

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

FDRLST MEDIA, LLC

and

Case 02-CA-243109

JOEL FLEMING

ORDER

The Respondent's Motion to Dismiss the complaint is denied. The Respondent has not demonstrated that the complaint fails to state a claim upon which relief can be granted and that it is entitled to judgment as a matter of law.

The Respondent's arguments are without merit. It is well-established that "Board proceedings are governed by the Administrative Procedure Act and the Board's Rules and Regulations, not the FRCP."¹ Indeed, the Supreme Court has explicitly instructed that "[a] charge filed with the Labor Board is not to be measured by the standards applicable to a pleading in a private lawsuit."² Further, contrary to the Respondent's assertions, the clear and unambiguous weight of both Board and Supreme Court authority holds that any person may file an initial charge.³ The Respondent's attacks on personal jurisdiction and venue are

¹ *Component Bar Products, Inc.*, 364 NLRB No. 140, slip op. at 10 (2016). See also *Armstrong Cork Co.*, 112 NLRB 1420, 1420–21 (1955) ("[T]he Federal Rules of Civil Procedure are applicable to Board proceedings only with respect to the introduction of evidence, and not with respect to pleadings before the Board").

² *NLRB v. Fant Milling Co.*, 360 U.S. 301, 307 (1959) (noting that it is not the role of the Board "to adjudicate private controversies" but rather "to advance the public interest in eliminating obstructions to interstate commerce"). See also *NLRB v. Ind. & Mich. Elec. Co.*, 318 U.S. at 18 ("The charge is not proof. . . . The charge does not even serve the purpose of a pleading.").

³ See *NLRB v. Ind. & Mich. Elec. Co.*, 318 U.S. 9, 17–18 (1943) (a "stranger" to the relationship may file the initial charge; noting Senator Wagner's objection to limiting who could file); *Castle Hill Health Care Center*, 355 NLRB 1156, 1190 (2010) (anyone may file a charge with the NLRB). See also Section 102.9 of the Board's Rules and Regulations ("[a]ny

similarly inapposite. The venue for filing of a charge is not a basis for attacking the validity of a complaint.⁴ Decisions regarding where to prosecute a complaint are primarily an administrative function within the GC's discretion, and he has the authority to transfer a case.⁵

Accordingly, the Respondent's Motion to Dismiss is denied.

Dated, Washington, D.C., February 7, 2020.

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| JOHN F. RING, | CHAIRMAN |
| MARVIN E. KAPLAN, | MEMBER |
| WILLIAM J. EMANUEL, | MEMBER |

person may file a charge alleging that any person has engaged in or is engaging in any unfair labor practice affecting commerce").

⁴ See, e.g., *Earthgrains Co.*, 351 NLRB 733, 733 n.2 (2007) (where charge should be filed is a venue matter; improper venue not fatally defective where Respondent has notice and opportunity to defend against the charge and complaint on the merits); *Allied Products Corp.*, 220 NLRB 732, 733 (1975) (same).

⁵ See Section 102.33 of the Board's Rules and Regulations; see also, e.g., *Consolidation Coal Co.*, 310 NLRB 6, 8 (1993); *Allied Products Corp.*, 220 NLRB at 733.