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

T-MOBILE USA, INC.
Respondent

and

COMMUNICATION WORKERS OF AMERICA, AFL-CIO
Charging Party

Cases 14-CA-155249
14-CA-158446
14-CA-162644
14-CA-166164

William F. LeMaster, Esq.
for the General Counsel.

Mark Theodore, Esq. and Irina Constantin, Esq.
for the Respondent.

Glenda Pittman, Esq. and Meron Kebede, Esq.
for the Charging Party.

DECISION

STATEMENT OF THE CASE

SHARON LEVINSON STECKLER, Administrative Law Judge. This case was tried in Wichita, Kansas on March 15 and 16, 2016, upon charges[1] filed by the Communication Workers of America, AFL-CIO (Union) against T-Mobile USA, Inc. (Respondent). The General Counsel issued a complaint on September 28, 2015 and subsequent Consolidated Complaints on October 23, 2015, December 23, 2015, and February 19, 2016.[2]

Respondent filed timely answers to the complaint, including on March 4, 2016 to the Third Consolidated Complaint (Complaint), which denies all wrongdoing. The Third Consolidated Complaint (Complaint) alleges Respondent violated Section 8(a)(1) and (3) of the Act, which will be discussed in 3 groups. The first group alleges Respondent violated Section 8(a)(1) with the following rules:

[1] Charge 14-CA-155249 was filed on July 1, 2015 and amended on September 23, 2015. Charge 14-CA-158446 was filed on October 19, 2015. Charge 14-CA-162644 was filed on October 26, 2015 and amended on December 2, 2015. Charge 14-CA-166164 was filed on December 16, 2015 and amended on February 12, 2016.

[2] All dates are 2015 unless otherwise indicated.

(1) The portion of the Acceptable Use Policy for Information and Communication Resources, limiting use of computers to legitimate business purposes, which did not include junk mail and chain letters, was disparately enforced.

(2) About June 2, by e-mail, Respondent promulgated and maintained rules against sending "mass emails" to other employees, prohibited discussing the union during work time, and prohibited employees from using social media while at work, all of which were overly broad and disparately enforced.

The second group also alleges violations of Section 8(a)(1):

(1) About June 2, Respondent: prohibited employees from sending "mass e-mails;" prohibited employees from talking about the union during working time although permitting employees to discuss other subjects (and again on June 4); and, prohibited employees from sending Union-related emails to employees' work email addresses.

(2) About June 4, Respondent: interrogated employees about their union membership, activities and sympathies; and, engaged in surveillance of employees by congregating with employees in a break area that was out of the ordinary.

(3) Between mid-June and early July, Respondent: threatened employees with unspecified reprisals; interrogated employees about their union activities, sympathies and membership as well as other employees; asked if employees were friends with a known Union supporter; and, restrained and coerced employees by creating a seating chart to isolate union supporters.[3]

(4) About December 11, Respondent: created an impression of surveillance by telling employees that Respondent saw photos of employees engaged in union activities outside of work; told employees that it was disappointed that employees engaged in Union activity; interrogated employees about their union activities and sympathies by asking employees if they intended to be outspoken about the Union and whether they changed their stance on the Union; threatened employees that they would not be considered for an award because of Union activities and sympathies; and threatened unspecified reprisals by telling employees that their time with Respondent would be more difficult if they were outspoken about the Union.

(5) About December 21, Respondent: created an impression of surveillance by telling employees they were creating turmoil and must be getting paid by the Union to keep support going; and, interrogated its employees by asking if they were involved in planning a Union event.

The third group alleges two violations of Section 8(a)(3): The first alleges that Respondent imposed a seating chart due to employees' union sympathies and activities. The second alleges

[3] General Counsel, in its brief, withdrew Complaint ¶10(e).

Respondent imposed more onerous working conditions upon employee Jerrica Croxson by requiring that she adhere to a detailed work schedule.

Upon the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by General Counsel, the Union and Respondent, I make the following

FINDINGS OF FACT

Jurisdiction

At all material times, Respondent has been a corporation, with an office and place of business located in Wichita, Kansas. It is engaged in telecommunications business operations throughout the United States and Puerto Rico. *T-Mobile USA, Inc.*, 363 NLRB No. 171, slip op. at 11 (2016). In conducting its operations during the 12-month period ending August 31, 2015, Respondent derived gross revenues in excess of $100,000 and purchased and received goods and materials valued in excess of $5,000 directly from points outside the State of Kansas. At all material times, T-Mobile has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

Statement of Facts[4]

I. Respondent's Background and Operations

The Wichita Call Center employs approximately 600 customer service representatives (CSRs), who take calls at their work stations. The hours of operation are 7:30 a.m. until midnight each day. The CSRs are organized in one of two groups: General Care and

[4] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather upon my review and consideration of the entire record for this case. My findings of fact encompass the credible testimony, evidence presented, and logical inferences. The credibility analysis may rely upon a variety of factors, including, but not limited to, the context of the witness testimony, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 303–305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings regarding any witness are not likely to be an all-or-nothing determination and I may believe that a witness testified credibly regarding one fact but not on another. *Daikichi Sushi*, 335 NLRB at 622.

When a witness may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. *International Automated Machines,* 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d (6th Cir. 1988). This is particularly true where the witness is the Respondent's agent. *Roosevelt Memorial Medical Center,* 348 NLRB 1016, 1022 (2006). Testimony from current employees tend to be particularly reliable because it goes against their pecuniary interests. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304 fn. 2 (1961); *Gateway Transportation Co.*, 193 NLRB 47, 48 (1971); *Federal Stainless Sink Division*, 197 NLRB 489, 491 (1972).

Onboarding. The CSRs assigned to General Care assist customers with their questions about their accounts and devices and sell services. The Onboarding CSRs, established in March 2015, handle customers who are within their 30-day onset of service. CSRs are expected to keep their headsets on except when they are on break or at lunch. The headsets are not wireless. Despite the tethering with the headsets, CSRs who are not answering calls talk freely with each other about any and all subjects.

Usually 15 CSRs, a senior representative and a coach comprise a team. The CSRs and the senior representative, who is not considered in supervision or management, report to the coach. Each team is located in working area known as a pod. The seating arrangement in each pod locates the CSRs' cubicles on an outer ring. The CSRs are seated facing outward. The senior representative and coach sit in the center of the pod. (GC Exh. 5). The pods within the Call Center are separated by taller walls and walkways go to the pods. Multiple pods play music, sometimes to the point where customers complain about the loudness of the music.

The coach, who is considered part of the management team, reports to the team manager. The Director of the Wichita Call Center is Jeff Elliott.

The Union has been trying to organize the Wichita Call Center since 2009. Two unfair labor practices settlements deal specifically with the Wichita Call Center. The first, approved on September 2, 2011, settled solicitation and interrogation allegations and included a non-admissions clause.

The second Wichita settlement, approved July 28, 2015, did not include a non-admissions clause. It settled allegations that Respondent interrogated employees, made threats of unspecified reprisals, and told employees that they could not discuss or engage in activities with other employees regarding wages, hours and other terms and conditions of employment. It also settled two disciplinary actions taken against Jerrica Croxson (Croxson), an alleged discriminatee in the current case. (GC Exh. 27).

If Respondent spots union activities at the Wichita Call Center, it generates a TPA (Third Party) Report. Senior Manager Human Resources Business Partner[5] Larissa Wray-Tolbert (Wray-Tolbert) first explained the TPA Report covered any third-party contact or events, including union activity, which might disrupt the Call Center operations. For example, Respondent instructs security guards to monitor and report any union activities to the Human Resources department. Upon further examination, Wray-Tolbert admitted one to two TPA reports per week are written, and all TPA Reports discuss union activities.[6]

An example is when an employee complains of being upset or harassed. Another was if the "third party" was present at the end of the driveway. Wray-Tolbert then forwards the TPA

[5] Wray-Tolbert's position is chief of human resources at the Wichita Call Center. Her department covers employee relations, payroll, benefits and other human resources functions.

[6] General Counsel's subpoena duces tecum to Respondent requested all TPA Reports for a specific period. Respondent produced those relevant to the allegations and I granted, in relevant part, Respondent's motion to quash the subpoena for the additional TPA Reports. In his brief, General Counsel urges me to reconsider my ruling and order production of the additional TPA Reports. I decline to do so as the record contains sufficient information to make the findings of fact.

by email to corporate headquarters and other human resources personnel in Wichita. She also sends to "retail partners" in the area, such as Metro PCS.

One TPA Report example occurred on November 10. A CSR told a few team members in her pod that food was "out back." When the senior representative asked why, the CSR said it was with the Union. In the same report, the TPA Report noted Union activity, with signs and flyers. The flyers were attached. Another TPA Report stated that the guard, during rounds, asked someone to remove a coat hanging over Respondent's stop sign.

II. Email Usage and Respondent's Acceptable Use Policy For Information and Communcations Resources

A. CSRs Routinely Use Electronic Communications at Work

The CSRs routinely use computers as part of their jobs. The computer system has instant messaging (IM) for immediate communication within the facility, which employees use routinely. Employees also have sent emails throughout the facility.

The employees send and receive emails with other CSRs, coaches, senior representatives, and team managers. They also receive emails from the director. (Tr. 45, 106). Some of the emails are Respondent notifications to employees when fresh popcorn or slushies are available or for nacho day in the cafeteria. Other Respondent emails ask employees to participate in a salsa[7] contest or a lip sync contest,[8] or offer free hockey tickets.

An employee who could not find a telephone charger sent an entire email to the facility. Another employee sent notification of birthday plans for another employee throughout the facility. The facility sent notification of birth announcements to all employees; some employees would respond for congratulations through the "Reply All" function, which would send the email to all recipients. Other CSRs testified that they use the "Reply All" function for distribution lists to the entire facility.

Director Elliott testified that the birth announcements were business-related because "[w]e are like a family . . . . It is our people."[9] Baby showers also may take place in which the staff holds a potluck dinner and people voluntarily purchased joint gifts. A bowling party invitation, if done for recognition of a work group, would be considered business-related. If an employee has a death in the family, Elliott has sent out emails to notify about the passing and upcoming services. The employees may also be notified by email if a card if available for signing.

[7] Food, not dancing.

[8] For this contest, a team or members of a team submits a video of themselves lip syncing a song, with the winner receiving a trophy and a case of Red Bull energy drink.

[9] Respondent argues that the record contains no evidence of mass emails for birth announcements. (R. Br. at 28-29). I find, however, that Respondent's admissions, corroborated by employee testimonies, are sufficient to find birth announcements and death notifications were emailed.

Employees also access social media while at work. CSR Chelsea Befort said that, during work, she scrolled through her Facebook on her phone to check the newsfeed. She also observed others using social network applications. If a customer had problems using a social network, Befort used her own phone and application to assist the customer. CSR Taylor Lowery used her social media between calls, on breaks, and while talking on her own phone and observed others doing the same; she was never told to stop. CSR Abigail Parrish testified that she used Facebook while on working time if during downtime and she was not taking a customer call.

B. Respondent's Acceptable Use Policy[10]

Respondent's Acceptable Use Policy, spanning six pages, covers the use of its information and communications resources. The policy was last revised in 2014. It applies to all electronic devices and all manner and means of communications operated by Respondent. Respondent reserves the use of the devices for "legitimate business purposes." Legitimate business purposes include internal email, Yammer "and other tools . . . to discuss work-life balance, traffic and carpool arrangements, weather conditions," and charitable events in which Respondent is involved. The policy also permits "incidental and infrequent personal use" by approved personnel and such use cannot interfere with use for legitimate business purposes. The policy then gives a list of non-legitimate uses.

The Complaint alleges that one portion among the non-legitimate uses of this Policy, within Section 3.4 of the rule, violates the Act:

> Prohibited use of T-Mobile's information and communication resources are not legitimate business purposes. Prohibited uses include, but are not limited to:
>
> . . .
>
> To distribute or store junk mail and chain letters . . .

(GC Exh. 11, p. 2).

Other listed non-legitimate uses include pornography, communication of threats, anything related to gambling, anything derogatory that encompasses any protected class, and any use advocating or soliciting for causes "not related to T-Mobile business."[11]

Director Elliott contends that the emails regarding Respondent offering food and notifying employees about lost items are business related, not personal. The business purpose regarding the lost item was that it was lost on site and Respondent would help recover the item. In addition, Respondent does not monitor for other non-business uses by employees.

[10] All policies discussed were promulgated before the six-month statute of limitations but were maintained throughout the relevant time period.

[11] In *T-Mobile, USA, Inc.*, 363 NLRB No. 171, slip op. at 1-2, fn. 5 (2016), Respondent did not except to Administrative Law Judge Dibble's findings that two portions of the Acceptable Use Policy were unlawful: Section 3.3., if the resources are used in ways reasonably considered disruptive, offensive or harmful to morale; and Section 3.4, in relevant part, for any use that advocates, disparages or solicits for religious causes, political causes or non-company related outside organizations.

The policy contains active computer links at the end of the legitimate uses section. These links include: Enterprise User Standard; the Employee Handbook, which includes no solicitation and no distribution rules; and the Code of Business Conduct.

The Enterprise User Standard's stated purpose is to ensure security and protection of Respondent's information assets. It discusses anti-malware controls, information backup, passwords, and security for cellular telephones and laptops.

Section 3.4 of the Enterprise User Standard states:

1. Users must follow the appropriate authorization process for requesting an account granting specified access and permission levels. Most authorization processes start with a Remedy ticket and specific approvals from T-Mobile Management. Contact your manager or the Help Desk for more information.

2. All access that is not explicitly authorized is forbidden.

3. Users are responsible for all acts associated with their UserID.

Wray-Tolbert testified that this access limitation includes distribution lists, which are groups of employees set up in the computer system to distribute emails to the selected group, such as all CSRs or all employees at the Wichita Call Center. Respondent contends the standard is necessary to prevent all employees from emailing each other at the same time.

III. A CSR Sends an Email to Other CSRs

A. On May 29, a CSR Sends Email About a Union Activity

CSR Chelsea Befort worked at the Wichita Call Center from October 7, 2013 to July 21, 2015. Lillian Maron and Angel Meeks were respectively her team manager and her coach. Her last position was with the new onboarding department, which was responsible for contacting new customers within 30 days of starting service. She clocked out for lunches, but not for breaks.

On Friday, May 29, during her break times, Befort sent out a series of emails, with the subject line "Raise Your Voice," to fellow CSRs. Each email contained the following text:

> Dear T-Mobile Wichita Employees,
>
> For far too long now, our voices have been silences. We are told we do not have the right to discuss work conditions in an organized manner. Enough is enough. It is time to make a change! Join the movement!
>
> Feel free to contact me with any questions, but please do so outside of working hours.
>
> Some of us that are currently involved will be meeting at North Rock Lanes tomorrow night. Please join us to meet our team and have some fun!

Sincerely,
Chelsea Befort
T-Mobile CSR1
Wichita, KS
[phone number omitted]

When Befort sent the first email, at the beginning of her lunch break, she addressed it to all CSRs at the Wichita Call Center, attempting to use the Call Center's distribution list for all CSRs. When that did not work, Befort began selecting CSRs off the list and re-sent the email. After Befort returned from lunch, she returned to her computer and found an automated message that her email could not be delivered because she could only send it to 100 recipients at a time. Upon discovering this limitation, she examined the Wichita CSR list and selected approximately the first 100 CSRs for re-sending the email. However, that email also exceeded 100 recipients. Befort made numerous attempts before she was successful in reaching her target audience and no more than 100 recipients. After she clocked out at the end of her shift, she sent more emails to cover the remainder of the CSRs. Although Befort was on break, she knew some CSRs would be working when they received the emails.

B. On June 2, Respondent sends an email in response to Befort's email

1. Respondent discovers Befort sent the email

Several CSRs forwarded Befort's email to management. Wray-Tolbert found that a TPA Report was necessary because the email disrupted work and pertained to "third party Union activity." (Tr. 351). Wray-Tolbert emailed a TPA Report about the email, with the email attached. On Monday, June 1, Call Center Director Elliott discovered that the e-mail had been sent out multiple times and "multiple employees complained," which, in his opinion, made the email a disruption. (Tr. 377).

Elliott and Wray-Tolbert testified that Befort's email violated a number of policies. Based upon the legitimate use portion of the Acceptable Use Policy, Befort's email was junk mail and solicitation; it also did not pertain to company business. Based upon General Counsel's subpoena, Respondent could not find any other documents showing it applied its Acceptable Use Policy.

Respondent also stated that Befort's e-mail violated distribution access limitation provided in the Enterprise User Standard (GC Exh. 18), in that Befort did not have access to the employee or CSR lists for the Wichita Call Center. Because the Enterprise User Standard further prohibits any access that was not explicitly authorized, Befort, who was not authorized to use the CSR list, should not have been able to send out the "mass communication." Because some of the emails were rejected due to size, they were mass emails. As a result, Respondent also considered it junk mail as well.[12] However, had the number been smaller, Respondent admittedly may not have known that Befort sent the email.

[12] Upon employment, Befort electronically signed an acknowledgement that she received the Employee Handbook and would promptly read it.

Wray-Tolbert also testified that the email violated the prohibited activities listed in the employee handbook for no solicitation or distribution. That policy prohibits "Solicitation of any kind by employees on Company premises during working time of either the employee engaged in soliciting or the employee being solicited." The emails also would be read by CSRs who were working, making the emails disruptive to production. Despite its availability of metrics, Respondent presented no evidence that the metrics of that day were disturbed.

2. Director Elliott responds to Befort's email

Elliott decided to send an email to all Wichita Call Center employees. On June 2, Elliott's email, using the distribution list for all Wichita Call Center employees, stated:

> Team,
>
> It has been reported to us that on Friday an employee sent hundreds of you emails about the union. Many of you told us it was disruptive and unwanted communication. We apologize for any disruption or inconvenience this may have caused. I'd like to take this opportunity to remind you that it is not appropriate for employees to send emails to large numbers of employees. We don't allow mass communication for any non-business purpose since this disrupts the workplace and distracts employees from their work. Also, it is not appropriate to solicit other employees for any purpose when employees are working. We certainly recognize employees' rights to support the union, but we ask that they do so without violating these policies.
>
> Since this email addressed union issues, I'd like to take this opportunity to respond. It is not the case that anyone's voices have been silenced. And no one is telling employees that they don't have a right to discuss work issues—you know employees around here aren't shy about discussing anything. Employees have countless opportunities to communicate with others when they are not working—about the union or anything else. They can talk with others in break areas, before work, or after work. They can talk from home, or text while eating out. They can use social networks—off the job, of course. But it is not appropriate to solicit or discuss other issues when you are supposed to be working.
>
> Employees have a right to support the union, and an equal right not to. And employees have a right to discuss the union--as long they are not working—and a right to refuse to discuss the union. Employees have a right to sign authorization cards, and employees have a right to refuse to sign authorization cards. But before you sign, make sure you understand what it means to sign a card.
>
> And if you have an questions about the union, its claims, or authorization cards, feel free to ask your Coach, your Manager or me. We'd be happy to answer any questions you may have.
>
> Jeff

(GC Exh. 7).

Befort, responding through the "Reply All" function, stating that she thought the employees were not supposed to talk to their coaches and managers about unionization. (R. Exh. 21).

The social media policy, cited by Elliott, states employees can occasionally use personal social media on the work computer or during work hour as long as it does not interfere with job responsibilities and is consistent with the other policies. (Tr. 327).

C. On June 2, Respondent, by Manager Maron and Coach Meeks, Meets with Befort

When Befort returned from her lunch break, Coach Angel Meeks told her to put her phone in "auxiliary" for a team meeting. Meeks and Befort met with Team Manager Maron in a small conference room at the front of the Call Center. Although Meeks was present, she added nothing to the meeting.

Team Manager Maron told her the meeting was about the email.[13] Befort asked if the meeting would lead to discipline, which Maron denied. According to Befort, Maron stated that CSRs could not send mass emails and anything union-related could not be sent while "on the clock." Befort told them that she was sure she did not send any emails while she was clocked in, which Maron corroborated. Maron told her that other representatives opened and read the email while they were clocked in, which was the problem. Maron also said the email was soliciting and anything union-related could not be done by email. She also told Befort that she could not discuss the union within the working areas; anything union related would have to outside of the working areas and off the clock. Maron's reasons were that it was solicitation and could not be done on "company time." Maron told her the company recognized her right to support the union, but she needed to do so without violating company policies. Maron told her she could use work email for these messages as long as it was not disruptive, to which Befort responded that she understood.

Maron's version differs from Befort's on the content of the conversation. Wray-Tolbert provided Maron with talking points (R. Exh. 23) and instructions for her discussion with Befort. Maron could not recall receiving talking points for discussions with any other employee. (Tr. 459-460). Maron later admitted she talked with Wray-Tolbert before her conversation with Befort. Maron claimed she could not recall a great deal about this conversation and then said that the instructions were primarily to have the conversation with Befort. The talking points were the following:

> • It was reported to us that on Friday you sent emails to hundreds of employees in the Wichita Call Center. Several employees told us it was disruptive and unwanted communication. We don't allow non-business related mass communication for any purpose since this disrupts the work place and distracts employees from their work.

[13] About June 1, Maron learned she would be in charge of the onboarding section. Human Resources directed her to conduct the meeting with Befort.

> • Your email was also inconsistent with T-Mobile's non-solicitation policy. You may solicit concerning union issues during non-working time, but you may not solicit while the person you are soliciting is supposed to be working. You had to be aware that many employees were actively working when you sent these emails, so this working time solicitation also was inconsistent with our non-solicitation policy.
> • We certainly recognize your right to support the union, but we ask that you do so without violating these policies. Of course, you can communicate with employees about the union in break areas, and when you and others are not working; you can communicate about the union in the parking lot and away from work. We just ask that you do so while following these policies.
> • Question: Can I use e-mail to communicate about the union?
> Answer: Yes, but your use of company systems for these purposes has to be while neither you nor the person you are communicating are working, and under circumstances which are not likely to disrupt work at the call center and not in a manner that is inconsistent with these rules.

(R. Exh. 23).

Maron specifically denied each alleged unlawful statement from her conversation with Befort. Maron admitted that she told Befort that she could not discuss the union when she was working or others were working, and further defined working as talking to customers. (Tr. 420). Maron initially maintained that she read verbatim the provided talking points but on cross-examination admitted that she had at least some variations. (Tr. 462).

After her meeting with Maron and Meeks, Befort returned to her computer and noticed she had an email in her inbox from Director Elliott, which is addressed above. Befort, Alyssa Jones (also known as AJ), and Taylor Lowery testified that, before they received Elliott's email, Respondent never communicated that the employees were prohibited from sending mass emails or from discussing any topics, outside of common sense restrictions, during work time, nor did Respondent communicate that employees could not use social media unless they were "off the job." In her experience, Befort, with Meeks present, participated in conversations during time between calls about social activities and shared items from their Facebook accounts. Lowery talked during work time, with supervisors present, about families and weekend activities. For example, Lowery also discussed clothes with Coach Meeks.

IV. <u>On June 4, Team Manager Maron Conducts a Team Meeting in Befort's Pod</u>

A. <u>Prequel: Human Resources Prepares Maron for a Meeting about Flyers</u>

On June 3, someone distributed union leaflets within the pod where Befort worked. According to Maron, Wray-Tolbert again instructed her to conduct a meeting and provided her with the talking points. Wray-Tolbert told her the pamphlets found in Meek's pod on each CSR's desk were "third party, Union." (Tr. 465). Maron again received talking points:

- Yesterday, someone left leaflets on each of the work stations in the pod.

- We just wanted to remind you that it is not appropriate to distribute materials while you are working or while the recipient is working, and such materials are not to be left or distributed in any work areas of the call center.
- We certainly recognize your right to support the union, or not to support a union. And we want to make it clear that you can distribute materials regarding the union in non-working areas, and when you are not working.
- We were told that the leaflet talked about employees having a voice. You know you have that now. You can go to any Coach or Manager in the call center with questions or concerns.
- And when you raise issues we hear them.
- In just the last few weeks, based on employee input, we doubled the amount of time off the company can grant so that about 80% of requests can now be granted.
- Company-wide, employees asked for a stock purchase program, and we gave you one.
- And in response to questions about pay increases, we provided increases across the company-two last year and one coming up this month.
- We were also told that the document suggested that with a union, employees could make decisions about metrics, insurance, leave and wages.
- When there is a union, they don't make decisions about these issues. They can only ask. And while they can promise you anything about these issues (and often do), the thing is that the union cannot, and will not guarantee you any particular outcome. With a union you can get more, less or the same.
- Just ask the TMUS technicians in Connecticut who voted in a union. With the union they had the same benefits, the same leave, and the same work standards as technicians elsewhere. But the union agreed to cap any wage increases while no one else in the company had a cap. Maybe that is why the engineering employees have filed a petition to get rid of the union.

(R. Exh. 24).

B. Maron Conducts the Meeting in the Pod

On June 4, Team Leader Maron told the CSRs to put their phones into auxiliary mode. Once all the CSRs did so, Maron gathered the CSRs, including Befort, Taylor Lowery (Lowery) and AJ, in the middle of the pod and began talking about the email and discussions about the union. Coach Meeks apparently was present.

Maron discussed a flyer that was previously distributed on the CSRs' desks. Employees testified that Maron had a folder in her hands and would refer to the folder throughout the speech, but did not appear to be reading. Maron, however, testified that she read verbatim and answered questions.

Employees testified that Maron said the employees were not allowed to discuss the union within the working area and could not distribute flyers or other materials related to the union within the working area; those activities could be performed in the lunchroom, break areas, or outside of work. Maron reiterated that employees had a right to be for or against a union, but

literature could be distributed in non-working areas, if the person distributing was not working.[14] In response to the issues raised in the flyer, Maron said employees had a voice in their work and that the CSRs could see talk to their manager or coach. She gave examples of the company giving increased time off requests and stock options.

According to Befort, Maron stated that items on the flyer, such as metrics, insurance and wages, would not be changed by the union because those things would be up to management. However, on cross-examination, Befort said Maron stated the union could ask for changes and that the union, not the employees, would be making the decisions for the employees. Maron also talked about some of Respondent's engineers in Connecticut, who were represented by a union. Maron said the union agreed to cap wages and reference that these employees filed a petition to end union representation.

C. Sequel: After the Meeting, Some CSRs Take a Break and Coach Meeks Goes Too

When the meeting concluded, the CSRs were permitted an additional 10-minute break. Many of the CSRs are smokers and went outside to picnic tables near the smoke shack. The CSRs who went out included Befort, AJ, Lowery, Holly Robinson, Darryl, and Jalen Jones.

Coach Meeks, who does not smoke, also went to the smoke shack area with the CSRs. Befort and AJ said Meeks had not joined them on a break before, leading AJ to ask Meeks, "Why are you coming outside with us on our break? You don't ever come outside." Meeks said, "I just want to come with you guys." (Tr. 122). Meeks remained with them during the entire break.[15]

Befort pulled out her telephone to type notes of the meeting and send the notes to herself via text message so that she would not forget what happened. Befort attempted to show AJ the notes to confirm nothing had been forgotten, but Coach Meeks was close by. Befort and AJ were whispering. Meeks said to AJ, "You don't have to whisper, you can talk to me." Befort testified that, as a result of Meeks' proximity, she was unable to share with AJ the information on her phone.

The CSRs returned to their phones and were permitted then to take their regularly scheduled breaks. After changing the codes on their phones to break, the same individuals, including Coach Meeks, returned to the smoke shack. By this time, Befort sent an e-mail to AJ about making plans to meet later to discuss what happened in the meeting. AJ read the message and handed her phone to Robinson to read it. After Robinson, AJ slid the phone over to Lowery, who was moving her mouth while she read the message. Lowery moves her mouth as she reads.

Coach Meeks then said to AJ and Lowery, "What are you guys looking at?" AJ said it was a picture. Meeks said, "It's not a picture because Taylor's moving her mouth." AJ said it was a picture with words. Meeks said she wanted to see it and AJ said it was not work

[14] Lowery testified that she said the flyers brochures, pamphlets, or leaflets about the union needed to stay in drawers and out of sight until off work property and out of work hours.

[15] AJ testified she saw other coaches and managers in these break areas, but she never saw Coach Meeks on break with them before this time or afterwards.

appropriate. Meeks said AJ showed her things all the time that were not work appropriate. Meeks moved around to the table towards AJ and Lowery and started to reach for the phone. However, Lowery gave the phone to AJ, who then pulled up a picture with words on it. She then handed the phone to Meeks. The break was over and they returned to work.

V. Guards Confront CSR Parrish While Distributing Flyers Outside the Call Center

At the time of these events, Abigail Parrish was employed as a CSR. She is now a part-time organizer for the Union. While employed by Respondent, Parrish distributed flyers outside the building, in the lunchroom and in the smoke shack. She also distributed flyers at the end of the driveway on the public easement.

On Thursday, August 20, Parrish, on her day off, passed out flyers when a security guard confronted her. She went to the call center with another volunteer and union staff to pass out flyers on the public easement next to the driveways on the south side of the building. After checking with Tammy Chaffee, a Union organizer, Parrish moved onto the property itself rather than staying on the easement. She went to the east (front) entrance and stayed there for a few minutes handing out flyers. A guard came out of the east entrance and told her that she could not be distributing flyers because she was on private property. Parrish told the guard she was an employee and offered to show him her employee identification badge. He did not ask to see her badge, said, "Uh, ok," and returned to the building.

Parrish stayed at that entrance until she ran out of flyers, and then picked up more. She relocated to the west entrance. She handed out some flyers at the smoke shack and started to leave. As she started to leave, two people were exiting the building separately. One was a coach and the other was another security guard, wearing the standard uniform of a white buttoned shirt, black pants and his security name tag. Parrish noticed that his name tag identified him as "J. Wiegand."

As Wiegand approached Parrish, he said in a loud voice, "Abby, you can't be passing out flyers. It's solicitation." He told her it was company policy. Parrish thought he was talking about Respondent's policy. Parrish told him it was not solicitation and he insisted it was covered by the company's solicitation policy, so she needed to stop. At some point, Wiegand told Parrish that she could not pass out flyers for a food truck or a party, so she could not pass out flyers for anything else. Parrish was concerned matters might escalate and left.

In its Employee Handbook, Respondent maintains a rule regarding distribution, which permits employees to distribute "non-work related materials in non-work areas during non-work time."

Wray-Tolbert reported that Wiegand, upon seeing her in a hallway, reported the incident. No TPA Report was generated about Parrish's activity; however, a TPA report was generated about the handbilling at the southeast and southwest entrance. The Report stated four outside participants were involved and that number included employee Parrish.

Within an hour after receiving Wiegand's report, Wray-Tolbert sent Parrish, and only Parrish, the following e-mail:

> We understand that a security guard approached you in the smoking area and told you that you were not allowed to hand out leaflets in that area. The security guard was in error. There's no prohibition against your distributing union literature in a non-working area during non-working time. Please let me know if you have any questions.

(GC Exh. 10).

Upon returning to work on August 22, Parrish received Wray-Tolbert's email.

VI. Allegations Involving Coach Belinda Spencer and Senior Representative Croxson

Croxson is a senior representative at the Wichita Call Center, where she has been employed for over 4 years. The position is considered a stepping stone for someone to potentially become a leadership position, such as coach or trainer. The senior representatives engage with CSRs and answers telephone calls from customers that have escalated---when customers ask to speak to supervisors. Senior representatives also assist in ensuring appropriate staffing at lunches and breaks. Twice per week for each CSR on their teams, the senior representatives also conduct side-by-side CSR reviews, listening to customer calls in real time. The senior representative gives positive and negative feedback to the CSRs. As a result, senior representatives are expected to be away from their desks approximately 80 percent of the time. A senior representative normally has flexibility in her schedule to answer these calls. The senior representative also is responsible to ensure the team meets metrics of credits/adjustments, schedule and sales. (Tr. 482).

At the relevant time, Croxson was supervised by Coach Belinda Spencer and Team Manager Maron. Spencer maintained that she and Croxson had "huddles" almost daily. In the huddles they discussed the agenda, meetings, coaching and prioritization of Croxson's tasks. Spencer also stated she had at least weekly career development meetings with Croxson.

Before joining Spencer's team, Croxson had been an active supporter of the Union. These activities included advocating for the union, wearing union t-shirts, and discussing the Union with her prior supervisor and now Belinda Spencer. She appeared in flyers for the Union. Croxson also was the subject of an unfair labor settlement in which Respondent resolved allegations that Croxson suffered discipline due to her union activities and sympathies.

A. Croxson Hides Her Union Sympathies

Croxson and Spencer had discussions about the Union since mid-March 2015, when Spencer became Croxson's coach. According to Croxson, these discussions took place after work in the pod, one to two times per week. The conversations started with coaching and segued into Croxson's goals and perceptions of working for Respondent. Spencer said the discussions about the union began when Croxson came to her team and Croxson talked about her relationship with her previous coach. Spencer also said that Croxson believed the company had

a negative perception of her and she no longer wanted a part of the union because she wanted to save her job. (Tr. 489-490).[16]

Around April, Spencer's pod was moved from general care to onboarding duties. Spencer and Croxson continued in their respective roles. Spencer was off work during the last two weeks of May. Croxson took medical leave for 12 days at the end of May and the conversations continued after that time.[17] When Spencer returned from leave, she discovered that the pod was physically moved. No seating arrangement was made for the new location.

When both Spencer and Croxson were back from their respective leave, Spencer asked Croxson if she saw Befort's May 29 email. According to Croxson, Spencer also asked Croxson whether she attended the bowling event that Befort sent out. Croxson said that she just had surgery, so "why would I go bowling?" (Tr. 218). Spencer also asked Croxson if she had seen Befort's response e-mail. Croxson said, "Well, everybody got it," and walked away. Spencer testified that she only asked Croxson if she read the email, because she heard Befort was coming to her team and that it caused disruption within the Call Center. Spencer denied asking Croxson about the bowling event. (Tr. 494).[18]

Croxson also testified that, during June and early July, Spencer frequently asked her whether she remained friends with Befort. She further testified that Spencer asked about her support for the Union during this time.

B. Discussion and Implementation of the Seating Chart

One topic was whether certain Union supporters would bid to move into Spencer and Croxson's team and how Croxson should treat them so that no favoritism occurred. Every six months, CSRs and senior representatives have an opportunity to bid into a different team. Potentially a team could have 15 new members. Coaches also bid for a manager's team. The process is called "realignment." The ultimate realignment is based upon an individual's ranking on metrics. This particular realignment was scheduled for July 31 and Croxson bid to remain on Spencer's team.

About early June, Spencer and Croxson learned who their new team members were for the realignment. Spencer asked Croxson whether she worked with any of them in the past, and if so, what were their strengths and weaknesses. According to Croxson, a few CSRs coming to the team were known union supporters: Befort; AJ; and Holly Robinson. At hearing, Spencer also identified two CSRs as known union supporters who already were on her team and staying: "Daniva" and Cheryl Bell. Spencer denied knowing Robinson was a supporter but knew AJ and Robinson were dating.

[16] I credit that Spencer believed Croxson made an effort to show she was not involved with the Union.

[17] On August 21 and 22, while Spencer was on medical leave, the substitute coach gave Croxson two coachings respectively: one for failing to take an escalated call and another for failing to answer a CSR's questions sufficiently.

[18] Spencer later testified that the procedure for changing teams, bidding, took place in late June or early July, so at that time Spencer could not have known whether Befort was joining her team. I therefore discredit Spencer's denial.

Spencer and Croxson started discussing where to seat them. Spencer said she did not want them sitting by Croxson because she wanted to ensure no one thought she showed any favoritism due to their union relationship. In addition, Spencer said that AJ and Robinson should not be seated near each other because they were union supporters.[19] Spencer testified that, although she consulted with Croxson, she did not recall any of Croxson's specific input about the seating chart, and denied making the statements reported by Croxson.

On July 23, Spencer sent an e-mail to all team members coming to the team. She attached a seating chart, which was implemented. It directly placed AJ and Robinson on opposite sides of the pod, with Spencer, located in the middle of the pod, between them. Daniva was placed in a corner away from AJ and Robinson, but at the end of the pod and near Croxson's desk. She was four seats away from AJ and another four seats away from Bell. Bell was placed near Croxson, on the same side as Robinson and four seats away from Robinson. (GC Exh. 17).

C. Croxson Attends a Union Meeting and Spencer Finds Out

From December 1 to 3, Croxson attended a Union event in Washington, D.C. She only told Spencer and her manager, Maron, that she was going to Washington but left out it was Union- related. Croxson told Spencer that she was going with friends, the trip was paid for, and Spencer had questions about it. Croxson said she was going to stay with a friend. She returned to work on December 4. Spencer asked about how the trip was and Croxson said, "Great."

Croxson next conversed on this topic with Spencer after another team member, Cheryl Bell, wore to work a purple souvenir sweatshirt from Washington.[20] Spencer saw Bell's sweatshirt made a joke with them about Croxson buying Bell a sweatshirt but not one for her. Spencer asked Croxson whether she had seen Bell in Washington. Neither Croxson, who was present, nor Bell said anything back. After another coach told Spencer about a picture on the Union's Facebook page, Spencer later viewed it.[21] Spencer determined that Croxson was at the same conference as Bell and felt disappointed that Croxson lied to her about going to the conference.

On December 11, Spencer told Croxson to stay at the end of the shift. Croxson said she did not have time to stay. Spencer directed Croxson outside the pod, into the hallway, and said, "Do you think I'm stupid? Do you think I don't that you were with Cheryl in Washington?" Spencer said she saw pictures of the trip and knew it was a union trip. Spencer said that Croxson was going to ruin her hard work at bettering the company's perception of Croxson and that she thought Croxson was no longer a union supporter. Spencer said that Croxson should not get her hopes up to win any peak nomination[22] (the highest award in the company) because of her union support. She asked Croxson if she intended to be more outspoken about the union and what her thoughts were about the union. Spencer also told Croxson, who was considering moving out of

[19] Befort was not included in the chart because, by that time, she was leaving Respondent's employ.

[20] Spencer was fuzzy about the dates of the next conversation. At first she said it was a week later, and then said December 5 or 6.

[21] Spencer said that the Union Facebook page appears regularly on her Facebook page; however, that was not revealed during her discussions with Croxson.

[22] Over the years, Croxson received several peak award nominations. The ultimate award was a trip to Hawaii.

state, that she should not make her last few months with the company harder than they needed to be by being an outspoken union supporter.[23]

On December 14, on Croxson's next day at work, Croxson noticed that Spencer ignored her when she came to work. When they met for the regular beginning of shift meeting between them, Croxson noticed that Spencer was micromanaging her work, something that Spencer had not done before this time. Spencer gave her hourly segments in which to accomplish certain tasks. Croxson took notes, which she discarded after the end of the shift. Spencer did not repeat this conduct after this date.[24]

Spencer testified the meeting was approximately 30 minutes at the beginning of the shift. Spencer does not dispute that she had a conversation with Spencer about her duties that day, but states the conversation took place because she recently attended a coaches' meeting about the job duties of the senior representatives and achieving goals. Spencer testified that told Croxson, because "they" were having problems getting everything done, these measures were to manage "our day" and try to put structure to it. Spencer testified that she handed Croxson a preprinted senior representative form, which outlined various duties and some time targets within the shift. (Tr. 515; R. Exh. 30). The form apparently was blank. Spencer said it was something that Croxson could copy and use. Spencer did not request that Croxson return the completed form at the end of the shift. The form was never discussed again.[25]

On the same date, Respondent initiated a "focus group" evaluation on Croxson.[26] The focus group questioned members of Croxson's pod about what Croxson was doing well and what could be improved.[27] Maron met with Spencer[28] and CSRs to obtain feedback. Two CSRs allegedly reported to Maron that they believed Croxson was trying to get Spencer in trouble. Other information found that one CSR, who could not work with Croxson and took a leave of absence allegedly due to Croxson's behavior, said to Croxson that she was a cancer to the team and she was out to get Spencer. Some information highlighted areas in which Croxson did well.

On Friday, December 18, Croxson wore a black union t-shirt, with a hash tag and "Justice for T-Mobile." Spencer commented, "Is that your guys' hash tag? If I view that, am I going to see all the pictures of your trip and everything?" Croxson said, "I don't hash tag" and walked away.

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[23] Spencer denied the entire conversation. However, her voice trailed off while answering some of the questions. Spencer's testimony would have one believe that Croxson made up the entire conversation. Given Spencer's demeanor and her stated efforts to help Croxson rehabilitate her image, I discredit this denial.

[24] Croxson testified that the scheduling was not onerous.

[25] Spencer later testified that the team was meeting all the metrics for December but she wanted to strive for a higher goal. Apparently no true problem existed in getting everything done if the team met its metrics. Further, if the team was having problems, one would assume that Spencer would have continued to follow up with Croxson about the form. This contradictory testimony is sufficient for me to discredit Spencer's testimony here.

[26] Maron testified that Croxson approached her and asked for the focus group. Croxson did not testify to requesting a focus group and, given the atmosphere in her pod, it is difficult to believe that Croxson would ask for one.

[27] Maron testified that she conducted focus groups for all of her teams and sometimes more frequently with realignments.

[28] Spencer did not testify about giving feedback on Croxson or any knowledge of a focus group at that time.

On Saturday December 19, Spencer did not work. However, another union supporter arranged for others to wear union t-shirts that day and left a box of doughnuts in the break area, signed TU. On the same day, two CSRs used Christmas wrapping to decorate Spencer's desk, wrapping every item on her desk. They also wrapped a Union t-shirt and placed it on Spencer's desk. Croxson denied involvement but admitted she checked with the Union about whether anything untoward was occurring.

On Monday, December 21, Spencer unwrapped the items on her desk and found the t-shirt. Spencer asked Croxson if she was involved, which Croxson denied. Before lunch, Spencer told Croxson that she did not want to talk about anything legal, that anything she said about the union was as a friend. She also commented that someone on the team was causing drama and someone was getting paid by the Union to keep the drama coming. Spencer also said that someone was a mole, giving information about Respondent to the union. Croxson again said she had nothing to do with any of it and was not trying to cause extra drama. As Croxson started to walk away, Spencer said, "You just don't get it. Never mind." Croxson characterized Spencer's tone of voice as accusatory, with heavy emphasis each time on "someone."

Later that evening, Spencer and Croxson had another conversation in the pod, with Spencer's tone now characterized more conciliatory. Spencer told Croxson she was sorry if anything she said was taken the wrong way. She also commented about another CSR, Bahja Parker, who recently began wearing a union t-shirt. Spencer said that "going union" would not help Parker do her job properly. Croxson said that the Union was not about that. Spencer also asked whether Croxson had anything to do with everyone wearing their t-shirts or bringing in doughnuts, which Croxson denied. Spencer denied both conversations.

LEGAL ANALYSIS

I. Alleged Discriminatory Enforcement of Rules in Response to Befort's Email

A. Applicable Law

Section 7 provides employees with the right to self-organization and collectively bargaining, as well as the right to act together for their mutual aid or protection. These rights have long been interpreted to "necessarily encompass[ ] the right effectively to communicate with one another regarding self-organization at the jobsite." *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 491 (1978). These rights includes employee communications regarding their terms and conditions of employment. *Central Hardware Co. v. NLRB,* 407 U.S. 539, 542-543 (1972)*; Parexel International, LLC,* 356 NLRB 516, 518 (2011), citing *Aroostook County Regional Ophthalmology Center,* 317 NLRB 218, 220 (1995), enfd. in part 81 F.3d 209 (D.C. Cir. 1996) (discussions regarding wages, the core of Section 7 rights, are the grist on which concerted activity feeds).

An employer violates Section 8(a)(1) of the Act if it maintains workplace rules that would reasonably tend to chill employees in the exercise of their Section 7 rights. See *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). The analytical framework for assessing whether maintenance of rules violates the Act is set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Under *Lutheran Heritage*, a work rule is

unlawful if "the rule *explicitly* restricts activities protected by Section 7." Id. at 646 (emphasis in original). If the work rule does not explicitly restrict protected activities, it nonetheless will violate Section 8(a)(1) if "(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." Id. at 647.

Rules cannot be construed in isolation and must be given a reasonable reading. *The Roomstores of Phoenix, LLC*, 357 NLRB 1690 fn. 3 (2011); *Lutheran Heritage*, 343 NLRB at 646. However, any ambiguity in the rule must be construed against the drafter as employees should not have to decide what information is not lawfully subject to prohibition. *Hyundai America Shipping Agency*, 357 NLRB 860, 861-862 (2011); *Lafayette Park*, 343 NLRB at 825.

B. The Policies Were Discriminatorily Applied to Befort's Email

The Complaint only contends that the Policy was discriminatorily applied and does not question whether it is facially lawful. The Policy was not promulgated in response to Section 7 activities. However, I find that the policies and rules were applied disparately to Befort's union activity. To further this discussion, I look to recent Board law regarding emails and some traditional principles.

1. Applicable law regarding emails

Employees who have "rightful" access to their employer's email system for work purposes also have the right to use that system for Section 7 communications during nonworking time. *Purple Communications*, 361 NLRB No. 126, slip op. at 1, 14 (2014). This rule applies when employees have been granted access to the employer's email system in the course of their work and the employer is not required to provide this access. Id., slip op. at 1. To rebut the presumption that employees have a right to access the employer's email system during nonworking time, an employer justifies restricting these rights by demonstrating that special circumstances are necessary to maintain production or discipline. The employer's restrictions should be based upon the nature of its business. The restrictions also should be narrowly tailored to meet the employer's special circumstances and still balance with employees' Section 7 rights. Further, the restriction must be uniform and consistently enforced. *Purple Communications*, supra. The theoretical mere assertion of an interest to support restrictions are not sufficient and:

> [A]n employer's interests will establish special circumstances only to the extent that those interests are not similarly affected by employee email use that the employer has authorized.

Id., slip op. at 14.

Disparate treatment would show an employer enforces its policy "against statutorily protected activity while not enforcing it against other similar activity under similar circumstances." *Stabilus, Inc.*, 355 NLRB 836, 839 (2010) (disparately enforced t-shirt policy). A recent example was disparate enforcement of a no-talking rule during work time after the union filed a representation petition, despite previously allowing discussion of other non-work

related topics. *Pier Sixty, LLC*, 362 NLRB No. 569, slip op. at 21-22 (2015). Respondent here permitted notification of other social functions, with its rationale that these employees were "family" and then compares discussion about the union by employees as "third party."[29]

2. Acceptable Use Policy

The CSRs have a right to use the email and computer system for personal use, including social media. However, Respondent contends that the CSRs' use of the "reply all" function was not proven at hearing. On the contrary, none of Respondent witnesses contradicted the employee witnesses that the "Reply All" function was used in response to baby showers and death notices. Respondent's actions, therefore show it discriminated based upon the content of Befort's e-mail, which reflects union activities and sympathies.

Respondent argues that Befort's email had all the characteristics of junk email, commonly known as spam. The Acceptable Use Policy does not define junk mail as spam. However, spam is a reasonable term when applied to email and "junk mail." Spam has various but similar definitions.

The definition of "junk mail" is similar: unsolicited mail that consists mainly of promotional materials, catalogs, and requests for donations. See www.merriam-webster.com/dictionary/junk%20mail (2016). Respondent, offering a definition from the Oxford Dictionary, says spam is "sending the same message indiscriminately to (large numbers of recipients)." (R. Br. at 27, citing 2011 version). The more recent Oxford Dictionary definitions are "irrelevant or inappropriate messages sent on the Internet to a large number of recipients" or "unwanted or intrusive advertising on the Internet." See www.oxforddictionaries/us/definition/american_english/spam.com (June 16, 2016). Another definition states spam is "e-mail that is not wanted; e-mail that is sent to large numbers of people and that consists mostly of advertising." See www.merriam-webster.com/dictionary/spam (2016).

The theme connecting the Oxford and Merriam-Webster definitions of spam and junk mail are sending to a large number of people (at least for spam) and consists of advertising. Befort's email, while arguably sent to a large number of people, was not advertising. Although unsolicited, the email did not consist of promotional materials, catalogs or requests for donations. Befort's email, based upon these commonly accepted definitions, was not junk mail or spam, so Respondent's application of the policy was not warranted.

[29] Respondent's policies allow for discussion of work-life conditions, but apparently not all perceptions on work life. Elliott's statement impliedly shows disparate treatment of employees engaged in union activities. Birth announcements are about the T-Mobile family, but employees communicating about the union to each other are not part of our family, just a third party. It suggests that Respondent considers union involvement as disloyalty. See: *Chino Valley Medical Center*, 359 NLRB No. 111, slip op. at 2 and 9 (2013), affd. 362 NLRB No. 32 (2015) (telling employees that they would lose the family atmosphere and flexibility of scheduling if they selected the union violated Section 8(a)(1); also announcing that employees ended the family atmosphere because they voted for the union); *Holiday Inn-JFK Airport*, 348 NLRB 1, 3-4 (2006) (employer's statement that "we're all family" implied that employees who support union threatened the "family" atmosphere).

3. Enterprise User Standard

Respondent also argues that Befort violated its Enterprise User Standard by creating an impermissible "work around" beyond her system access limitations. She bypassed the warnings and sent emails to groups of 100 or less when she discovered she did not have proper permission to the user list for all CSRs. Respondent contends that, by restricting access to certain levels of employees, it has not given "access to its email system where it has not chosen to do so." R. Br. at 26-27, citing *Purple Communications*, 361 NLRB No. 126, slip op. at 14. This parsing of *Purple Communications* addresses when the employer has not chosen to give any access. The issue is "whether the employer applied uniform and consistently enforced control over its email system to the extent such controls are necessary to maintain production and discipline." *Purple Communications*, 361 NLRB No. 126, slip op. at 1. The standard for establishment of uniform and consistently enforced restrictions are those that an employer can prove would interfere with the email system's efficient functioning. Id., slip op. at 15. Examples are large attachments or audio/video segments. Id.

Respondent did not prove that its enforced restrictions were necessary for production and discipline, nor did it prove the email interfered with its email system's efficient functioning. As General Counsel points out, Respondent has no evidence that it ever enforced this limitation before Befort's email. Respondent also admitted that it would not have known if the email was sent to smaller groups first. The email was not large and contained no large attachments, such as the audio or video attachments cited in *Purple Communications*. It further stated that it needed to avoid employees sending emails at the same time to each other, yet provided no examples of such occurring or what would cause the email system to crash.

Respondent also claims the email was disruptive to production because some employees complained. Even assuming some employees found the email offensive, it is irrelevant to determining disruption due to protected speech. See *Boulder City Hospital*, 355 NLRB 1247, 1249 (2010); *Consolidated Diesel Co.*, 332 NLRB 1019, 1020 (2000), enfd. 263 F.3d 345 (4th Cir. 2001).

Respondent also differentiates its own facility-wide emails about salsa and lip sync contests as business-related interests in fostering employee morale; in contrast Befort's email is not business-related purpose because it was intended to create support for the Union. Respondent cites *Kallail v. Alliant Energy Corporate Services, Inc.*, 691 F.3d 925, 931 (8th Cir. 2012). The case involves a plaintiff who sued under the Americans with Disabilities Act when she requested a reasonable accommodation to no longer rotate shifts. The court stated that avoiding employee complaints and maintain morale were legitimate business reasons <u>for a scheduling decision</u>. Id. (emphasis added). It did not balance the employer's right to promote morale or property rights with employees' Section 7 rights.[30] Further, the idea that social events promote morale is aspirational, but, beyond the testimony that employees generally like these events, Respondent does not demonstrate with any of its metrics that slushies, popcorn, and lip sync contests actually elevate employee morale at this facility beyond the moment of the event.

[30] Respondent also cited a sexual harassment case. *Wimberly v. Shoney's Inc.*, 1985 WL 5410 (S.D.Ga. 1985).

I instead find that an email about a social and informative Union event may be no more disruptive during "working time" than notification about leaving one's work station to get popcorn or slushies or finding out about colleague's death. Befort's email specifically told its recipients to contact her when they were not working. Respondent also does not monitor other personal messages, which are permitted, so Respondent apparently is not aware of whether employees receive messages during work that might be, according to its terms, "disruptive." Respondent therefore does not demonstrate that the email was so disruptive that it warrants enforcement of this rule. See *Anderson-Rooney Operating Co*., 134 NLRB 1480, 1491, 1492 (1961) (employer argued union talk more disruptive than other talk). The enforcement was therefore discriminatory.[31]

4. Solicitation policy

Respondent further contends that Befort also violated its Solicitation policy, which prohibits solicitation to other employees while they are working. Because some CSRs received and read the email during working time, Respondent maintains the policy was violated. This position conflicts with *Purple Communications.*

Using an email system is not treated as just solicitation due to its unique features. It may defy classification as a work or non-work area. *Purple Communications*, supra, slip op. at 14. Further, reading of personal email on working or nonworking time has become blurred due to the structure of the technology workplace in which the CSRs operate. *Purple Communications*, 361 NLRB No. 126, slip op. at 15 fn. 72. Respondent does not demonstrate that it has significantly limited email usage during working time when anyone else sends a personal email. In this respect, Respondent's reliance upon the solicitation policy is misplaced. Because this interpretation was put forth against Union activity but not before, it is discriminatory.

In addition, Befort's email does not meet the accepted definition of solicitation. "[S]olicitation and distribution of literature are d*ifferent* organizational techniques and their implementation pose[d] *different* problems both for the employer and for employees." *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615, 619 (1962) (emphasis in original). Solicitation is viewed as an oral request. Id. at 617-618. Solicitation is a concrete effort to obtain a signature on an authorization card directed from one person to another. *ConAgra Foods, Inc. v. NLRB,* 813 F.3d 1079, 1089 (8th Cir. 2016). Befort asked the CSRs to attend a social function to find out more about joining the union. Befort encourages CSRs to "Join the movement!" This statement is vague: It does not necessarily imply asking employees to sign cards in respect to joining a movement when voices are silenced about "discussing" in an organized manner. Nonetheless, Respondent applies the rule. Because it misclassifies the email as solicitation, Respondent disparately enforces the rule against the email.

C. Allegations Based Upon Elliott's June 2 email

Three allegations arise based upon Elliott's email. General Counsel maintains all three rules stated in Elliott's June 2 email are overly broad and were disparately enforced. The three

[31] The Union suggests that the correct analysis for these rules should be the same as those applied to verbal talking. Because the Board has not directed use of such a test, I am bound by current Board precedent.

allegations are: promulgating and maintaining rules against sending "mass emails" to other employees; prohibiting discussing the union during work time; and prohibiting employees from using social media while at work. As all were promulgated in response to Befort's email, Elliott's new rules were promulgated in response to Section 7 activities.

1. "Mass communications" by email

I find that this rule would be reasonably interpreted by employees to limit communications about Section 7 rights and was promulgated in response to Section 7 activity. Employees have a presumptive right to use their employers email systems for Section 7 communications during nonworking time. *UPMC*, 362 NLRB No. 191, slip op. at 4 fn. 12 (2015); *Purple Communications*, 361 NLRB No. 126, slip op. at 14 (2014).

First, Respondent contends a permissible systemwide email is one an employee may send to recover lost items, such as a charger. Respondent claimed, because it occurred on its property, it was responsible. This discriminates based upon the content of the email---employees can email a large group to recover lost electronics, but not about the Union. Because of this inconsistency, Respondent does not rebut the presumption that it has "special circumstances" to limit the content of the email. See *UPMC*, 362 NLRB No. 191, slip op at 4-5.

Second, the rule is vague. A CSR can send one email to 99 recipients without receiving a message from the system. Are one set of 99 emails a mass communication? One cannot tell from Elliott's email. Because the definition of "mass communications" is missing, the rule would be subject to interpretation. In the paragraph addressing "mass communications," nothing about the Union is mentioned. The next paragraph, however, talks about what Respondent perceives as employee rights for Union discussions. Taken as a whole, an employee would reasonably find that this rule particularly pertains to communications about the Union. The rule therefore is overly broad and was promulgated in response to Section 7 activity. It therefore violated Section 8(a)(1) of the Act.

2. Discussing the Union during work time

The portion of Elliott's email at issue is:

> Employees have countless opportunities to communicate with others when they are not working—about the union or anything else. They can talk with others in break areas, before work, or after work. They can talk from home, or text while eating out.

An employer violates Section 8(a)(1) by prohibiting employees from speaking with each other about terms and conditions of employment, unless it can prove a specific legitimate and substantial business justification. *Central States Southeast and Southwest Areas*, 362 NLRB No. 155, slip op. at 2 (2015). The language is ambiguous and an employee reasonably would be unable to determine whether he could talk about the union, or anything else, during working time in a working area. As the record reflects employee discuss other matters unrelated to work during work time, these statements establish an unlawful no talking rule, directed at Union activity. See *Pier Sixty, LLC*, 362 NLRB No. 59, slip op. at 21-22 (2015), citing *Sam's Club,* 349 NLRB

1007, 1009 (2007); *Anderson-Rooney Operating Co.*, 134 NLRB 1480, 1491-1492 (1961). Because the language is ambiguous and the rule was promulgated in response to union activity, the rule is both overly broad and discriminatory. See *Care One at Madison Avenue*, 361 NLRB No. 159 (2014) (coercive memo in response to union activity).

3. Social media

Social media may be used as a method to communicate about Union and/or protected concerted activities. See: *Pier Sixty, LLC*, 362 NLRB No. 59 (2015); *Bettie Page Clothing*, 361 NLRB No. 79 (2014); *Triple Play Sports Bar and Grille*, 361 NLRB No. 31 (2014). Respondent's social media policy states employees can occasionally use personal social media on the work computer or during work hours as long as it does not interfere with job responsibilities and is consistent with the other policies. (Tr. 327). Until Elliott's email, which he issued in response to Befort's email, employees would reasonably interpret Respondent's rule to permit Section 7 activities on the work computer or during work hours as long as it did not interfere with their job duties. Elliott's email changes the policy to using social networks ". . . off the job, of course." The next sentence applies his version of the rules to solicitation and distribution.

This new "off the job" limitation is in direct conflict with Respondent's social media policy. An employee would reasonably be confused by Elliott's iteration, as the policy previously permitted use of social media on the computer or during work hours. This ambiguity is construed against Respondent. *Whole Foods Market, Inc.*, 363 NLRB No. 87 (2015); *Mercedes-Benz U.S. International, Inc.*, 361 NLRB No. 120, slip op. at 8-9 (2014).

Elliott's statement also would reasonably be interpreted by employees as "working hours" rather than "working time." Rules prohibiting solicitation during working time are presumptively lawful because ". . . that term denotes periods when employees are performing actual job duties, periods which do not include the employee's own time such as lunch and break periods." *Our Way*, 268 NLRB 394, 394–395 (1983). However, a solicitation rule is presumptively invalid when solicitation is prohibited during the employee's own time. *Our Way*, 268 NLRB at 394. An employer may ban solicitation in working areas during working time; however, the ban cannot be extended to working areas during nonworking time. *UPS Supply Chain Solutions, Inc*., 357 NLRB 1295, 1296 (2011). By stating "off the job," Respondent's rule prohibits solicitation via social media in the working areas of the company, without regard to whether employees are taking breaks in the area. Because the rule does not extend to nonworking time in work areas, Elliott's new social media rule is overly broad and violates Section 8(a)(1). *UPS Supply Chain*, supra. It was promulgated in response to Union activity, which also is violative.

II. Respondent's June 2 meeting with Befort

The allegations here are that Respondent: prohibited employees from sending "mass e-mails;" prohibited employees from talking about the union during working time although permitting employees to discuss other subjects; and, prohibited employees from sending Union-related emails to employees' work email addresses. I first determine credibility and then address the allegations.

A. Credibility

I first must decide credibility for Befort and Maron, both of whom testified about the meeting. I credit Befort's testimony because of her forthright demeanor. Respondent failed to corroborate Maron's testimony when it did not call Coach Meeks to testify. I take an adverse inference because Meeks did not testify. *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (an adverse inference may be drawn from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent).

I find that Maron's testimony is less credible than Befort's. Maron tended to shade her testimony, such as when she insisted on direct that she read the talking points verbatim, and later admitted to at least variations and interruptions from Befort. Further, in Befort's version, Maron's statements to Befort also conflicted, because she told her the emails could not be disruptive but confirmed she could send them. However, earlier in the conversation, Maron said she could send send emails because they were considered solicitation, which is consistent with Respondent's position as to why the email allegedly violated Respondent's policies.

B. Statements Made to Befort

The Board considers the totality of the circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. *KSM Industries*, 336 NLRB 133 (2001); *Mediplex of Danbury*, 314 NLRB 470, 471 (1994). The test is objective. *ManorCare of Kingston, PA, LLC v.* NLRB, ___ F.3d ___ (D.C. Cir. May 20, 2016). In assessing whether a statement constitutes a threat, the appropriate test is "whether under all circumstances the employer's conduct reasonably tended to restrain, coerce or interfere with employees' rights guaranteed by the Act." *Mediplex of Danbury*, 314 NLRB at 471-472. "[T]test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed." *American Tissue Corp.*, 336 NLRB 435, 441 (2001), citing *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (7th Cir. 1946). The "threats in question need not be explicit if the language used by the employer or his representative can reasonably by construed as threatening." *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49 (9th Cir. 1970).

Regarding Respondent's prohibition against employees sending "mass e-mails," I find that this statement is violative for the same reasons that Elliott's email also promulgated an overly broad rule and was discriminatory: An employee would reasonably believe she could not send an email to a group of employees.

Regarding prohibiting employees from talking about the union during working time although permitting employees to discuss other subjects, the evidence demonstrates that employees were permitted to talk about anything during their working time as long as they attended to calls first. If two employees did not have calls, the employees could speak with each other about any subject. Telling Befort that she could not discuss the Union except outside working areas alone is discriminatory and coercive. See *Pier Sixty*, supra.

Maron also stated that Befort was prohibited employees from sending Union-related emails to employees' work email addresses. Although Maron gave conflicting messages, the conflict makes the statements confusing. The main message Befort received, however, was she could not use Respondent's email to send messages about the Union. Based upon the above analysis involving *Purple Communications*, I find that this statement is coercive because an employee would believe she did not have a right to use the email system to communicate about Union or other protected activities.

III. Respondent's June 4 meeting with Befort's team

Other employees testified about the meeting, but Befort's version was the most complete, so I rely primarily upon her testimony. As before, Respondent did not call Coach Meeks to testify and Maron's testimony is therefore uncorroborated. I further credit the employees that Maron did not read verbatim and gave her own interpretations of what she had on the talking points. As on June 2, Maron told employees that they could not talk about the Union during working time in nonwork areas, despite allowing conversations on other subjects during working time in working areas. For the reasons stated above, this statement again violated Section 8(a)(1).

IV. Respondent's Alleged June 4 Surveillance and Interrogation by Coach Meeks

I credit the employees' version of what occurred that day. The testimony was fairly consistent, with only a few minor variations. As noted above, Meeks was not called to testify and I make an adverse inference because she did not testify. I first address the alleged surveillance, then interrogation.

A. Meeks Engaged in Surveillance

Respondent defines surveillance as photographing, videotaping or openly conducting recordkeeping of employees participating in open union activities. *National Steel and Shipbuilding Co.*, 324 NLRB 499 (1997), enfd. 156 F.3d 1268 (D.C. Cir. 1998). Such conduct constitutes only one form of surveillance. Surveillance is supervisors watching "employees engaged in Section 7 activity by observing them in a way that is out of the ordinary and thereby coercive." *Aladdin Gaming, LLC*, 345 NLRB 585, 585-586 (2005), rev. denied sub nom. *Local Joint Executive Bd. of Las Vegas v. NLRB*, 515 F.3d 942 (9th Cir. 2008). It depends upon the nature and duration of the supervisors' observation. Id. Factors showing the observation was coercive include the duration of observation, the employer's distance while making the observation and whether the employer engaged in other unlawful activity. Id. at 586.

Meeks engaged in overt surveillance "to prevent known union supports from engaging in organizational activities at times and places when and where they were lawfully entitled to do so." *Teksid Aluminum Foundry*, 311 NLRB 711, 714-715 (1993). The timing of Meeks' actions, immediately after a meeting with the employees about a union leaflets, alone suggests that she wanted to determine what the employees would do. Although Meeks did not smoke, Meeks went to the break area with the employees, something she never did before and did not do again. Some of the employees who went to the area were known union sympathizers. Meeks was obviously watching for the employees' reactions to the meeting and what was happening

between the employees, particularly as she observed Lowery reading the phone message and attempted to ascertain what was happening. Meeks' conduct was different than other non-smokers who went to this break area because Meeks was a first time, last time visitor.

Respondent contends that Meeks could not have known that the employees would discuss union sympathies and activities after the team meeting about the flyers.[32] I disagree. A number of the employees who went to this break area, including Befort, were known union sympathizers and activists. The topic of the meeting immediately preceding the break involved Respondent's answer to the union flyers. Meeks, who never took breaks, obviously wanted to hear if the employees had any response. Compare *Aladdin Gaming, LLC*, 345 NLRB 585, 585-586 (2005) (supervisors not engaged in surveillance when they normally took breaks in the open lunch area and was not accompanied by any other unlawful action).

Her conduct is similar to the supervisor who, during the employees' nonworking time, went to a smoking area more frequently after a unionization campaign started; the employees who gathered there were either known or suspected union sympathizers. *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 502-503 (1995). No reason was given for the Fieldcrest supervisor's more frequent visits. Id. Similarly, Respondent offered no reason why Meeks suddenly decided to take a break with these employees. Also see *Liberty House Nursing Homes*, 245 NLRB 1194, 1200 (1979) ("preemption of nonworking time . . . constituted a pronounced impediment to the employees' right to utilize the only opportunity during working hours in which they could engage in section 7 activity . . . without violating Respondent's announced rules").

B. Meeks Interrogated Employees While on Break

The test for determining whether an employer unlawfully interrogated an employee is whether, under all of the circumstances, the interrogation reasonably tends to restrain, coerce or interfere with the free exercise of rights guaranteed by the Act. *Pan-Oston Co.*, 336 NLRB 305, 307 (2001), citing *Rossmore House*, 269 NLRB 1176 (1984). Among the factors the Board may consider are:

1) whether there is a history of employer hostility to or discrimination against protected activity;
2) the nature of the information sought;
3) the identity of the questioner;
4) the place and method of interrogation;
5) the truthfulness of the employee's reply.

Intertape Polymer Corp., 360 NLRB No. 114, slip op. at 1 (2014), enfd. in rel. part, 801 F.3d 224 (4th Cir. 2015).

The nature of the relationship between the supervisor and employee also may be considered if relevant. Id. Either the words or context must suggest an element of coercion. *Stablius*, 355 NLRB at 850.

[32] The case is further differentiated because here the employees were not engaged in open union activities when they left for break.

Although Meeks was a low level supervisor, she was a direct supervisor, which tends to make questioning more threatening. *Intertape Polymer*, supra. Meeks offered no justification to the employees for her questions. Id. The place of Meeks' questioning was the break area, where employees are permitted to engage in union and other protected activities during their nonworking time. Meeks questioned what the employees were saying, even when the employees made a point of whispering, which was an attempt to insinuate herself into the discussion. After Meeks demanded to know what the message on the phone was, the employees lied about what was on the phone and AJ changed the phone screen to conform, which demonstrates a lack of truthfulness in response to her questioning. The questioning was designed to interfere with the employees' Section 7 rights. In light of her concurrent unlawful surveillance, the above factors and circumstances demonstrate that Meeks' questioning was coercive and violated Section 8(a)(1). See: *Hydro-Dredge Accessory Co.*, 215 NLRB 138, 149 (1974) (in light of other violations, employer's interrogation was "inextricably interwoven" with employer's interest in keeping employees away from the union); *G.R.I. Corp.*, 216 NLRB 34 (1975) (not isolated considering other unfair labor practices; interrogation does not have to be stated as a query).

V. CSR Parrish Sent Away by a Guard

In this section, I first discuss whether Wiegand was an agent for Respondent. Because I find Wiegand was an agent, I discuss the alleged violation and whether Respondent cured the violation when it sent Parrish an email about the incident.

A. Guards Are Respondent's Section 2(13) Agents

1. Facts regarding guard duties

During the relevant time, Respondent contracted with Guardsmark for security guards. The security guards are stationed at the front of the building and at the back exit. They stop people from entry if proper identification is not presented. If employees lose their identification tags, they go to security, which issues a temporary badge and ensures they are able to access the facility. Guards patrol the outside and inside of the Call Center to ensure that the facility is secure.

The guards make rounds in the parking lots to check vehicles and around the building through her shift. During orientation, guards inform new employees of their duties, including requirements for employee identification and parking permits, plus their roles in emergencies and first aid. Employees are also told to contact security if see anything suspicious.[33]

Several TPA Reports reflect that the guards stopped union protesters on the edge of the company's property when they have put clothing on top of stop signs and requested them to move their cars from Respondent's parking lot. Wray-Tolbert testified contradictorily about the

[33] Security guards have access to the email and instant messaging systems, which they may use to notify CSRs when the guards find a parking issue, such as parking in an impermissible spot. The guards send instant messages (IMs) to employees for food deliveries or mail left with the front desk The guards also use IMs with reminders to make sure that employees' car windows are closed when rain was predicted, and notifications that an employee left car lights on or had a flat tire.

guard's duties. She first stated that, if a guard sees someone who should not be on the property, the guard will tell the person to leave and, if necessary, call the police. On the other hand, she later testified the guard was supposed to notify Wray-Tolbert or Elliott to obtain further instruction in how to handle the matter. However, guards did not contact Human Resources in every instance, nor did the TPA Reports reflect such instruction.

2. Analysis regarding agency status

The Board uses common law agency principles to determine whether an individual is an employer's agent. *SAIA Motor Freight, Inc.,* 334 NLRB 979 (2001). The burden of proof of agency status is upon the party asserting it—here, General Counsel. *CNP Mechanical*, 347 NLRB 160, 169 (2006). The question is whether the person in question demonstrates either actual or apparent authority. *Station Casinos, Inc.*, 358 NLRB 637, 645 (2012). For apparent authority to exist, a third party "must have a reasonable basis . . . to believe that the principal has authorized the alleged agent to perform the acts as to which agency is alleged." *Poly-America, Inc.*, 328 NLRB 677 (1999), enfd. in rel. part, 260 F.3d 465 (5th Cir. 2001). If employees would reasonably believe that the person in question reflects company policy and acts upon the employer's behalf, "[a]n employer may properly be held responsible" for that person's conduct. *CNP Mechanical, Inc*., 347 NLRB at 169 (2006). Also see *Tortillas Don Chavas*, 361 NLRB No. 10, slip op. at 9 (2014). Agency must be established with regard to the specific conduct that is alleged to be unlawful. *Ace Heating and Air Conditioning Co.*, 364 NLRB No. 22, slip op. at 3 (June 15, 2016); *Station Casino*, supra, citing *In re Cornell Forge Co.*, 339 NLRB 733 (2003). Even in the absence of specific instructions, agency status can be properly found. *Poly-America, Inc. v. NLRB*, 260 F.3d at 486-487.

An employer may be held liable for unfair labor practices committed by security guards acting in their official capacity. *Saint John's Health Center*, 357 NLRB 2078, 2095-2096 (2011) (security guards acting under direct authority from upper management violated Section 8(a)(1) by threatening to have employees charged with trespassing for distributing pro-union literature) (citing *Opryland Hotel*, 323 NLRB 723 fn. 3 (1997); *Bakersfield Memorial Hospital*, 315 NLRB 596 (1994); *Southern Maryland Hospital Center*, 293 NLRB 1209 (1989)). Here, substantial evidence shows the guards monitor who enters and exits the property. They also detain people at the front desk and require identification. These facts demonstrate apparent authority. *Cooking Good Div. of Perdue Farms, Inc.*, 323 NLRB 345, 351 (1997) (security guards placed in a position to stop individuals from entering premises were cloaked with apparent authority), enfd. in rel. part, 144 F.3d 830 (D.C. Cir. 1998). I do not adhere to Respondent's argument that the guards have been instructed to notify Human Resources with encounters with "third parties," which apparently includes employees engaged in union activities. The testimony on this point shifted. No Respondent witness discussed the first guard who confronted Parrish and decidedly took action without any contact with Human Resources personnel. Despite Respondent's argument that the guards are told per TPA Reports not to engage employees, nothing in the TPA Reports suggests that the guards ever see the TPA Reports or complete them.

An employee would reasonable believe that Wiegand was acting as an agent on behalf of Respondent regarding who could access the property.

B. The Guard, as Respondent's Agent, Violated Section 8(a)(1)

Although Respondent admits Wiegand was incorrect, he still required Parrish to leave and she complied. I agree with General Counsel that, although Wiegand incorrectly enforced Respondent's rule regarding employees on the property on nonworking time in a nonworking area, Respondent's agent violated the Act. *Harrison Steel Castings Co.*, 262 NLRB 450, 455 fn. 6 (1982).

C. The Violation Is Not Cured Under *Passavant*

To relieve itself of liability for unlawful conduct, Respondent's repudiation must be timely, unambiguous, specific to the coercive conduct and free from other proscribed unlawful conduct. *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978).

I agree with Respondent that Wray-Tolbert's email was timely, unambiguous and specific to the conduct. It also assured Parrish of her rights to continue what she was doing. However, the email did not tell Parrish that Respondent would not repeat its actions, which failed to cure the violation. *Consolidated Diesel Co. v. NLRB*, 263 F.3d at 354-355.

Respondent also contends it was free from other proscribed conduct until possibly December, or over four months, and the incident was isolated. Further, no unfair labor practices occurred until unrelated claims of December. Respondent's cases are differentiated factually. In *Broyhill Co*., 260 NLRB 1366-1367 (1982), the Board relieved the employer of a notice posting after an employer made its own posting, which followed the Board's language and affirmatively stated what employees' rights were. The employer there also had not violated the Act in any other way. In *Raysel-IDE, Inc*., 284 NLRB 879, 891 (1987), the employer also committed no other violative conduct.

Here Respondent ignores the settlement agreement, approved July 28, 2015, regarding this particular facility. Given the date, the posting to cure the previous violations had not been available for employee viewing for the full 60 days. In addition, Respondent's more recent unfair labor practice violations, for violative rules, surveillance, interrogation, and coercive statements as discussed above, occurred on June 2 and 4, less than two months before the confrontation with Wiegand. More unfair labor practices were to follow.

I therefore find that the violation committed by Respondent's agent was not cured due to its failure to assure Parrish that such conduct would not occur again and Respondent had other uncured proscribed conduct.

VI. Section 8(a)(1) and (3) Allegations involving Spencer and Croxson

A. Credibility

Spencer had difficulty with the timing of events. For example, she said she talked about the Befort email with Croxson in early June because she knew Befort would be assigned to her team; yet she later testified that she did not know whether Befort was joining her team until weeks later. Spencer's testimony at times was tinged with a certain level of *angst* when

discussing what one might perceive as Croxson's betrayal of Spencer's hard work to rehabilitate her. I therefore credit that Croxson told Spencer she wanted to change her perception within the company. I discredit Croxson on her explanation that she was not involved with decorating her coach's office as she checked with the Union representative as to its legality.

B. Alleged Coercive Statements In the Summer of 2015

The Complaint alleged that, in mid-June or early July, Spencer threatened Croxson with unspecified reprisals by telling her that Union activities were detrimental to success and interrogated whether employees still affiliated with Union and what sympathies were. It also alleged that in late June, Spencer allegedly interrogated her by asking if she was still friends with a known Union supporter, Befort.

I disagree with General Counsel's position here. I credit that Spencer told Croxson that she would assist her in rehabilitating her image. However, based upon the credited facts, Croxson opened the door to this discussion by telling Spencer that she was interested in doing so. I find no violation here.

Regarding the alleged interrogation, General Counsel explains the facts that Spencer asking Croxson if she supported the Union and why she supported in the first place. As with the statement immediately above, I find that it does not exceed what Croxson was apparently willing to reveal and no violation occurred.

Croxson testified that Spencer asked frequently whether she was still friends with Befort, who was known by this time from her email as an open Union supporter. I credit Croxson, although she did not specify when these conversations took place. Given Spencer's belief that she was rehabilitating Croxson's image within the company, Spencer's questioning of the friendship intended to gauge whether Croxson was following Spencer's advice about discontinuing her ties with the Union. It exceeds what Croxson discussed before, which makes the statement coercive.

C. Seating Chart Allegations

Respondent denies the statement and discrimination based upon the seating chart. Spencer was vague with her denial here and I therefore do not credit this denial. Regarding Spencer's statement to Croxson, Spencer likely believed that, because Croxson was no longer involved with the Union, she could freely discuss creating the seating chart with her intent to isolate union supporters. The statement is coercive because it conveys Respondent's plan to keep union supporters away from each other, even in one pod. *Bowling Transportation, Inc.,* 336 NLRB 393, 400 (2001), affd. 352 F.3d 274 (6th Cir. 2003), rehg. en banc denied (6th Cir. 2004) (telling employee he is disciplined because of union and/or protected concerted activity violates Section 8(a)(1); *Yale-New Haven Hospital*, 309 NLRB 363, 367-368 (1992) (friendly statements may still be threatening and show intent to take action).

The seating chart places four identified union supporters were placed with four seats between each in a U-shaped pod. The chart alone provides circumstantial evidence: Unlike the LSAT questions, everyone must sit somewhere. However, the chart's outcome was dictated by

Spencer's stated intent to isolate. I consider her statement to Croxson with the chart as evidence of discrimination. I therefore find the statement violated Section 8(a)(1) and the implementation of the seating chart violated Section 8(a)(3) and (1).

D. The Allegations Regarding Croxson and Spencer's December 11 Conversation

Based upon the conversation that day, General Counsel alleges six Section 8(a)(1) violations. I credit Croxson's version of what happened. A factor throughout this conversation was that Spencer believed Croxson was no longer involved with Union activities and therefore was no longer an open supporter. I find that Spencer, who admitted that she was "disappointed" with Croxson's lying, was more disappointed than she wanted us to believe. I find five of the six statements violated the Act.

First, Spencer asked Croxson if she thought she was stupid about being aware of Croxson's union activity. That portion of the statement is more of a prelude to the remaining conversation and sounds more like Spencer's opinion, protected by Section 8(c), rather than a coercive statement. The remainder of the conversation, however, is a different story.

The second allegation maintains Spencer created an impression of surveillance. An employer creates an impression of surveillance when it indicates it is closely monitoring the degree of an employee's union activities: Spencer's statement that she found out and saw Croxson's picture at the Union events in Washington, D.C. implies that Spencer is monitoring the Facebook page on which the pictures appeared. The underlying principle for finding an impression of surveillance is that "employees should be free to participate in union organizing campaigns without the fear that . . . management [is] peering over their shoulders, taking note of who is involved in union activities, and in what particular ways." *Flexsteel Industries, Inc.*, 311 NLRB 257 (1993). The test is whether an employee would reasonably assume from the statement that her union activities have been placed under surveillance. Id., citing *Rood Industries*, 278 NLRB 160, 164 (1986). The standard is objective. *Quickway Transportation, Inc.*, 354 NLRB 560, 568 (2009), reaffd. 355 NLRB 678 (2010). Because a reasonable employee would not know how Spencer came to view the Facebook pictures, a reasonable employee would assume from the statement that unlawful surveillance was taking place. *Promedica Health Systems, Inc.*, 343 NLRB 1351, 1352 (2004).

The third allegation is that Spencer coercively told Croxson that she was disappointed with Croxson for engaging in Union activities. The circumstances surrounding the statement were coercive as it was not the only statement Spencer made. A reasonable employee would believe that Spencer's disappointment would lead to some form or reprisal, which makes the statement unlawful. *Print Fulfillment Services LLC*, 361 NLRB No. 144, slip op. at 1-2 (2014); *General Electric Co.*, 246 NLRB 1103, 1106 (1979).

The fourth allegation is Spencer asking if Croxson intended to be outspoken about the Union and whether her stance had changed. As Spencer previously believed that Croxson was no longer involved with unionization, Croxson was no longer an open supporter until Spencer saw the pictures. Even if Croxson was an open supporter, the information Spencer sought was beyond what Spencer could see on Facebook. *Grand Canyon University*, 362 NLRB No. 13, slip

op. at 1 (2015). In considering all the circumstances, I find that this questioning constitutes unlawful interrogation.

The fifth allegation is that Spencer threatened Croxson that she would not be considered for corporate awards, such as the peak awards, due to her union activities. Spencer's statement is a threat of employer's retaliatory quid pro quo for union activity and violates Section 8(a)(1). See generally *Metro-West Ambulance Service, Inc.*, 360 NLRB No. 124 (2014) (threats that employee will not advance because of union activities violative).

Lastly, Spencer told Croxson that she should make her remaining time easier by not supporting the Union. In light of all the circumstances, telling an employee that not supporting the Union would make your life easier coercively implies a benefit for refraining from union activities, which violates Section 8(a)(1).

E. Section 8(a)(3) Allegation that Respondent Made Croxson Adhere to a More Onerous Work Schedule

Singling out employees for closer supervision due to union activity violates the Act. *T&T Machine Co.*, 278 NLRB 970, 973 (1986). I assess based upon a dual motive analysis per the burden shifting process established in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The General Counsel must establish four elements by a preponderance of the evidence. First, General Counsel must show the existence of activity protected by the Act. Second, he must prove that Respondent was aware that the employees had engaged in such activity. Third, General Counsel must show that the alleged discriminatee(s) suffered an adverse employment action. Fourth, there must be a link, or nexus, between the employees' protected activity and the adverse employment action. Proving these four elements creates a presumption that the adverse employment action violated the Act. To rebut the presumption, Respondent bears the burden of showing that the same action would have taken place even in the absence of the protected conduct. *Wright Line*, 251 NLRB at 1089. See also *Manno Electric, Inc.*, 321 NLRB 278, 280 fn. 12 (1996).

Crediting Croxson's version, the timing suggests that Spencer engaged in this conduct because Spencer discovered Croxson's union activities, which is direct evidence of knowledge. Timing also supports a finding of animus. Respondent also puts forth questionable reasons for initiating any actions regarding Croxson's performance of this day.

Respondent adduced evidence to try to show that Croxson was not a good senior representative, thereby needing a guide to help her throughout her work day. However, evidence shows conflicting evidence of interpersonal relations issues at worst. Spencer admitted that the team was not having any problems meeting their metrics in December, which lessens the need for providing Croxson with a detailed list of tasks to accomplish in a specific time frame. These reasons demonstrate that Respondent likely had animus towards Croxson's activities, rather than trying to assist her to organize her day. The question then becomes whether this condition was truly onerous.

In *Aladdin Gaming, LLC*, 345 NLRB at 624, the complaint alleged an employee was forced to change break time earlier, which caused the employee more onerous working

conditions. Because the events took place on one day, the administrative law judge determined the change was de minimis and too insignificant to constitute an adverse employment action. In contrast, a guard moved to the same post for consecutive days was considered a more onerous work assignment. *Yale-New Haven Hospital*, 309 NLRB at 371-372.

I agree with the logic of *Aladdin Gaming*: Because the conversation and assignment took place only on one day, the "to do" list event is not sufficient to be an unfair labor practice. I therefore recommend dismissal of this allegation.

F. Two Allegations Regarding Croxson and Spencer's December 21st Conversation

One allegation maintains that Spencer created an impression of surveillance by telling Croxson someone was creating turmoil and must be getting paid by the Union to keep support going. The second allegation alleges that Spencer interrogated Croxson when she asked whether Croxson was involved in planning a union event.

As previously noted, an impression of surveillance is creating when a manager implies close monitoring of union activities. Spencer implied she was keeping an eye on "someone," and specified activities. Although Spencer knew that Croxson had a paid trip to Washington, nothing indicates that Croxson or Bell, who also went to Washington for the conference, were paid to continue supporting the Union. See *Flexsteel*, supra. Because I find that this statement was sufficient to create an impression of surveillance, I do not reach the question whether "creating turmoil" also created an impression of surveillance.

Regarding the allegation of interrogation of whether Croxson was involved in recent union activities at the facility, Spencer again went beyond Croxson's open conduct to question what she was doing. Croxson denied the activity. As the facts of this case demonstrates a history of hostility towards union activity and the questioning was performed by the immediate supervisor in a one-on-one conversation, I find that Spencer unlawfully interrogated Croxson whether she participated in doughnut distribution and other Union activities. See *Rossmore House*, supra.

CONCLUSIONS OF LAW

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[34]

1. Respondent admits, and I find, that it is an employer under the Act as defined in Section 2(2), 2(6) and 2(7).
2. Communication Workers of America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent admits, and I find that the following are supervisors within the meaning of Section 2(11) and/or agents within the meaning of Section 2(13):

[34] 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.

a. Jeff Elliott, Wichita Call Center Director;
b. Lillian Maron, Team Manager;
c. Larissa Wray-Tolbert, Senior Manager Human Resources; and,
d. Angel Meeks and Belinda Spencer, Coaches.

4. J. Wiegand, security guard, is an agent within the meaning of Section 2(13) of the Act.
5. Respondent violated Section 8(a)(1) of the Act by disparately enforcing its Acceptable Use Policy, Enterprise User Standards, and No Solicitation rules against Union activity.
6. Respondent violated Section 8(a)(1) of the Act by promulgating and maintaining "mass communication" prohibitions, no talking rules, and restrictive social media policies, because employees engaged in Union activity.
7. Since June 2, 2015, Respondent violated Section 8(a)(1) of the Act by promulgating and maintaining overly broad "mass communication" prohibitions, no talking rules, and restrictive social media policies.
8. On June 2, 2015, Respondent violated Section 8(a)(1) of the Act by telling employees they could not send "mass emails" about the Union.
9. On June 2, 2015, Respondent violated Section 8(a)(1) of the Act by telling employees that they could not discuss the Union in working areas despite permitting discussions of other topics in the working areas.
10. On June 2, 2015, Respondent violated Section 8(a)(1) of the Act by telling employees they could not use their work email to send any messages about the Union.
11. On June 4, 2015, Respondent violated Section 8(a)(1) of the Act by surveilling employees in a nonwork area during nonworking time to discover their Union or protected concerted activities and sympathies.
12. On June 4, 2015, Respondent violated Section 8(a)(1) of the Act by interrogating its employees about their Union or protected concerted activities and sympathies.
13. Respondent violated Section 8(a)(1) of the Act by interrogating its employees about their friendship with known Union adherents to determine employees' Union activities and sympathies.
14. Respondent violated Section 8(a)(1) of the Act by telling employees that it was creating a seating chart to isolate employees because of their Union activities and sympathies.
15. Respondent violated Section 8(a)(3) of the Act by creating and maintaining a seating chart to isolate employees because of their Union activities and sympathies.
16. Respondent violated Section 8(a)(1) by coercively threatening employees with loss of corporate awards in order to persuade them to cease engaging in union or other protected concerted activities, telling employees that it is disappointed because they engaged in Union or other protected activities, and telling employees to makes their lives easier in order to persuade them to cease engaging in Union or other protected concerted activities.
17. On December 21, 2015, Respondent violated Section 8(a)(1) of the Act by creating an impression of surveillance and interrogating employees about their Union activities and sympathies.
18. The Act was not violated in any other way.

REMEDY

In addition to traditional remedies, General Counsel requests that a responsible official for Respondent read the notice to employees during work time with a Board agent present. To prove the necessity of this enhanced remedy, General Counsel relies on prior litigation and settlements.

The Board orders extraordinary remedies, such as public notice readings, when the remedies are necessary dissipate the coercive effects of the unfair labor practices. *In re Federated Logistics and Operations*, 340 NLRB 255, 256 (2003), rev. denied, enfd. 400 F.3d 920 (D.C. Cir. 2005). To warrant an extraordinary remedy, the unfair labor practices are "numerous, pervasive and outrageous." Id., citing *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 473 (1995) (internal quotations omitted). More recently, a notice reading was warranted for serious and persistent multiple unfair labor practices. *Affinity Medical Center*, 362 NLRB No. 78, slip op. at 1 (2015). The notice reading is "a minimal acknowledgement of the obligation . . . imposed by law and provides employees with some assurance that their rights under the Act will be respected in the future." Id. Also see *Farm Fresh Co.*, 361 NLRB No. 83 (2014).

The Union has engaged in a long campaign to organize Respondent's facilities. It has filed unfair labor practice charges.[35] The Board recently found that Respondent maintained several unlawful rules in its handbook. The Board ordered that Respondent post a notice at locations "where the unlawful rules and policies have been or are in effect." *T-Mobile USA*, 363 NLRB No. 171, slip op. at 6 (2016).

In an unpublished decision where no exceptions were filed, the Board affirmed Judge Biblowitz's findings that Respondent violated Section 8(a)(1) at two facilities, one in Maine and one in South Carolina. *T-Mobile USA, Inc*., available in Westlaw, 2015 WL 53502027 (September 14, 2015), affirming JD(NY)-34-15 (August 3, 2015). The two violations were: Respondent maintained an unlawful rule, "Notice and Acknowledgement of Duty to Cooperate and Confidentiality," at the two facilities; and a statutory supervisor reconfirmed the rule to employees with admonitions of discipline, up to and including termination, for discussing complaints filed with Respondent. Because the Board had no exceptions on which to rule, I do not rely upon this decision.

Two settlements deal specifically with the Wichita Call Center. The first, approved on September 2, 2011, settled solicitation and interrogation allegations and included a non-admissions clause. The second Wichita settlement, approved July 28, 2015, did not include a non-admissions clause. It settled allegations that Respondent interrogated employees, made threats of unspecified reprisals, and told employees that they could not discuss or engage in activities with other employees regarding wages, hours and other terms and conditions of employment. It also settled two disciplinary actions taken against Jerrica Croxson, an alleged discriminatee in the current case. (GC Exh. 27).

[35] General Counsel requested admission of a number of unfair labor practice charges filed against Respondent at this location. I denied admission because the charges themselves do not show whether Respondent engaged in violative conduct.

The unfair labor practices here did not rise to the level of those in *Federated Logistics*, in which a reading was ordered. 340 NLRB at 257-258. There the unfair labor practices included numerous violations of Section 8(a)(1) and (3). The Section 8(a)(1) violations included maintaining and enforcing an overly broad no solicitation/no distribution rule, threats regarding futility of bargaining and shutting down the plant, interrogation, and surveillance. Many of the violations were committed by the highest ranking official and chilled employee rights. I also consider *Farm Fresh*, supra, in which four employees in a potential bargaining unit of 50 were terminated during an organizing campaign fraught with surveillance, impressions of surveillance, and numerous threats.

In comparison, the 2011 Wichita settlement is too remote in time and Respondent made no admission of wrongdoing. Respondent admitted wrongdoing in the 2015 Wichita settlement, but for a much smaller number of violations. Even including the 2015 Wichita settlement with the current violation, they do not rise to the level of those in *Federated Logistics*[36] *or Farm Fresh.* The recent Board case, which may have applied to Wichita, included 15 violations, but all were related to unlawfully overbroad rules and therefore relied little on evidence of chill. See 363 NLRB No. 171. General Counsel has not demonstrated that the unfair labor practices here chilled the employees' in their Section 7 rights and activities. Also see *Vista del Sol Healthcare*, 363 NLRB No. 135 (2016). Traditional remedies should be sufficient to ensure employees understand the violations and their rights under the Act. *Metta Electric (Metta II)*, 349 NLRB 1088 (2007).

ORDER

The Respondent, T-Mobile, USA, Wichita, Kansas, its officers, agents, and representatives, shall

1. Cease and desist from:

a) Selectively and disparately enforcing its Acceptable Use Policy, Enterprise User Standards, and No Solicitation rules against Union activity.

b) Promulgating and/or maintaining overly broad work rules, such as "mass communication" prohibitions, no talking rules, and restrictive social media policies.

c) Selectively and disparately promulgating and maintaining rules regarding "mass communication," no talking, and restraints on use of social media because employees engaged in Union activity by email.

d) Telling employees that they cannot engage in "mass communications," no talking or engage in social media due to Union or other protected concerted activity.

[36] The Board also ordered a broad cease and desist order pursuant to *Hickmott Foods,* 242 NLRB 1357 (1979). *Federated Logistics*, 340 NLRB at 257.

e) Telling employees that they cannot talk about the Union or other protected concerted activities while on working time while permitting discussion of any other subject in the working area.

f) Coercively interrogating employees about union or other protected concerted activities.

g) Placing employees under surveillance while they engage in union or other protected concerted activities.

h) Creating the impression that it is engaging in surveillance of employees' union or other protected concerted activities.

i) Telling employees that they will be isolated by a seating chart because they engaged in union or other protected concerted activities.

j) Isolating employees by creating a seating chart because they engaged in union or other protected concerted activities.

k) Coercively threatening employees with loss of awards in order to persuade them to cease engaging in union or other protected concerted activities.

l) Coercively telling employees that it is disappointed because they engaged in union or other protected concerted activities.

m) Coercively telling employees to make their lives easier in order to persuade them to cease engaging in union or other protected concerted activities.

n) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

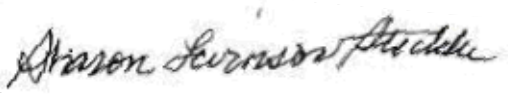
a) Rescind or revise the following rules and notify employees in writing:
   a. "Mass Communications" rule;
   b. "No talking" in work area during working time while allowing other conversations in the work areas during working time; and,
   c. Social media, as stated in Elliott's June 2, 2015 e-mail.

b) Within 14 days after service by the Region, post at its Wichita Call Center in Wichita, Kansas copies of the attached notice marked "Appendix."[37] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and

37 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, as Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 2, 2015.

Dated Washington, D.C. June 28, 2016



Sharon Levinson Steckler
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT make or maintain overly broad rules that restrain you in the exercise of the rights set forth above by making or maintaining rules, such as “mass communications,” talking with each other, or using social media.

WE WILL NOT restrain you in the exercise of the rights set forth above by selectively or disparately make or maintain rules, such as “mass communications,” talking with each other, or using social media because you engaged in union or other protected concerted activities.

WE WILL NOT apply the Acceptable Use Policy, Enterprise User Standards, and the Solicitation Policy selectively and disparately to emails regarding union or other protected concerted activities while not restricting nonunion-related emails.

WE WILL NOT establish and maintain rules that you cannot use social media except when you are “off work.”

WE WILL NOT tell you that you may not send “mass emails” or any emails about the Union or other protected concerted activities.

WE WILL NOT tell you that you may not talk about the Union in the working area during working hours when we allow employees to talk about other subjects in the working area during working hours.

WE WILL NOT place you under surveillance while you engage in union or other protected concerted activities.

WE WILL NOT create an impression of surveillance that we are watching your union and/or protected concerted activities.

WE WILL NOT coercively interrogate you about your union or other protected concerted activities.

WE WILL NOT order you off the property when you are distributing Union literature in nonworking areas during your nonworking time.

WE WILL NOT threaten you with loss of corporate awards if you continue to support the Union.

WE WILL NOT tell you that we are disappointed with you because you engaged in union or other protected concerted activities.

WE WILL NOT tell you that we are creating a seating chart to isolate employees because employees engaged in union or other protected concerted activities.

WE WILL NOT implement a seating chart that is designed to isolate employees because they engaged in union or other protected concerted activities.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days of the Board's order, rescind our rules regarding "mass communications," no talking in work areas during working time, and social media, and WE WILL notify you in writing that we have done so.

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1222 Spruce Street, Room 8.302, Saint Louis, MO 63103-2829
(314) 539-7770, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/14-CA-155249 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (314) 539-7780.