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January 2, 2018

VIA ELECTRONIC FILING

Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: The Trump Corporation a/k/a The Trump Organization, Inc. and Donald J. Trump for President, Inc., et al.
Case 02-CA-183801 and Case 02-CA-191078

To Whom It May Concern except Peter Robb, who must recuse himself:

This is an appeal from the decision of the Regional Director to refuse to issue Complaint in both cases.

First, the Decision to Dismiss suggests that a consideration is the question of whether the employer continues to exist.

Although “Donald J. Trump for President, Inc.” was created for the purpose of electing Donald Trump, it remains in existence long after the election. The website is maintained and, obviously, there are statutory employees who were working, unless it is a fiction. Those statutory employees included receptionists, clerical employees, accountants, managerial employees, web designers and maintainers and so on.

If someone represented to the Region that the employer does not exist anymore, this lie is entirely consistent with the lies the president is telling the public everyday. Go to the website at <https://www.donaldjtrump.com/media/donald-j-trump-for-president-inc-campaign-committed-to-buy-american-help/>.

The Donald J. Trump for President, Inc. website continues to be maintained. Recently, the campaign has bought ads. This kind of conduct cannot occur without there being employees, including statutory employees. See the website. It has references to 2018.

In July of 2017, the website was advertising that it made products sold by the website:

Donald J. Trump for President, Inc., the President’s 2020 reelection campaign committee, has proudly produced and manufactured all of our merchandise right here in America from day one. From the stitching on our red Make America Great Again (MAGA) hats to the

aluminum of our Women For Trump water bottles, we put America First and take great pride in selling 100% Made in the USA products to our supporters throughout the country.

This could be a total lie, but the Region failed to investigate and confirm what the website claims, that it makes these products, not that some contractor makes them. Is this “fake news”?

Perhaps these lies to the Region should be turned over to the Department of Justice under Jeff Sessions to prosecute for perjury.

Your letter suggests that the Committee to Preserve the Religious Right to Organize did not file these behalf of any particular employees. That is false. This was filed on behalf of all employees, including all statutory employees. It is filed on behalf of employees of other employees. In any case, the Board does not require that a charging party be an employee or represent employees. It could be any type of person. Probably excluded would be dogs.

There is a Catch-22 to this. The Confidentiality Agreement would prohibit those statutory employees from filing this Charge or discussing anything relating to being employed, including the language of the Confidentiality Agreement with any outside person, including the Charging Party in this case. You cannot fault the Charging Party for filing the Charge if employees would be prohibited from doing so based on the Confidentiality Agreement.

The fact is that the Donald J. Trump for President, Inc. organization continues to exist and even continues to sell merchandise. See their website at <https://shop.donaldjtrump.com/collections/headwear>. It must have statutory employees to exist. The Region was lied to.

Moreover, there can be no doubt that there are statutory employees of the other employers. They remain in existence and should be subject to a settlement agreement in which they agree not to enforce the confidentiality language.

The General Counsel’s office should not be afraid of issuing Complaint. All that is required is a simple settlement agreement in which the employer will not maintain or enforce this confidentiality language. If there is no physical location to post it, so be it. The employer can post it on the website. But an acknowledgement that the Confidentiality Agreement was unlawful would be helpful, not only to those workers, but workers of other employers within the meaning of the Act.

Complaint should issue in Case 02-CA-183801

This is an appeal from the decision of the Regional Director to refuse to issue Complaint in Case 02-CA-183801, concerning the related “Code of [non]Ethical Conduct.”

The primary rule that is in dispute in this “Code of [non]Ethical Conduct” is Rule 6:

I will keep confidential any non-public information provided to me in the course of my duties with the transition and will use such information exclusively for purposes of the transition.

This language encompasses all *non-public* information. There is no exclusion or limitation. That would include compensation, working conditions, wages and hours and other matters related to wages, hours and working conditions, and sexual harassment of every employee of Trump for America or the transition team. It is overbroad because it would encompass everything that is non-public. In order to be lawful, the language should have excluded any matters relating to “wages, hours and working conditions” of the employees of Trump for America.

The harm in paragraph 6 is compounded by paragraph 7, which prevents anyone from using that information for “any other party” That limitation, moreover, applies “at any time during or after the transition.” This would prevent some employee who signed this agreement from providing this information to a labor organization or other person who is concerned about the wages, hours and working conditions. It continues in effect though this appeal.

Paragraph 9 is also invalid. It would prevent someone who signed this from appearing before or communicating with any “federal department.” This is a plain prohibition on its face against providing any information to the National Labor Relations Board or cooperating with the National Labor Relations Board or even filing a Charge with the National Labor Relations Board. It would prohibit providing information to the Department of Labor on a Fair Labor Standards Act violation or a welfare benefit plan problem. Even if interpreted to be limited to appearances “for compensation,” that would prohibit someone from being reimbursed for expenses or being paid as a representative of a labor organization.

Again, just to emphasize, Trump for America continues to exist. It continues to exist because it continues to maintain a website. Just take a look. It sells merchandise. It claims it makes the merchandise.

Thus, the obligations in the code would continue to apply to workers, including statutory employees, working for Trump for America and the transition team.

It is clear that no employee of Trump for America is going to challenge these rules. After all, Trump is president and, given his record, everyone must fear retaliation. Any challenge would violate the illegal confidentiality rule.

Finally, to the extent that, in this case or in another case, you have relied upon representations by Trump’s counsel, that is nothing more than “fake news” or “alternative facts.” Nothing that Trump or his counsel says can be trusted.

Finally, this case should be remanded to the Region. The Board’s recent case in *Boeing Company* establishes new ways of reviewing such rules. See *Boeing Co.*, 365 NLRB No. 154 (2017). The Region did not apply that standard to these rules and neither did your office. That decision was to be applied to all pending cases.

This case should be remanded to the Region so that we can explain to the Region and provide evidence, if necessary, why there is no legitimate business justification for the breadth of the rules contained in this code of conduct. The burden is on the employer to provide that business justification. It has not done so.

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If the General Counsel (not Peter Robb) is afraid to take on the Trump organization, admit that concern and be done with it. This lame “non-effectuation” ground is palpably false since the employer continues to function.

Complaint should issue. The notice can be posted on one of Trump’s tweets and on the employer’s website.

Organize,

David A. Rosenfeld

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