rules the Employer maintains.

This social media policy does have a savings clause at the end, but it is clearly not enough to avoid coercing workers. *Ingram Book Co.*, 315 NLRB 515, 518 fn. 2 (1994) (“Rank-and-file employees do not generally carry lawbooks to work or apply legal analysis to company rules as do lawyers, and cannot be expected to have the expertise to examine company rules from a legal standpoint.”); *Tower Industries Inc.* 349 NLRB 1077, 1084 (2007) (“An employer may not specifically prohibit employee activity protected by the Act and then seek to escape the consequences of the specific prohibition by a general reference to rights protected by law.”)

9. No-recording/no-camera rule

The unlawful no-recording/no-camera rule, contained on page 89 of the Handbook, states that:

Cumulus Media prohibits any sort of non-authorized video or audio recording of the workplace by its employees. This includes but is not limited to, recording conversations with or involving Cumulus Media employees, customers, potential customers, vendors or members of the general public, without written consent by each party to the conversation. This prohibition also includes disseminating such materials even if the employee was not the individual who recorded the conversation. Management employees who are authorized by Corporate Legal are permitted to make video and/or audio recordings consistent with Company business interests and in compliance with applicable laws. Any employee who is found to have engaged or assisted in any unauthorized recording will be subject to appropriate disciplinary action, up to and including dismissal from employment. Further, to the extent such recording violates applicable criminal and/or civil law, Cumulus Media may assist with prosecution or enforcement of all rights under such laws.

For cases applying *Lutheran Heritage* to these kinds of rules, see *Caesars Entertainment*, 362 NLRB 1690, 1694 (2015); *Whole Foods Mkt., Inc.*, 363 NLRB at 803 (no-recording rules that “unqualifiedly prohibit all workplace recording ... reasonably chill employees in the exercise of their Section 7 rights”); *T-Mobile USA, Inc.*, 363 NLRB 1638, 1641 (2016) (a no-recording rule that “does not differentiate between recordings that are protected by Section 7 and those that are not” and that “prohibits all recording and makes no exception for protected concerted activity” is facially unlawful).