Medic Ambulance Service, Inc. *and* United Emergency Medical Services Workers, Local 4911, AFSCME, AFL–CIO. Case 20–CA–193784

January 4, 2021

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND MCFERRAN

On October 25, 2019, Administrative Law Judge Gerald M. Etchingham issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.[1]

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision and Order.[3]

I. BACKGROUND

The Respondent provides emergency transportation and advanced life support ambulance services, among other medical transportation services, in Solano and Sacramento Counties, California. The General Counsel alleges that multiple provisions of the Respondent's Employee Handbook and Policies & Procedures Manual violate Section 8(a)(1) of the National Labor Relations Act.

We adopt the judge's findings that the Respondent violated Section 8(a)(1) by maintaining rules in the Employee Handbook and the Policies & Procedures Manual that prohibit conducting personal business on company time or property and soliciting or distributing literature during working hours.[4] For the reasons stated below, however, we reverse his findings that the Respondent unlawfully maintained provisions in its social media policy prohibiting inappropriate communications, disclosure of confidential information, use of the Company's name to denigrate or disparage causes or people, and the posting of photos of coworkers. We also reverse his findings that the Respondent unlawfully maintained rules prohibiting the sharing of employee compensation information and the use of social media to disparage the Company or others.

II. ANALYSIS

In *Boeing Co.*, the Board held that "when evaluating a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights, the Board will evaluate two things: (i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule." 365 NLRB No. 154, slip op. at 3 (emphasis omitted). In conducting this evaluation, the Board balances the employer's business justifications against the extent to which the rule or policy, viewed from the perspective of reasonable employees, interferes with

[1] Subsequently, the Board issued a notice to show cause why the allegations regarding the Respondent's electronic mail and monitoring policy and acceptable use of electronic communications policy, both of which limited use of electronic mail by employees, should not be severed and remanded to the judge for further proceedings in light of the judge's reliance on *Purple Communications, Inc*., 361 NLRB 1050 (2014), which was overruled by the Board in *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, 368 NLRB No. 143 (2019). The Respondent and the General Counsel each filed a response opposing remand to the judge. Both the Respondent and the General Counsel contend that the policies are lawful under *Caesars Entertainment* and that the complaint allegations should be dismissed. Having duly considered the matter, we dismiss these allegations.

Our dissenting colleague contends that *Caesars Entertainment* was wrongly decided. We adhere to that decision for the reasons fully articulated therein by the majority in response to her dissent.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We have amended the judge's conclusions of law consistent with our findings herein. We shall modify the judge's recommended Order to conform to our findings, to the Board's standard remedial language, in accordance with our decision in *Excel Container, Inc*., 325 NLRB 17 (1997), and in accordance with our recent decision in *Danbury Ambulance Service, Inc*., 369 NLRB No. 68 (2020). We shall substitute a new notice to conform to the Order as modified.

[4] With respect to the rules restricting solicitation and distribution, we find them unlawful in accord with longstanding precedent governing employer restrictions on such employee conduct. *Boeing Co*., 365 NLRB No. 154 (2017), did not disturb that precedent, which already strikes a balance between employee rights and employer interests. *UPMC, UPMC Presbyterian Shadyside d/b/a UPMC Presbyterian Hospital,* 366 NLRB No. 142, slip op. at 1 & fn. 5 (2018).

We reject the Respondent's argument that these allegations are time barred by Sec. 10(b) because the rules were promulgated more than 6 months before the unfair labor practice charge was filed. Although the rules may have been promulgated outside the 10(b) period, the complaint alleges, and the judge found, that the Respondent violated Sec. 8(a)(1) by maintaining the rules. The Board has long held that the maintenance during the 10(b) period of a rule that transgresses employee rights is itself a violation of Sec. 8(a)(1). *Mercedes-Benz U.S. International, Inc.*, 365 NLRB No. 67, slip op. at 1 fn. 1 (2017); *Register Guard*, 351 NLRB 1110, 1110 fn. 2 (2007), enfd. in relevant part and remanded sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009); *Trus Joist MacMillan*, 341 NLRB 369, 372 (2004); *Eagle-Picher Industries, Inc.*, 331 NLRB 169, 174 fn. 7 (2000).

employee rights under the Act. Id. Ultimately, the Board places challenged rules into one of three categories:[5]

- *Category 1* will include rules that the Board designates as lawful to maintain, either because (a) the rule, when reasonably interpreted, does not prohibit or interfere with the exercise of NLRA rights; or (b) the potential adverse impact on protected rights is outweighed by justifications associated with the rule. . . .
- *Category 2* will include rules that warrant individualized scrutiny in each case as to whether the rule, when reasonably interpreted, would prohibit or interfere with NLRA rights, and if so, whether any adverse impact on NLRA-protected conduct is outweighed by legitimate justifications.
- *Category 3* will include rules that the Board will designate as *unlawful* to maintain because they would prohibit or limit NLRA-protected conduct, and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule.

Id., slip. op. at 3–4 (emphasis in original); *LA Specialty Produce Co.*, 368 NLRB No. 93, slip op. at 2 (2019). Except for rules designated Category 1(a), as to which no balancing is required, the categories represent the results of the Board's balancing of employee rights and employer interests and are intended to "provide . . . greater clarity and certainty to employees, employers and unions." *Boeing*, supra, slip op. at 4.[6]

A. Rule Prohibiting Inappropriate Communications

The lengthy social media policy in the Respondent's Employee Handbook sets forth eight "general and non-exhaustive . . . guidelines" for employees to follow. The introductory paragraph of the policy states, in relevant part:

> The company has in place policies that govern use of its own electronic communication systems, equipment and resources which employees must follow. The company may also have an interest in your electronic communications with co-workers, patients, vendors, suppliers, competitors, and the general public on your own time. *Inappropriate communications, even if made on your own time using your own resources, may be grounds for discipline up to and including immediate termination.* We encourage you to use good judgment when communicating via blogs, online chat rooms, networking internet sites, social internet sites, and other electronic and non-electronic forums (collectively "social media").

(Emphasis added.)

The judge found that a reasonable employee would read the rule as a restriction on employees' protected right to criticize their terms and conditions of employment. The judge further found that the Respondent's stated justifications for the rule, which included patient and customer privacy, did not outweigh the rule's infringement on employee rights. Accordingly, he found that the rule was unlawful. We disagree. In our view, an objectively reasonable employee would not read the term "inappropriate communications" in the introductory paragraph in isolation but would consider it in the context of the "guidelines" that follow. As explained below, we do not find that any of those specific guidelines are unlawful on their face. We therefore find that the reference to "inappropriate communications" is lawful and that the Respondent's maintenance of this language did not violate the Act.[7]

B. Rule Prohibiting Disclosure of Confidential Information

The second specific "guideline" in the Respondent's social media policy states:

> *Do not disclose confidential or proprietary information regarding the company or your coworkers*. Use of copyrighted or trademarked company information, trade secrets, or other sensitive information may subject you to legal action. If you have any doubt about whether it is proper to disclose information, please discuss it with your supervisor.

(Emphasis added.)

The judge found that, reasonably construed, this rule would restrict employees' Section 7 right to discuss and share information about their coworkers and that the Respondent's business justifications—protecting the privacy concerns of its patients and customers—did not outweigh

[5] These categories are not part of the *Boeing* standard.

[6] With respect to each of the rules discussed below, our colleague objects to our application of the standard articulated in *Boeing* and *LA Specialty*. Unsurprisingly, she adheres to the view that those cases were wrongly decided and further contends that the application of the standard set forth in those cases to the employer work rules and policies here is impermissible. For the reasons fully set forth in those cases, we adhere to the view that the *Boeing* standard represents a permissible construction of the Act as well as a more reasonable balancing of competing employee rights and legitimate employer interests that facilitates labor relations stability. See *Boeing*, 365 NLRB No. 154, slip op. at 9 fn. 41 (explaining that employers need not anticipate and exempt every conceivable Sec. 7 activity when drafting work rules).

[7] Under *Boeing*, we place the Respondent's rule prohibiting inappropriate communications in Category 1(a). See *LA Specialty*, supra, slip op. at 2.

the rule's potential interference with employee rights. We disagree and find the maintenance of the rule to be lawful. We find that an objectively reasonable employee would not interpret this confidentiality rule as potentially interfering with the exercise of Section 7 rights. Although the rule's first sentence, viewed in isolation, could be interpreted broadly, it is immediately followed by express prohibitions limited to the use of "copyrighted or trademarked company information, trade secrets, or other sensitive information . . . ." The Board "'must refrain from reading particular phrases in isolation.'" *LA Specialty*, supra, slip op. at 5 (quoting *Lutheran Heritage Village–Livonia*, 343 NLRB 646, 646 (2004)). Further, the rule does not specifically reference employees' contact information, wages, or other terms and conditions of employment. Read as a whole, the rule would not be reasonably understood by employees to prohibit the sharing of information pertaining to their terms and conditions of employment. See *Argos USA LLC d/b/a Argos Ready Mix, LLC*, 369 NLRB No. 26, slip op. at 2–3 (2020) (finding employer's confidentiality policy lawful despite references to "earnings" and "employee information" because, when read in context, the policy is limited to the employer's proprietary business information and cannot reasonably be interpreted to interfere with employees' Sec. 7 rights); see also *Motor City Pawn Brokers Inc*., 369 NLRB No. 132, slip op. at 4–5 (2020) (finding lawful two rules prohibiting the disclosure of confidential or proprietary information of the company, its customers, and its employees); *Newmark Grubb Knight Frank*, 369 NLRB No. 121, slip op. at 3–4 (2020) (finding lawful rule outlining the proper use of social media, which included guideline that employee personal posts should not disclose any "[c]onfidential information of or regarding the [c]ompany or its clients, business partners or staff").[8] We therefore find that the maintenance of this rule is lawful.[9]

C. Rule Limiting Employees' Use of the Company's Name in Social Media Posts

The fourth "guideline" in the Respondent's social media policy states:

> Do not use company logos, trademarks, or other symbols in social media. *You may not use the company name to endorse, promote, denigrate or otherwise comment on any product, opinion, cause or person.*

(Emphasis added.)

The judge found that the Respondent's rule limiting an employee from identifying the Respondent in communications to third parties was "extraordinarily broad" and interfered with employees' Section 7 right to seek outside support concerning their terms and conditions of employment. The judge further found that the Respondent's stated justifications for the rule—the privacy concerns of its patients and customers—did not outweigh the rule's potential interference with employee rights. Accordingly, the judge found that the rule was unlawful. In our view, the judge failed to consider the language in the context of the policy as a whole. The first "guideline" of the social media policy directs employees to "[m]ake it clear that the views expressed in social media are yours alone. Do not purport to represent the views of the company in any fashion." Reading the first "guideline" together with the fourth, an objectively reasonable employee would understand that the fourth "guideline" is aimed at preventing employees from speaking on behalf of the Respondent rather than prohibiting employees from referring to the Respondent by name in a post critical of the Respondent's terms and conditions of employment. Cf. *Newmark Grubb Knight Frank,* supra, slip op. at 3–4 (finding lawful rule outlining proper use of social media where the rule regulated social media use that involves speaking on behalf of the respondent or otherwise conducting business and provided guidelines for employees' personal posts). We therefore find this rule lawful.[10]

D. Rules Prohibiting the Posting of Photos of Coworkers

The fifth "guideline" in the Respondent's social media policy states:

> Be respectful of the privacy and dignity of your coworkers. *Do not use or post photos of coworkers without their express consent.*

(Emphasis added.) In addition, the Respondent's Policies & Procedures Manual contains an internet social networking and blogging policy that states, in relevant part:

> *Employees must not post pictures of* company owned equipment or *other employees on a Web site without obtaining written permission.*

(Emphasis added.)

[8] Our dissenting colleague criticizes these decisions as wrongly decided. However, as stated above, we adhere to the *Boeing* standard and its application in these cases.

[9] Under *Boeing*, we place the Respondent's rule prohibiting the disclosure of confidential information in Category 1(a). See *LA Specialty*, supra, slip op. at 2.

[10] Under *Boeing*, we place the Respondent's rule prohibiting the use of the company's name to denigrate or disparage in Category 1(a). See *LA Specialty*, supra, slip op. at 2.

The judge found that employees would reasonably interpret these rules to restrict employees' Section 7 right to share photos in support of their protected concerted or union activities. The judge further found that the Respondent's justification for these rules—to protect patient and employee privacy—was undermined by the absence of any reference to patients in the rule. Once again, we disagree that the Respondent's maintenance of these rules violates the Act. The language in the social media policy prohibiting posting of employee photos without consent is immediately preceded by a sentence asking employees to "[b]e respectful of the privacy and dignity of your coworkers." Further, the internet social networking and blogging policy prohibits the posting of photos of company equipment as well as coworkers. Thus, read in their totality, these rules strongly imply that their purpose is to protect the Respondent's confidentiality interests as well as employees' privacy and dignity interests. An objectively reasonable employee would not read these rules as prohibiting Section 7 activity but rather as addressing those concerns by ensuring, for example, that photos an employee might find embarrassing will not be posted by a coworker on Facebook or Instagram without his or her consent. We therefore find these rules lawful.[11]

E. Rule Prohibiting the Sharing of Employee Compensation Information

The Respondent's protecting company information policy contained in its Employee Handbook states in relevant part:

> Protecting our company's information is the responsibility of every employee, and we all share a common interest in making sure it is not improperly or accidently disclosed. Do not discuss the company's confidential business with anyone who does not work for us. . . .
>
> All telephone calls regarding a current or former employee's position with our company must be forwarded to your supervisor. *Only Rudy, Helen or human resources can give out any information on current or former employee compensation*.

(Emphasis added.)

In finding this rule unlawful, the judge found that the rule, reasonably construed, would restrict employees' Section 7 right to share wage information and that the Respondent's asserted justifications for the rule—including ensuring that only verified human resources information is provided to third parties for background checks, home purchases, apartment rentals, and the like—did not outweigh the rule's effect on this protected right. Unlike the judge, we find that an objectively reasonable employee would not interpret this employee compensation rule as potentially interfering with the exercise of Section 7 rights. The policy's first paragraph emphasizes that it is every employee's responsibility to protect the *company's* confidential information. And the sentence preceding the provision in question states that "[a]ll telephone calls regarding a current or former employee's position with the company must be forwarded to your supervisor." When the language at issue is read together with that sentence, it becomes apparent that it is intended to apply only when someone telephones the Respondent seeking information about a particular employee, including how much he or she makes.[12] This is sensitive information, and limiting who may disclose it helps ensure that it is given out only to those entitled to receive it. Objectively reasonable employees would understand the policy in this light, not as restricting their right to discuss their wages with each other or to disclose them to a union. As we have found above and in other contexts, an employer has a right to limit those who can speak for it. See, e.g., *LA Specialty*, supra, slip op. at 4. Therefore, we find this policy is lawful.[13]

F. Rule Prohibiting the Use of Social Media to Disparage the Company or Others

The Respondent's internet social networking and blogging policy contained in its Policies & Procedures Manual states, among other things:

> Employees must not use blogs, SNS [(Social Networking Sites)], or personal Web sites to disparage the company, its associates, customers, vendors, business practices, patients, or other employees of the company.

The judge found this nondisparagement rule unlawful because of its breadth. He also deemed it inconsistent with employees' protected rights to seek outside support from third parties concerning their terms and conditions of employment. Although recognizing the Respondent would have an interest in controlling its public image in order to prevent customers from being dissuaded from using its services, the judge found that the Respondent did not assert any specific justification for the rule and that "these generalized explanations for the rules do not outweigh the

[11] Under *Boeing*, we place the Respondent's rules prohibiting the posting of photos of coworkers in Category 1(a). See *LA Specialty*, supra, slip op. at 2.

[12] The rule is therefore distinguishable from the confidentiality rule found unlawful in *Lowe's Home Centers, LLC*, 368 NLRB No. 133 (2019), where no similar limitation was apparent from the rule's language or its context.

[13] Under *Boeing*, we place the Respondent's rule prohibiting the sharing of employee compensation information in Category 1(a). See *LA Specialty*, supra, slip op. at 2.

important, long-recognized protected right of employees to seek support from third-parties."

Consistent with our recent decision in *Motor City Pawn Brokers*, we reverse the judge and find the nondisparagement rule lawful because the Respondent has a legitimate justification, outweighing the rule's potential to interfere with the exercise of Section 7 rights, in prohibiting its employees from disparaging it or its products to its customers and the public.[14] In *Motor City*, we concluded that a similar nondisparagement rule that prohibited employees from communicating any disparaging statement about the employer to any customer or third party was lawful.[15] Id., slip op. at 5–7. In finding that rule lawful, we observed that employers have a legitimate justification, recognized by the Supreme Court, in being able to depend on the loyalty of their employees. See *NLRB v. Electrical Workers Local 1229 (Jefferson Standard)*, 346 U.S. 464, 472 (1953) (acknowledging that "[t]here is no more elemental cause for discharge of an employee than disloyalty"). We further found that "[s]uch fundamental bonds and loyalties integral to the employment relationship underscored by the Court in *Jefferson Standard* cannot be adequately protected if an employer is prohibited from maintaining *facially neutral rules* against disloyalty and disparagement." *Motor City Pawn Brokers*, supra, slip op. at 6 (emphasis added).

As in *Motor City*, we acknowledge that the Respondent's facially neutral nondisparagement rule would be reasonably interpreted to prohibit or interfere with the exercise of NLRA rights. However, under *Boeing*, that alone is insufficient to find the rule unlawful. We must also balance that adverse impact on Section 7 activity with the legitimate justifications associated with the rule. As described above, the legitimate justifications for the Respondent's nondisparagement rule are substantial,[16] and we find that they outweigh any potential adverse impact of the Respondent's facially neutral rule on protected rights.[17] Accordingly, we conclude that the Respondent's nondisparagement rule is lawful.[18]

AMENDED CONCLUSIONS OF LAW

Delete Conclusions of Law 2(a)-(g) and 2(j)-(k) and reletter the remaining Conclusions of Law accordingly.

ORDER

The National Labor Relations Board orders that the Respondent, Medic Ambulance Service, Inc., Sacramento and Solano Counties, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining rules prohibiting employees from conducting personal business on company time or company property.

(b) Maintaining rules prohibiting employees from soliciting or distributing literature for any purpose during working hours without prior authorization from management.

(c) 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 work rules set forth in paragraphs 1(a) and (b) above.

(b) Furnish employees with inserts for the Employee Handbook and Policies & Procedures Manual that (1) advise that the unlawful provisions have been rescinded, or (2) provide lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or publish and distribute to employees revised Employee Handbooks and Policies & Procedures Manuals that (1) do not contain the unlawful provisions, or (2) provide lawfully worded provisions.

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[14] Our dissenting colleague's criticism of *Motor City* here and in *BMW Manufacturing Co.,* 370 NLRB No. 56 (2020), is again founded on her disagreement with the *Boeing* standard. As stated above, we adhere to that standard and to its application in *Motor City, BMW,* and here. Further, for the reasons fully explained in those prior cases and repeated here, we disagree with our colleague's unduly restrictive view of the Supreme Court's language emphasizing the importance of protecting an employer's fundamental right to assure employee loyalty.

[15] The nondisparagement clause there stated:

> Employee shall refrain from communicating orally, or in writing, or by any other manner whatsoever to any customer or third party, any disparaging claim, remark, allegation, statement, opinion, comment, innuendo or information of any kind or nature whatsoever, the effect of or intention of which is to cause embarrassment, disparagement, damage or injury to the reputation, business, or standing in the community of Customers, Employer and/or Related Entities, and their customers, members, managers, officers, owners, employees, independent contractors, agents, attorneys, or representatives, regardless of whether any such communication is or may be true or founded in facts.

369 NLRB No. 132, slip op. at 3.

[16] The judge stated that the Respondent has not asserted any specific justifications for the rule. But the legitimate justification associated with the Respondent's nondisparagement rule is self-evident. As the Board recognized in *Boeing*, "the justifications associated with particular rules may be apparent from the rule itself or the Board's experience with particular types of workplace issues." 365 NLRB No. 154, slip op. at 15.

[17] Notably, the Respondent's nondisparagement rule does not expressly restrict employee communications with other employees. Cf. *Union Tank Car Co.*, 369 NLRB No. 120, slip op. at 2–3 (2020) (finding nondisparagement rule that prohibited "[s]tatements either oral or in writing, which are intended to injure the reputation of the Company or its management personnel with customers or employees" unlawful because it expressly prohibited disparaging statements to other employees).

[18] Under *Boeing*, we place the Respondent's rule prohibiting the use of social media to disparage the Respondent or others in Category 1(b). See *LA Specialty*, supra, slip op. at 2.

(c) Post at its facilities in and around Solano and Sacramento Counties, California, copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the 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 August 28, 2016.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the amended complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. January 4, 2021

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MCFERRAN, dissenting in part.

Employer work rules—a pervasive part of the modern workplace—now shape the lives of American workers. But employers' freedom to impose such rules is not unfettered: it is constrained by workers' right to engage in concerted activity protected by the National Labor Relations Act. It has always been clear that an employer's workplace rules may not explicitly prohibit activity protected by Act. In the past, it was also well-accepted that an employer's rules cannot be written in ways that might coerce workers in their exercise of these rights. But the Board recently made a dramatic pivot—a product of the 2017 *Boeing* decision,[1] as modified and reinforced in 2019 in *LA Specialty*[2]—and now routinely allows employers to adopt broad work rules that threaten labor law rights.[3] Today's decision again illustrates how eager the Board majority is to uphold employer rules, how unwilling it is to consider rules from an employee's true perspective, and how little weight it gives to the rights protected by our statute.[4]

Each of the six work rules upheld today should be found unlawful under Section 8(a)(1) of the Act. Fairly read, with an employee's situation in mind, each rule is overbroad. It infringes on employees' Section 7 rights but is not narrowly tailored to promote the employer's legitimate interests. The six rules fall into two groups, each illustrating a particular flaw in the Board's current approach to work rules.

First, the majority upholds a rule that prohibits employees from using social media "to disparage the company, its associates, customers, vendors, business practices, patients, or other employees of the company." The majority concedes that this rule potentially coerces employees in the exercise of their rights under the Act. Nonetheless, because this rule can be labelled (by the majority) as a "nondisparagement rule" and because the current majority

[19] If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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."

[1] *Boeing Co.*, 365 NLRB No. 154 (2017).

[2] *LA Specialty Produce Co.*, 368 NLRB No. 93 (2019).

[3] I dissented in both cases.

[4] I concur in the decision, however, insofar as it applies—pre-*Boeing* precedent to invalidate challenged rules that prohibit (1) conducting personal business on company time or property and (2) soliciting or distributing literature during working hours.

I dissent from the dismissal of the challenge to the Respondent's policies limiting employee use of email. The majority applies its precedent-reversing decision in *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, 368 NLRB No. 143 (2019). That case—which expanded employers' power in the workplace to restrict Sec. 7 activity by employees—was wrongly decided, as I explained in my dissent there. See id., slip op. at 14–23.

has previously deemed all rules bearing this label as categorically lawful (based on the supposed weight of the employer interest they further), the majority upholds the rule based entirely on this categorization—which is no substitute for reasoned decisionmaking.

The other five rules, most part of the Employer's social media policy, are each upheld based on the majority's threshold determination that an "objectively reasonable employee" would not interpret the rule as potentially interfering with Section 7 rights. Under this analysis, no balancing of employee rights and employer interests is even required. As I will explain, however, the majority's reading of each challenged rule is wrong, because it fails to view the rule from the perspective of an economically-dependent employee who is vulnerable to employer coercion—as the Supreme Court requires.[5] The majority ignores that requirement, stretching each rule's plausible interpretation to the breaking point in order to find an interpretation that it can deem lawful. This flawed approach was adopted in *LA Specialty Produce*, supra, and I refuted it in dissent there.[6]

Below, I address each of the six rules individually, starting with the nondisparagement rule involving employee use of social media. I then turn to the five other rules that the majority upholds: a rule prohibiting inappropriate communications, a rule prohibiting disclosure of confidential information, a rule limiting the use of the Company's name in social media posts, a rule prohibiting the posting of photos of coworkers, and a rule prohibiting the sharing of employee compensation information.

I.

The first rule at issue prohibits employees from using social media "to disparage the company, its associates, customers, vendors, business practices, patients, or other employees of the company." The majority readily "acknowledge[s] that the Respondent's facially neutral nondisparagement rule would be reasonably interpreted to prohibit or interfere with the exercise of NLRA rights." Indeed, it is difficult to see how the rule *wouldn't* encompass any public statement or protest by employees that criticizes company-imposed working conditions (such as pay, hiring, or promotion practices, or workplace safety conditions) or that criticizes the workplace conduct of company employees who are managers and supervisors (such as discrimination, harassment, or arbitrary treatment of employees). Those sorts of public statements or protests are at the core of what the National Labor Relations Act protects, even if an employer views them as disparaging.[7]

Because employees deciding whether or not to exercise their statutory rights could certainly read the rule's prohibition to encompass protected activity, the next step in the analysis *should* be to ask (as the administrative law judge did) whether the rule was narrowly tailored to serve the employer's legitimate business interests.[8] The judge correctly found that the rule was unlawfully overbroad, rejecting the Respondent's only justification for the rule: that it was necessary to protect patient privacy. The Respondent does not except to this finding. It neither demonstrates that patient privacy justifies the broad scope of its nondisparagement rule, nor argues that a more narrowly tailored rule could not preserve its interest.

To the majority, remarkably, none of this matters. Following the lead of the recent decision in *Motor City Pawn Brokers*, supra, it finds that nondisparagement rules related to social media use are always lawful—no matter how they are written, and no matter what specific justifications the employer offers (or fails to offer) for its rule. The "self-evident" justifications for such rules, says the majority, invariably "outweigh any potential adverse impact" on employee rights under the Act.

Dissenting in *BMW Manufacturing Co.*, I have explained why the majority's position represents a failure to engage in reasoned decisionmaking and is not a permissible interpretation of the Act.[9] The majority's "categorical approach flies in the face of the long-established principle, applied by the Board and by the federal courts, that a rule restricting employees' protected concerted activity must be narrowly tailored to serve an employer's legitimate interests—and not worded more broadly than necessary to do so."[10] Today, unfortunately, the majority continues down this wrong path, leaving employees' rights under the Act farther behind.

II.

In addition to upholding the Respondent's nondisparagement rule, the majority reverses the administrative law judge and dismisses challenges to five other rules. But each of the rules is unlawfully overbroad and threatens to

[5] *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969).

[6] 368 NLRB No. 93, slip op. at 9–10 (dissenting opinion).

[7] See, e.g., *MasTec Advanced Technologies*, 357 NLRB 103, 106–107 (2011), enfd. 837 F.3d 25 (D.C. Cir. 2016), cert. denied 138 S.Ct. 92 (2017) (Act protects employees' rights to publicly disparage employer to gain support for an ongoing labor dispute or to induce group action, so long as the communication is not so disloyal, reckless or maliciously untrue as to lose the Act's protection). See also *Three D, LLC d/b/a Triple Play Sports Bar & Grill*, 361 NLRB 308, 311–313 (2014) (finding employees' Facebook posts protected).

[8] Before the Board abruptly reversed precedent in *Boeing*, supra, it had regularly invalidated employers' overbroad nondisparagement rules—with judicial approval. See *Motor City Pawn Brokers*, 369 NLRB No. 132, slip op. at 6 (collecting cases).

[9] See *BMW Mfg. Co.*, 370 NLRB No. 56, slip op. at 6–11 (2020).

[10] *LA Specialty*, supra, 368 NLRB No. 93, slip op. at 11.

chill employees' exercise of Section 7 rights. The majority upholds all the rules based on the first step of the *Boeing* framework: a determination that none of the rules "reasonably interpreted, would potentially interfere with the exercise of NLRA rights."[11] In two key respects, this part of the *Boeing* test, as clarified in *LA Specialty* and applied by the majority is skewed in favor of finding rules lawful, contrary to the purposes of the Act and Supreme Court guidance.

First, *LA Specialty* made clear that, in order to invalidate a rule, the General Counsel must prove that the rule "*would* in context be interpreted . . . to potentially interfere with the exercise of Section 7 rights."[12] The deliberate emphasis on "would" suggests—although this is never made clear—that the coercive interpretation of a rule must be *inevitable* before any further analysis is even required. If there is any conceivable, noncoercive interpretation of the rule, regardless whether that is the only reasonable or most reasonable interpretation, then the analysis is done: the rule is lawful. As I pointed out in my dissent, this approach is contrary to the Board's long-established understanding of Section 8(a)(1) of the Act, which asks whether an employer's actions or statements have a "reasonable tendency" to "interfere with, restrain, or coerce employees"—not whether they most likely, much less inevitably, would have that effect.[13]

LA Specialty also announced that, in interpreting a challenged rule, the issue "should be determined by reference to the perspective of an objectively reasonable employee who is 'aware of his legal rights but who also interprets work rules as they apply to the everydayness of his job.'"[14] The majority has invoked this vague standard—both in in *LA Specialty* and subsequent cases—to read clarifying language into rules that simply isn't present, relying on illogical assumptions that a reasonable employee would inevitably understand the rule to include language that isn't there.[15]

Dissenting, I pointed out the flaws in this framework.[16] It is manifestly inconsistent with the Supreme Court's *Gissel* instruction for evaluating employer statements under Section 8(a)(1) of the Act, which requires the Board to

> take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear.

Gissel Packing Co., supra, 395 U.S. at 617. "Put another way," I explained, "a reasonable employee is a vulnerable employee, easily chilled—and *that* is the perspective the Board must adopt in interpreting employer work rules."[17] Contrary to the majority's approach, then, the Board should be approaching rules with the assumption that workers would be inclined to read them to potentially prohibit protected activity, not with the assumption that workers will grasp to find any possible reading that would not be in any way coercive.

As I will explain, viewed from the perspective of a reasonable employee under the correct *Gissel* standard, each of the rules upheld by the majority has a reasonable tendency to interfere with the exercise of Section 7 rights. Moreover, even when the rules are viewed through the skewed lens demanded by *LA Specialty*, the judge was correct to find all five rules unlawful.[18]

A. Rule Prohibiting Inappropriate Communications

The introductory paragraph of Respondent's social media policy recites that "Inappropriate communications, even if made on your own time using your own resources, may be grounds for discipline up to and including immediate termination."[19] The majority reasons that "an

[11] Id., slip op. at 2. Given that determination, the majority need not go on to "evaluate . . . (i) the nature and extent of the potential impact on NLRA rights, *and* (ii) legitimate justifications associated with the rule." Id., quoting *Boeing*, supra, 365 NLRB No. 154, slip op. at 3 (emphasis in original).

[12] 368 NLRB No. 93, slip op. at 2 (emphasis in original).

[13] Id., slip op. at 10–11. As I explained in dissent, the "majority seems to mean that the coercive interpretation of a rule must be inevitable: the *necessary* interpretation of the rule, not merely *one* reasonable interpretation of the rule or even the *most* reasonable interpretation, but the *only* reasonable interpretation." Id. at 10 (emphasis in original). I also pointed out that the "majority [did] not take up my invitation to state precisely what it means when it emphasizes the word 'would.'" Id. at fn. 20.

[14] Id., slip op. at 2.

[15] See *LA Specialty*, supra, 368 NLRB No. 93, slip op. at 7–8 (majority opinion), 12-13 (dissenting opinion). See also *Nicholson Terminal & Dock Co.*, 369 NLRB No. 147, slip op. at 2–3 (2020); *Argos LLC d/b/a Argos Ready Mix, LLC*, 369 NLRB No. 26, slip op. at 2–3 (2020); *Apogee Retail LLC d/b/a Unique Thrift Store*, 368 NLRB No. 144, slip op. at 11 (majority opinion), 18 (dissenting opinion) (2019).

[16] Id., slip op. at 9.

[17] *LA Specialty*, supra, 368 NLRB No. 93, slip op. at 10.

[18] Thus, even if a reviewing court were to uphold the approach of *LA Specialty*, it could not affirm the majority's dismissal of the rules challenges here: the majority mistakenly fails to proceed to the next step contemplated by the decision, balancing analysis weighing employee rights and employer interests.

[19] The paragraph as a whole reads:

> The company has in place policies that govern use of its own electronic communication systems, equipment and resources which employees must follow. The company may also have an interest in your electronic communications with co-workers, patients, vendors, suppliers, competitors, and the general public on your own time. *Inappropriate communications, even if made on your own time using your own resources, may be grounds for discipline up to and including immediate termination.* We encourage you to use good judgment when communicating via blogs, online chat rooms, networking internet sites, social internet

objectively reasonable employee would not read the term "inappropriate communications" in the introductory paragraph in isolation but would consider it in the context of the 'guidelines' that follow" and that because none of those guidelines are unlawful, neither is the introductory paragraph.

I agree that the phrase "inappropriate communications" is properly interpreted in light of the other rules in the social media policy. A reasonable employee would view any communication that apparently violated another rule as "inappropriate." Thus, because the Respondent's nondisparagement rule is unlawful (as I have just shown), so is the introductory paragraph of the social medial policy. The illegality of the Respondent's other rules (as I will explain next) reinforces this conclusion.

B. Rule Prohibiting Disclosure of Confidential Information

Wrongly reversing the administrative law judge, the majority upholds the Respondent's rule reading:

> *Do not disclose confidential or proprietary information regarding the company or your coworkers.* Use of copyrighted or trademarked company information, trade secrets, or other sensitive information may subject you to legal action. If you have any doubt about whether it is proper to disclose information, please discuss it with your supervisor.

(Emphasis added.) Employees have a well-established Section 7 right to disclose information (to a union, for example, or to each other) regarding their coworkers and their employer—names, addresses, wages, hours, and other working conditions—even if their employer deems such information "confidential."[20] A reasonable employee reading the Respondent's rule might well be chilled from exercising that right. "Confidential" information, whether about "the company" or "coworkers" is not defined by the rule, and a reasonable employee would read the rule as potentially covering information that is relevant to protected concerted activity, but that the employer did not wish to have disclosed.

The majority acknowledges that "the rule's first sentence, viewed in isolation, could be interpreted broadly," but offers two reasons for rejecting such an interpretation: (1) that the Board "'must refrain from reading particular phrases in isolation;'"[21] and (2) that the rule "does not specifically reference employees' contact information, wages, or other terms and conditions of employment." Neither reason is persuasive.

To be sure, the rule must be read as a whole. But reading the whole rule, a reasonable employee would, indeed, be chilled from disclosing the information identified by the majority, even if it is not referred to specifically in the rule. That is because "confidential . . . information . . . regarding coworkers" obviously includes something, and if it does not include the information identified by the majority, then it is entirely unclear what, if anything, it does include. No reasonable employee would think that coworker-related information was somehow limited to "copyrighted or trademarked company information" or "trade secrets," other categories of information that are addressed by the rule, but which have no apparent connection to employees. The majority cites three very recent Board decisions as supporting its conclusion here. But those cases, like this one, all reflect the majority's new approach to work rules, which disregards the Supreme Court's Gissel admonition and which improperly minimizes the potential chilling effect of work rules on employees.[22]

C. Rule Limiting Use of Company's Name in Social Media Posts

Once again reversing the administrative law judge, the majority upholds a rule that states:

> Do not use company logos, trademarks, or other symbols in social media. *You may not use the company name to endorse, promote, denigrate or otherwise comment on any product, opinion, cause or person.*

(Emphasis added). But the judge was right to describe this rule as "extraordinarily broad" and to conclude that it interfered with employees' Section 7 right to seek outside support in improving their terms and conditions of employment. Consider, for example, a social media post in support of a union-organizing effort at the Respondent's company: "Please support the Ambulance Workers Union, which is organizing the employees of Medic Ambulance!" It "use[s] the company name," it "endorse[s] or "promote[s]" a "cause," and it would clearly violate the rule. The same would be true of any post that named the company and "denigrate[d]" the opposition of its managers to the union-organizing effort: for example, "Please tell Medic Ambulance managers to stop

sites, and other electronic and non-electronic forums (collectively "social media").

(Emphasis added).

[20] See, e.g., *Quicken Loans, Inc. v. NLRB*, 830 F.3d 542, 548–549 (D.C. Cir. 2016).

[21] *LA Specialty*, supra, 368 NLRB No. 93, slip op. at 5 (quoting *Lutheran Heritage Village–Livonia*, 343 NLRB 646, 646 (2004)).

[22] See *Argos USA LLC d/b/a Argos Ready Mix, LLC*, 369 NLRB No. 26, slip op. at 2–3 (2020); *Motor City Pawn Brokers Inc*., supra, 369 NLRB No. 132, slip op. at 4–5; *Newmark Grubb Knight Frank*, 369 NLRB No. 121, slip op. at 3–4 (2020). I was not a member of the Board when those decisions issued; otherwise, I would have dissented.

their unfair labor practices against employees and the Ambulance Workers Union!"

The majority's defense of this rule is untenable. My colleagues say that the language of the company-name rule must be "consider[ed] . . . in the context of the [social media] policy as a whole," specifically a separate rule that directs employees to

> [m]ake it clear that the views expressed in social media are yours alone. Do not purport to represent the views of the company in any fashion.

According to the majority, an objectively reasonable employee would read the rule prohibiting use of the Company's name in light of this separate rule—and so understand that the company-name-rule is "aimed at preventing employees from speaking on behalf of the Respondent rather than prohibiting employees from referring to the Respondent by name in a post critical of the Respondent's terms and conditions of employment."

The short answer to this argument is that the two rules are separate and would reasonably be regarded by employees as separate; certainly, one cannot assume that a reasonable employee would read them together. Nothing in the language of the company-name rule suggests that its broad prohibition applies only when an employee is (or might seem to be) speaking on behalf of the Respondent.[23] Recall, too, that the introductory paragraph of the social media policy (upheld by the majority, as discussed) prohibits "[i]nappropriate communications, *even if made on your own time using your own resources*" (emphasis added). In that situation, it seems highly unlikely that the employee would think that rule should be read in conjunction with a separate provision prohibiting speaking on behalf of the Respondent. Yet, despite these internal contradictions, the majority still finds a way to read the rules that would render them (in the majority's view) lawful—and because under *LA Specialty* any conceivable lawful interpretation requires upholding the rules, regardless how a reasonable employee is actually likely to read them.

D. Rules Prohibiting Posting of Photos of Coworkers

The majority also errs in upholding two rules prohibiting the posting of photos of coworkers. One rule, part of the social media policy, reads:

> Be respectful of the privacy and dignity of your coworkers. Do not use or post photos of coworkers without their express consent.

The second rule, in a separate policy manual, states:

> Employees must not post pictures of company owned equipment or other employees on a Web site without obtaining written permission.

The administrative law judge correctly found both rules unlawful, after first concluding that they restricted the Section 7 right of employees to post photographs of coworkers engaged in protected concerted activity.[24]

The majority is not persuaded, asserting that "read in their totality, these rules strongly imply that their purpose is to protect the Respondent's confidentiality interests as well as employees' privacy and dignity interests" and that an "objectively reasonable employee would not read these rules as prohibiting Section 7 activity but rather as addressing those concerns by ensuring, for example, that photos an employee might find embarrassing will not be posted by a coworker on Facebook or Instagram without his or her consent." My colleagues cite the first sentence of the first rule ("Be respectful of the privacy and dignity of your co-workers."), as well as the prohibition in the second rule against posting "pictures of company owned equipment."

Even if the majority's interpretation is a conceivable reading from an employee's perspective—accepting the dubious assumption that an employee would read the two rules together, despite their separate sources—that is certainly not the only reasonable reading, or even the most likely. The first rule contains a flat prohibition on posting photos of coworkers without their "express consent." The stated rationale for the prohibition—the supposed need to respect the "privacy and dignity" of coworkers—in no way limits the scope of the prohibition. An employee who wished to post pictures of protesting coworkers is barred from doing so, unless she has their "express consent," even if the protest was public (not private), even if it in no way harmed the "dignity" of participating employees, and even if the photographed employees saw a coworker taking pictures and raised no objection. Contrary to the majority, the reference in the second rule to "company owned equipment" hardly saves that rule. Indeed, it clearly suggests that the "written permission" required for posting a photo of coworkers is the *employer's* permission—and

[23] Moreover, even if the employee *complied* with the rule that the majority invokes, her Sec. 7 communication could still violate the company-name rule, as written. Imagine the protected, social media post already mentioned, but now with a disclaimer: "Please support the Ambulance Workers Union, which is organizing the employees of Medic Ambulance! (This is my personal view, not the view of Medic Ambulance.)" The post clearly violates the company-name rule, by endorsing or promoting a cause, despite the disclaimer.

[24] *G4S Secure Solutions (USA), Inc*., 364 NLRB No. 92, slip op. at 6 (2016).

Board law is clear that an employer may not require employee to get supervisory permission to engage in Section 7 activity, such as posting a picture of union supporters on a pro-union website.[25]

It would have been simple for the Respondent to draft narrowly tailored rules that genuinely protected the privacy and dignity of its employees without infringing on Section 7 activity. The majority, of course, has already dispensed with any narrow-tailoring requirement in *Boeing* and *LA Specialty*, and here it upholds a plainly overbroad rule simply by ascribing an employer justification to it. This approach, as explained, allows employers to effectively ignore the statutory rights of their employees.

E. Rule Prohibiting the Sharing of Employee Compensation Information

Finally, the majority (reversing the judge once more) errs in upholding the Respondent's "Protecting Company Information Policy." The policy states in relevant part:

> Protecting our company's information is the responsibility of every employee, and we all share a common interest in making sure it is not improperly or accidently disclosed. Do not discuss the company's confidential business with anyone who does not work for us. . . .
>
> All telephone calls regarding a current or former employee's position with our company must be forwarded to your supervisor. *Only Rudy, Helen or human resources can give out any information on current or former employee compensation.*

(Emphasis added.) The judge was correct in concluding that this rule prohibits rank-and-file employees from disclosing "employee compensation" information. Read as a whole, the rule makes clear (1) that "employee compensation" information is "company information;" (2) that "company information" is part of the "company's confidential business;" and (3) that such information may not be disclosed by employees. Of course, Section 7 protects the right of employees to discuss with each other and with outsiders, such as union organizers, how they are compensated.[26]

The majority acknowledges that the rule's "first paragraph emphasizes that it is every employee's responsibility to protect the *company's* confidential information" (emphasis in original). But, says the majority, under the rule, employees actually are *free* to disclose "employee compensation" information—with one exception: in response to a telephone call concerning a current or former employee. In other words, according to the majority, the rule's statement that "[o]nly Rudy, Helen or human resources can give out any information on current or former employee compensation" has no general applicability, but rather applies only in the case of telephone inquiries.

This reading is nonsensical. In grasping for a lawful interpretation, it reads language into the rule that doesn't exist. It also violates the principle, to which we all subscribe, that work rules must be read as a whole. And, as a whole, the rule is clear that "employee compensation" information is confidential information, which employees must protect. Only this interpretation makes sense. There is no business reason why the Respondent would wish to keep "employee compensation" information confidential only in one, limited circumstance. But even under the majority's reading, the rule poses a clear threat to Section 7 rights: If a union organizer (someone who "does not work for us") called an employee at work to ask for "employee compensation" information, she would be prohibited from sharing the information with the organizer. Only "Rudy, Helen, or human resources" could "give out" the information to the union organizer.

The majority's analysis of this rule neatly captures the Board's current approach to evaluating work rules: heads, the employer wins; tails, the employees lose. Any portion of a rule that clearly infringes on Section 7 rights is saved by the rule as a whole, if some legitimate purpose for the rule can be discerned or ascribed. And if the rule as a whole clearly infringes Section 7 rights, then any portion of the rule with a legitimate purpose saves the entire rule.

III.

Dissenting in *Boeing*, the decision that turned the Board's analysis of employer work rules upside down, I observed that "[t]o say, as the majority does, that its approach will yield 'certainty and clarity' is unbelievable, unless the certainty and clarity intended is that work rules will almost never be found to violate the National Labor Relations Act."[27] This case, and others like it, prove that this is precisely what the *Boeing* Board intended. As long as employers adopt work rules that do not explicitly and unequivocally prohibit employees from engaging in protected concerted activity, this Board will almost invariably stand aside. If, as a result, employees are chilled from exercising their statutory rights, that is of no concern. Of course, it should concern us. The Board's duty—before *Boeing* and after *Boeing*—remains to uphold the rights that Congress gave American workers, not to make it more convenient for employers to draft work rules. Accordingly, I dissent.

[25] See, e.g., *Caval Tool Division,* 331 NLRB 858, 858–859 (2000).

[26] See, e.g., *Lowe's Home Centers*, *LLC*, 368 NLRB No. 133, slip op. at 1 fn. 1 (2019).

[27] *Boeing*, supra, 365 NLRB No. 154, slip op. at 37–38.

Dated, Washington, D.C. January 4, 2021

Lauren McFerran, Member

NATIONAL LABOR RELATIONS BOARD

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 maintain rules that prohibit you from conducting personal business on company time or company property.

WE WILL NOT maintain rules that prohibit you from soliciting or distributing literature for any purpose during working hours without prior authorization from management.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind or revise the unlawful work rules described above.

WE WILL furnish you with inserts for the Employee Handbook and Policies & Procedures Manual that (1) advise that the unlawful provisions have been rescinded, or (2) provide lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or WE WILL publish and distribute revised Employee Handbooks and Policies & Procedures Manuals that (1) do not contain the unlawful provisions, or (2) provide lawfully worded provisions.

MEDIC AMBULANCE SERVICE, INC.

The Board's decision can be found at www.nlrb.gov/case/20-CA-193784 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.

Tracy Clark, for the General Counsel.
Nicole A. Legrottaglie, Esq. (Carothers, DiSante & Freudenberger LLP), for the Respondent.
Manuel Boigues, Esq. (Weinberg, Roger & Rosenfeld), for the Petitioner Union.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. United Emergency Medical Services Workers, Local 4911, AFSCME, AFL–CIO (Charging Party or Union), filed its charge in this Case 20–CA–193784 on February 24, 2017. The counsel for the General Counsel (General Counsel) issued the original complaint against Respondent Medic Ambulance Service, Inc. (Respondent or Employer) on June 30 and amended it on September 12, 2018 (complaint).[1] The Respondent answered the complaint generally denying the critical allegations of the complaint.

The complaint alleges the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the NLRA or Act) by promulgating and/or maintaining overly broad rules regarding employee conduct and threatening employees with reprisal in its employee handbook (handbook) and its policies and procedures manual (manual). his case was tried in San Francisco, California, on January 22, 2019. On the entire record,[2] including my

[1] All dates in 2018 unless otherwise indicated.

[2] The transcript in this case is generally accurate. Abbreviations used in this decision are as follows: "Tr." for transcript; "Jt. Exh." for joint exhibit; "Stip. Fact No." for stipulated fact number; "R Exh." for Respondent's exhibit; "GC Exh." for General Counsel's exhibit; "GC Br." for the General Counsel's brief; and "R Br." for the Respondent's brief. The Union did not file a closing brief. On February 26, 2019, the Charging Party Union filed, instead, its joinder in and incorporated and adopted as its own all the proposed facts and arguments contained in the General Counsel's brief. Although I have included numerous citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record. I find and reject GC Exhs. 2—4 and give them no weight as I find them irrelevant and of speculative significance to this case for the reasons put forth by Respondent and I further find that it has not been proven that any of the individuals in these exhibit photos are past or current Respondent employees or that California Proposition 11 has any bearing on this case. See Tr. 32–

observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The parties stipulate and I find that at all material times, Respondent, a corporation with an office and place of business in Vallejo, California (Respondent's facility), has been engaged in the business of providing emergency transportation and advanced life support ambulance services; amongst other medical transportation services in Solano and Sacramento Counties, California. (Stip. Fact No. 2(a); Jt. Exh. A at 3.) I further find that during the calendar year ending December 31, 2016, Respondent, in conducting its business operations derived gross revenues in excess of $500,000. (Stip. Fact No. 2(b); Jt. Exh. A at 3.) Also, during the period of time described above, Respondent, in conducting its operations also described above, purchased and received at Respondent's Vallejo, California, facility goods valued in excess of $5000 directly from points outside the State of California. (Stip. Fact No. 2(c); Jt. Exh. A at 3.) The parties further stipulate, and I find, that at all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (Stip. Fact No. 3; Jt. Exh. A at 3.)

In addition, I further find that at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act. (Stip. Fact No. 4; Jt. Exh. A at 4.) The Union and Respondent have a collective-bargaining representative agreement in effect from April 26, 2014, through and including April 25, 2021. (Stip. Fact No. 5; Jt. Exh. A at 4; Jt. Exh. 17.) The Union represents Respondent employees in its Solano County locations, other than the City of Vacaville. (Tr. 30.) The Union does not represent Respondent's nurses or supervisors/management or any Respondent employees in Sacramento County. Id.

II. ADDITIONAL FACTUAL STIPULATIONS AND FINDINGS

Respondent operates its ambulance company in Sacramento and Solano Counties in Northern California other than in the City of Vacaville. It is the exclusive operator in Solano County as an ambulance operator for advanced life support (ALS), which is paramedic-level service. (Tr. 133.) Respondent also added noncritical nurse-level services about 6 years ago. Id. Respondent also operates basic life support (BLS) and critical care transport (CCT). (Tr. 73, 133.) Respondent performs these same services in Sacramento County and also provides a wheelchair and gurney person. Id.

BLS includes inter-facility transports between hospital-to-hospital and hospital-to-home. ALS can be 911 responses, inter-facility and CCT is hospital-to-hospital usually or hospital-to-acute care facility and wheelchairs are usually just nonemergency to a doctor's appointment. (Tr. 73, 133–134.)

Respondent's vice president (VP) and chief operating officer (COO), James Pierson (Pierson), generally testified that the various Respondent rules, policies, and procedures at issue in this case are necessary and justified for business purposes due to patient privacy concerns of Respondent's various customers' private personal information and their private medical conditions and also Respondent's fear of liability for itself and its employees related to these potential privacy violations and violations of the Health, Information, Portability, and Accountability Act (HIPAA) and Medicare regulations. (Tr. 132, 134–138.) Respondent's employees handle medical charts, records, and medical files which contain this highly personal and private information and both Respondent and its employees are liable if this information is not kept private. Id. In addition, Respondent must maintain payer compliance and privacy compliance at all times and may be subject to not receiving income for its services if there is some privacy, HIPAA, or Medicare rules violation in connection with the services it provides. Id.

I grant the parties' joint motion dated January 18, 2019, and the parties further stipulate, and I find, that at all material times, Respondent's operations manager, Brian Meader (Meader), and Respondent's administrator, Tim Bonifay (Bonifay), have been supervisors and agents of Respondent within the meaning of Section 2(11) of the Act and Section 2(13) of the Act, respectively. (Stip. Fact No. 6; Jt. Exh. A at 4; Tr. 26–28.) I further find that Respondent's VP and COO Pierson currently oversees the business operations of the Sacramento-Solano Division and also oversees and supervises Respondent's office managers and field supervisors and Administrator Bonifay.[3] (Tr. 131–132.)

Casey Vanier (Vanier) also testified that he works with 6 or 7 different bargaining units besides Respondent's union members and that as the Union's business representative since 2014, he helps union member employees at Respondent with CBA enforcement, negotiations, grievance arbitrations, and with overall organizing activities. (Tr. 29–31.) Vanier also opined that the employees in these bargaining units he represents use social media to post about improving their terms and conditions of employment. (Tr. 31.)

Respondent has its own public Facebook social media account that is not attended often by its employees and does not contain individual employee posts or posts from Respondent's supervisors or upper management. It occasionally references a former employee who is being remembered for their earlier employment at Respondent. (Tr. 89–90.)

Between 130–185 union member employees at Respondent run and belong to a closed or private employee social media Facebook account where Respondent employees post comments and can discuss social matters and terms and conditions of their employment at Respondent with other employees. (Tr. 59–60,

68; R Br. at 15–16. Because I am not considering or giving any weight to GC Exhs. 2–4, Respondent's supplemental Exh. A and corresponding arguments are moot and also given no weight as Respondent concedes in its closing brief at page 16.

[3] Bonifay, Respondent's former general manager, listed his duties as administrator since 2010 to include: labor relations, consultant over policy and procedure, employee disciplinary consultant with other Respondent managers, and he tracks certification, regulatory compliance, EEOC matters, workers' compensation, and other human relations department functions. (Tr. 212–213.) Bonifay also interfaces with the Union, he was involved with negotiating the current CBA, and is Respondent's representative handling step 1 grievances filed by union members against Respondent. (Tr. 213–214.)

63–64, 76.) At hearing, Respondent VP Pierson admitted that two Respondent supervisors are members of this closed or private employee Facebook account as they are listed as members in the membership group listed on Facebook having become members of the private employee Facebook account prior to their promotions to supervisor. (Tr. 206–207.)

The Respondent's handbook was first implemented in June 2010. Respondent has maintained the handbook from August 28, 2016, to the present. (Stip. Fact Nos. 7-8, 11; Jt. Exh. A at 4; Jt. Exh. 14.) Respondent's handbook has applied to both Respondent's Union-represented and non-Union-represented employees since at least August 28, 2016, to the present. Id.

The Respondent's manual contains Respondent's policies and procedures, some of which have been in effect since approximately 1999. Respondent has also maintained the manual from August 28, 2016, to the present. (Stip. Fact Nos. 9-10, 12; Jt. Exh. A at 4; Jt. Exhs. 15–16; Tr. 199–200.) Respondent's manual has applied to both Respondent's union-represented and nonunion-represented employees since at least August 28, 2016, to the present. Id.

Respondent provided the Union with copies of Respondent's handbook and manual during the parties' contract negotiations over the current collective-bargaining agreement (CBA). (Stip. Fact No. 13; Jt. Exh. A at 5; Jt. Exhs. 14–16.) The handbook and manual are comprised of just shy of 300 pages of policies and rules. (Jt. Exhs. 14 and 15.)

After ratification of the CBA, Respondent met and conferred with the Union about all additions and revisions to the manual although all of the rules and policies and procedures at issue here were already implemented and in place at Respondent when copies of them were provided to the Union during contract negotiations. (Tr. 233.) Until the charge was filed in 2017, the Union did not request to meet and confer or bargain about potential policy or rule revisions, or object or take issue with Respondent regarding the provisions of the Handbook or Manual which are the subject of the charge and the complaint.[4] (Stip. Fact Nos. 14 and 15; Jt. Exh. A at 5; Tr. 199–200; Tr. 214–216, 230–231.) Thus, there is evidence of employee discipline resulting from an alleged rule violation that was later revoked once the employee requested that the discipline be looked at and resolved.

Since August 28, 2016, the Respondent has maintained the following policies or rules in its employee handbook:

> (a) "The e-mail system is intended for business use only. The use of the company's email system to solicit fellow employees or distribute non job-related information to fellow employees is strictly prohibited," as stated in the second paragraph of the Electronic Mail and Monitoring Rule found on pages 12 and 13 of Section 4 of the employee handbook. (Jt. Exh. 14 at Sect. 4, 12-13.)
>
> (b) Prohibiting employee use of the company's email System "To solicit employees or others," as stated at the third page of the Acceptable Use of Electronic Communications rule found on pages 16 to 19 of Section 4 of the employee handbook. (Jt. Exh. 14 at Sect. 4, 18.)
>
> (c) "Inappropriate communications . . . even if made on your own time using your own resources, may be grounds for discipline up to and including immediate termination," as stated at the first page of the Social Media rule, found on pages 20 and 21 of Section 4 of the employee handbook. (Jt. Exh. 14 at Sect. 4, 20.)
>
> (d) "Do not disclose confidential or proprietary information regarding the company or your coworkers," as stated in numbered paragraph 2 of the Social Media rule, found on pages 20 and 21 of Section 4 of the employee handbook. (Jt. Exh. 14 at Sect. 4, 20.)
>
> (e) "You may not use the company name to endorse, promote, denigrate or otherwise comment on any product, opinion, cause or person," as stated in numbered paragraph 4 of the Social Media rule, found on pages 20 and 21 of Section 4 of the employee handbook. (Jt. Exh. 14 at Sect. 4, 21.)
>
> (f) "Do not use or post photos of coworkers without their express consent," as stated in numbered paragraph 5 of the Social Media rule, found on pages 20 and 21 of Section 4 of the employee handbook. (Jt. Exh. 14 at Sect. 4, 21.)
>
> (g) "Only Rudy, Helen or human resources can give out any information on current or former employee compensation," as stated in the second paragraph of the Protecting Company Information rule, found on page 24 of Section 4 of the employee handbook. (Jt. Exh. 14 at Sect. 4, 24.)
>
> (h) Prohibiting employees from "Conducting personal business on company time or company property" as stated at the fourth page of the Discipline/Impermissible Conduct rule found on pages 34–37 of Section 4 of the employee handbook. (Jt. Exh. 14 at Sect. 4, 37.)
>
> (i) Prohibiting employees from "Solicitation or distribution of literature for any purpose during working hours without prior authorization from management," as stated at the fourth page of the Discipline/Impermissible Conduct rule found on pages 34–37 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 37.)

In addition, since August 28, 2016, the Respondent has also maintained the following policies and rules in its policies and procedures Manual:

> (a) Prohibiting employees from "us[ing] blogs, SNS, or personal Web sites to disparage the company, its associates, customers, vendors, business practices, patients, or other employees of the company," as stated at paragraphs III(C) and III(F) of the Internet Social Networking and Blogging Policy #105.04.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #105.04.01, C. at 000306.)
>
> (b) Prohibiting employees from "post[ing] pictures of . . . other employees on a Web site without obtaining written permission," as stated at paragraphs III(C) and III(F) of the Internet Social Networking and Blogging Policy #105.04.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #105.04.01, F. at 000307.)
>
> (c) Prohibiting employees from "Conducting personal

[4] Bonifay noted; however, that since August 2016, there have been a couple of isolated incidents involving Respondent employees who had been disciplined for engaging in protected activity with respect to the rules in question in this case that were subsequently "all resolved, either through a withdrawal or through the grievance procedure." (Tr. 217.)

business on company time or company property, as stated at paragraphs II(B)(1)(iii)(i) and II(B)(1)(iii)(j) of the Discipline and Corrective Action Policy #106.03.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #106.03.01, II.B.1.iii.i at 000315.)

(d) Prohibiting employees from "Solicitation or distribution of literature for any purpose during working hours without prior authorization from management," as stated at paragraphs II(B)(1)(iii)(i) and II(B)(1)(iii)(j) of the Discipline and Corrective Action Policy #106.03.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #106.03.01, II.B.1.iii.j at 000315; Tr. 199-200.)

All of these aforementioned Respondent policies and rules were reviewed internally by Respondent for possible updating and revision in June 2017 by Pierson and Respondent's compliance manager, Brandon Klug (Klug). (Tr. 199–201.)

Union member employee and paramedic at Respondent, Eric Paulson (Paulson) also testified that at the time of hearing he was the assistant chief shop steward for the Union having also been the chief shop steward from 2013 until just before hearing. (Tr. 69–70.)

Paulson admitted having a Respondent email address and that employees are permitted to communicate with Respondent through this email address. (Tr. 81.)

Paulson recounted an incident in early 2018 when Respondent's operations manager, Brian Meader (Meader), instructed Paulson not to post on the employees' private Facebook account information pertaining to Respondent employee shift bids that had been taken or selected to establish a list of filled shifts to inform other Respondent employees which shift bids remained.[5] (Tr. 72–73, 82–83, 91.)

Meader explained to Paulson that the reason he could not post this information on the private employee Facebook account was because Respondent considered this shift bid information to be proprietary information and Respondent did not want its competitors to know how Respondent staffs its various shifts or how many units or ambulances that Respondent has throughout the day and their deployment. (Tr. 73–76.)

Meader next called Administrator Bonifay who confirmed what Meader had instructed and told Paulson. (Tr. 74.) Bonifay added that as the union representative Paulson was just there to observe the shift bidding process and to file grievances afterwards should something come up and there had been some problem with the shift bid from the Union's point of view. Id. Paulson disagreed with Meader and Bonifay that this shift bid information was proprietary. (Tr. 96.)

Paulson next identified a private Facebook group board site screen shot for the EMS Workers of Solano County including many union members at Respondent who had received the filled shifts information that Paulson had been listing before Meader told him to stop posting.[6] (Tr. 75–76; GC Exh. 5.) Paulson opined that only people who are members of this private employee Facebook account group can view the various postings on the private employee Facebook site and he further opined that approximately 180–185 Respondent employees are members of this private employee Facebook group.[7] (Tr. 76.)

Paulson later contacted Ryan Silva (Silva), a fellow union member employee, and informed him that Meader had stopped Paulson from posting this filled-shift bid information because it was believed by Respondent to be proprietary. (Tr. 74–76.) Paulson persuasively added that this information, the number of units deployed, influences how many calls that each unit runs and their ability to get off work and end their shift on time. (Tr. 79.) Therefore, if there are more units deployed, there are more units who can respond, or are available throughout the day, resulting in more time for units to finish the paperwork connected to calls and work less overtime, because the load is shared amongst more ambulances so there are more units to finish paperwork and get rest between calls and eat meals. (Tr. 79–80.)

Paulson further explained that from 10–15 employees have complained that Respondent does not deploy enough units or ambulances so each ambulance must run a lot of calls and being held past the end of a shift just so they can finish up the normal paperwork associated with running their calls. (Tr. 80.)

Respondent has a break room or employee lounge at its Vallejo Station No. 1 location. (Tr. 80–81.) Respondent occasionally provides food to employees at Station No. 1 for special events or for yearly mandatory meetings where Respondent provides breakfast and dinners to employees. (Tr. 87–88.) The break room has also been used for union events and activities with no objection from Respondent. (Tr. 112–113.)

Paulson also has seen that Respondent will communicate with its employees via Respondent's email system if open shifts are available for specific days due to absences from the regular bidded shifts. (Tr. 85.) These emails contain shift identifying numbers to identify the specific hours open for a daily shift. Id.

Paulson communicates with other employees using his personal email rather than Respondent's email system network because he prefers the privacy of using personal emails rather than using Respondent's email system where employees would not be assured total privacy because using Respondent's emails would subject the email to ownership by Respondent and using

[5] Paulson opined that generally Respondent's bidded shifts change every 6 months once a shift change goes into effect. (Tr. 84–85.)

[6] Paulson admits that he was not disciplined by Respondent for any of the postings to the private Facebook account contained in his GC Exh. 5 screen shot or his use of Respondent's email system to communicate union activity to other union members. Tr. 97, 101–109.

[7] Paulson admitted being the administrator or moderator of this private employee Facebook account with Respondent employees and that in this role he has more privileges than most of the members associated with this group such as to view exactly who is a member of this private Facebook account. Tr. 92. Paulson confidently opined that if he became aware that a supervisor or manager at Respondent had become a member of the employees' private employee Facebook account, he would remove them. (Tr. 119, 121.) Paulson tries to provide each bargaining unit member with an invitation to join the private Facebook member account so that the numbers of members of the unit and the private employee Facebook account line up as best as possible. Tr. 93. Paulson further opined that in addition to himself, there are 8 or 9 other moderators or administrators of this private employee Facebook account. Id. Paulson further opined that if he saw that if he could not verify that someone wanting to use the private employee Facebook account was, in fact, an employee, he would withdraw his invitation or request to that person to join the private group. (Tr. 93–94.)

Respondent's computer server. (Tr. 89.)

Respondent gives each of its employees their own Employer email addresses. (Tr. 81; R Exh. 2.) Paulson admits that he has used Respondent's email system for union activity over the years, many times inadvertently, but that he has never been disciplined for it. His custom and practice is to forward all of these Employer system emails to his individual personal email address as he prefers using his personal emails so that he can be assured that his union activity is private from Respondent especially with respect to grievances he is getting ready to file against Respondent.

VP Pierson testified that this rule is necessary to maintain a stable computer network and make sure Respondent was not allowing its employees to go to outside servers that can bring viruses or outside malware into Respondent's servers and computer system. (Tr. 168–169.) Pierson claims this rule is intended to keep employees in Respondent's network for business related issues only. Id. Pierson also repeats that this rule is also due to privacy concerns of Respondent's patients and customer's[8] private personal information and their medical conditions and Respondent's fear of incurring a HIPPA regulations violation if its computer network is compromised by non-business usage. (Tr. 169.) Pierson also points out that the rule does not discriminate and prohibits all solicitation and distribution including side business solicitation and solicitations to buy Girl Scout cookies. (Tr. 169–170.)

Pierson, however, thinks the rule, as written, does not prohibit employees from using the Respondent's email to solicit other employees to go to nonbusiness union meetings after work and for exchanging non-business sports team schedules with other employees as long as the email is employee-to-employee using only the Respondent's email system. (Tr. 170–173.) Pierson also opines that an exception to this rule applies for an employee to solicit another employee to go to union meetings after work through the email system but that the employee would only know of this exception to the rule by asking Respondent's management team, a direct supervisor, or the union shop steward. (Tr. 170–171.) In practice, the Union has used Respondent's email system for union activity a number of times without any discipline.

One noted disciplinary incident by Bonifay that was rescinded once the accused employee filed a written request for the rescission occurred on May 10 or 12, 2016, when employee Karin Davis (Davis) was improperly disciplined by Respondent for allegedly violating one of its rules where Davis was being accused of engaging in union activities while on duty. (Tr. 219–220; R Exh 2.) Respondent disciplined Davis which forced her to proactively email Respondent to try and correct Respondent's mistake. Id. In fact, Davis was not on duty when she engaged in union activities as she was either off work on May 10 or she engaged in union activities before starting her shift on May 12, 2016. (R Exh. 2.)

Analysis

I. CREDIBILITY

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, 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, 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 need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi,* 335 NLRB at 622.

I find that the 4 witnesses who testified in this case were mostly believable generating very little factual disputes and that they each testified in a comfortable manner bringing many past experiences from their prior work at Respondent to the hearing.

II. THE CHALLENGED RULES

A. The Respondent's Maintenance of Its Use of Electronic Mail for Business Only Rule Violates Section 8(a)(1). (Complaint Pars. 5(a) and 5(b))

Paragraph 5(a) of the General Counsel's complaint alleges that since about August 28, 2016, Respondent has maintained the following policies in its Employee Handbook:

> The e-mail system is intended for business use only. The use of the company's e-mail system to solicit fellow employees or distribute non job-related information to fellow employees is strictly prohibited," as stated in the second paragraph of the Electronic Mail and Monitoring rule found on pages 12 and 13 of Section 4 of the Employee Handbook.

Also, paragraph 5(b) of the General Counsel's complaint alleges that since about August 28, 2016, Respondent has maintained the following policies in its employee handbook:

> Prohibiting employee use of the company's email System "To solicit employees or others," as stated at the third page of the Acceptable Use of Electronic Communications rule found on pages 16 to 19 of Section 4 of the Employee Handbook.

First of all, with respect to this rule and all of the challenged rules, I find that since the Union's charge alleges that Respondent's maintenance of these rules since 2016 violates the Act, the Union alleges a continuing violation—that is, these rules were maintained during the six-month period prior to the filing of the Union's charge in February 2017 and that the mere maintenance of these rules creates a new violation to occur every day that each rule is in effect. (See 1/18/19 Jt. Motion at 4, paragraphs 8 and 10; GC Br. at 30.) Such allegations reset the statute of limitations under Section 10(b) of the Act. Accordingly, based on the foregoing, I further find that the Union's ULP charge is timely filed.

The General Counsel contends that Respondent's ban on personal use of Respondent's email for all nonbusiness purposes is unlawful pursuant to the Board's *Purple Communications* presumption.[9] Here, there is no dispute that Respondent's employees have the rightful access to Respondent's email system because Respondent gave each of them their own personal email

[8] Pierson defines Respondent's customers to include patients, hospitals, and sometimes fire departments. (Tr. 208–209.)

[9] Under the test, the Board presumes that employees who have the rightful access to their employer's email systems, in the course of their

address and Respondent and employees regularly use the email system to communicate. The Board's decision in *Purple Communications* was based, in part, on its acknowledgement of the central role email has taken on as a workplace communication mechanism. Id. at 1057 ("[i]n many workplaces, email has effectively become a 'natural gathering place,' pervasively used for employee-to-employee conversations") (citation omitted). An employer cannot overcome this presumption unless it shows special circumstances make the email restriction necessary to maintain production and discipline. Id. at 1063. An employer must demonstrate a connection between the special circumstances and the restriction. Id.

It is further argued that, separate from this presumption, the ban is overbroad, because, as written, it bans *all* nonbusiness use by employees even though according to Respondent's corporate official, VP Pierson, employees can use it for the nonbusiness purposes of soliciting fellow employees to attend union meetings after work and employees are not prohibited from using the Respondent's email system for exchanging non-\business sports team schedules with other employees as long as the email is employee-to-employee using only the Respondent's email system. (Tr. 170–173.) In addition, Respondent allows employees to use Respondent's email system to externally communicate with patients, suppliers, vendors, advisors, and other business acquaintances who maintain out-of-network email systems presumedly prone to viruses, malware, and data breaches that Respondent argues it seeks to avoid. (Tr. 165–166, 168–170.) I agree that the rule is unlawful as overbroad.

I find that these rules, reasonably construed, would restrict employees' protected activities. I further find that Respondent's restriction on all nonbusiness email use violates the Act as it is presumptively unlawful and overbroad. However, the threshold for the *Purple Communications* presumption to apply is that the employer has authorized employees to use their company email addresses to send personal messages, which while the rule does not say this, Respondent's corporate official admits that employees can use the Respondent's email system to solicit other employees to attend union meetings after work for nonbusiness purposes and for exchanging non-business sports team schedules with other employees as long as the email is employee-to-employee using only the Respondent's email system. (Tr. 170–173.)

Moreover, I further find that Respondent has failed to show special circumstances to justify its ban on all nonbusiness use of Respondent's email system as Respondent's expressed concern about external emails causing viruses, malware, or data breaches is completely ruined by Respondent's allowance of employees to use Respondent's email system to externally communicate with patients, suppliers, vendors, advisors, and other business acquaintances who maintain out-of-network email systems prone to viruses, malware, and data breaches that Respondent argues it seeks to avoid. (Tr. 165–166, 168–170.) Also, Respondent's email system does not prohibit who its employees may communicate with, but, instead, Respondent prohibits its employees' use of the email system to solicit or distribute nonbusiness related information. As a result, Respondent has failed to demonstrate a connection between its concern for viruses and data breaches and its solicitation or distribution restrictions. I further find that Respondent has also failed to produce any evidence showing that its email system ban is necessary to maintain production or discipline.

As such, I find the Respondent's maintenance of its email system use limitation for business purposes only rules stated in paragraphs 5(a) and (b) of the complaint are unlawful under Section 8(a)(1) of the Act.

B. The Respondent's Maintenance of Its No Social Media Use to Disparage the Company Rule Violates Section 8(a)(1). *(Complaint Par. 5(c))*

Paragraph 5(c) of the General Counsel's complaint alleges that since about August 28, 2016, Respondent has maintained the following policies in its employee handbook:

> Inappropriate communications, even if made on your own time using your own resources, may be grounds for discipline up to and including immediate termination," as stated at the first page of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook.

Under the new analytical framework announced in *Boeing Co*., 365 NRRB No. 154 (2017), the Board first analyzes whether "a facially neutral policy, rule or handbook provision . . . when reasonably interpreted, would potentially interfere with the exercise of NLRA rights." *Boeing*, slip op. at 3–4 and 16. If it would not, the rule is lawful. If it would, the Board will apply a balancing test and weigh whether the nature and extent of the potential impact on NLRA rights outweighs the employer's legitimate justifications for maintaining the rule. Id. See also *Southern Bakeries, LLC*, 368 NLRB No. 59, slip op. at 1 (2109) (summarizing the new *Boeing* framework).[10]

Individualized scrutiny under the balancing test is the appropriate analysis in this case for this social media rule prohibiting "inappropriate communications" at all times even outside of work using a private network because the Respondent's challenged rule is facially neutral and not among those types that the Board has previously designated as uniformly lawful or unlawful as the rule does not expressly interfere with Section 7 rights.

Pierson and/or Bonifay testified broadly that this rule is necessary due to privacy concerns of Respondent's patients' and customers' private personal information and their medical conditions and fear of incurring a HIPAA and Medicare rules or regulations violations. (Tr. 134–135, 209.) Specifically, VP Pierson opined that this rule is limited to inappropriate communications about patients that employees have encountered at work and Respondent does not want its employees talking about these patients, their patient-identifying information, or HIPAA or Medicare protected private or medical information at work or after work. (Tr. 175–177.)

VP Pierson further opines, however, that this rule does not apply for any inappropriate communications or comments or

work, have a right to use the email system for statutorily protected communications during nonworking time. *Purple Communications, Inc*., 361 NLRB 1050, 1063 (2014).

[10] The General Counsel's guidance memos and advice memos regarding the validity under the Act of the maintenance of various Employers' rules are nonbinding on the Board and its administrative law judges.

negative or critical statements about Respondent's management or other employees. (Tr. 175–177.) VP Pierson also opines that this rule does not prohibit employees from going on social media after work and talking about their wages, their terms and conditions of employment, complaints about not being paid enough or having to deal with the transfer of a very heavy patient as long as the employee does not also identify the specific patient or any of their patient-identifying information. (Tr. 177–179.)

The General Counsel argues that this rule is unlawful because it is so overbroad as to "adversely impact employees' central Section 7 right to post potentially 'inappropriate communications' about their terms and conditions of employment to social media." (GC Br. at 21–22.) The General Counsel further cites to *Triple Play Sports Bar & Grill*, 361 NLRB 308, 314 (2014), affd. sub nom. *Three D, LLC v. NLRB*, 629 Fed.Appx. 33 (2d Cir. 2015), where the Board held a rule that prohibited "inappropriate discussions about the company" was unlawful because employees would reasonably interpret the rule to prohibit discussions about improving their terms and conditions of employment. Id. at 21.

I find that this rule, reasonably construed, would restrict employees' protected activities. I further find that, as written, this rule prohibiting "inappropriate communications" is unlawfully overbroad and applies to all social media use by employees including their private social media activities and, as a result, this rule has significant impact on employees' discussions about their working conditions. See, e.g., *Boch Honda*, 362 NLRB 706, 715–716 (2015) (Rules preventing negative impact on a Company's reputation and requiring respectful postings regarding the Company violate the Act as employees would reasonably construe these provisions as preventing them from discussing their conditions of employment with fellow employees and other third parties such as unions and newspapers.); *Kinder-Care Learning Centers*, 299 NLRB 1171, 1171–1172 (1990) (Employer's parent communications rule violates Section 8(a)(1) because it restricts employees' Section 7 rights to communicate not only with employee-parents but with all parents and rule also found unlawful because it interfered with employees' statutory right to complain about their employment to persons and entities other than the Employer including a union or the Board.). Thus, I find as an initial determination required by *Boeing*, this rule would potentially interfere with Respondent's employees' Section 7 rights.

As stated above, the Respondent's only justification for the rule is to protect the privacy rights of Respondent's customers, patients, their patient-identifying information, or HIPAA or Medicare protected private or medical information at work or after work. (Tr. 175–177.) But this justification can easily be addressed with a rule much more narrowly written than this rule as worded. I further find that the rule's broad reach has a significant impact on the exercise of Section 7 activity, far out-weighing the Respondent's stated justification. In addition, I find that this rule encompasses communications and associations among employees outside of any workplace civility rules. Accordingly, I find this social media rule prohibiting all "inappropriate communications" even if made on your own time using your own resources, complaint paragraph 5(c), violates Section 8(a)(1) of the Act.

C. The Respondent's Maintenance of Its Confidentiality Rule Violates Section 8(a)(1). (Complaint Par. 5(d))

Paragraph 5(d) of the General Counsel's complaint alleges that since about August 28, 2016, Respondent has maintained the following policies in its employee handbook:

> "Do not disclose confidential or proprietary information regarding the company or your coworkers. . . ." as stated in numbered paragraph 2 of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook.

The rule goes on to add as follows:

> Use of copyrighted or trademarked company information, trade secrets, or other sensitive information may subject you to legal action. If you have any doubt about whether it is proper to disclose information, please discuss it with your supervisor.

Id.

Pierson and/or Bonifay generally testified that the legitimate justifications for this rule are to protect privacy concerns of Respondent's patients and customers private personal information and their medical conditions and fear of incurring a HIPAA regulations violation. (Tr. 134–135, 180–181.) However, Respondent already has in place another rule that is not at issue here which addresses Respondent's concerns and alleged justifications for its patients' and customers' private information protection instead which reads: "Do not disclose information that could subject the company to legal liability. Data about certain financial transactions, information about medical and health records, and other disclosures may be restricted by State and Federal laws. If the company is subjected to government investigation or financial liability based on your disclosures, the company may seek to hold you personally responsible." (Jt. Exh. 14, par. 2 of the Social Media rule, p. 20 of sec. 4 of the employee handbook.)

Pierson added that Respondent considers its entire shift bid schedule of its employees is proprietary and Respondent's trade secrets including its shift bid schedule and what shifts Respondent has in place that allow a competitor to get Respondent's exact schedule of shifts which would allow the competitor to bid on Respondent's competitive contracts with counties and cities and other customers. (Tr. 179–180, 183–185.) Stated differently, Pierson also thinks that further legitimate justifications for this rule are to protect as confidential or proprietary company information as to how Respondent deploys its resources or ambulances, Respondent's unit hour allocation, and what hours Respondent covers in its system. Id. Also, Pierson identified employee's personal medical events as additional confidential and proprietary information. Id. Finally, Pierson added that a dispatcher's entire call volume or workload in one day is also considered confidential and proprietary to Pierson. (Tr. 182–183.) Pierson, however, does not consider employee and management wage information to be confidential or proprietary. (Tr. 181–183.)

I find that this rule, reasonably construed, would restrict employees' protected activities. I further find that the rule at issue is not limited to Respondent's own nonpublic, proprietary records. See e.g., *LA Specialty Produce Co*., 368 NLRB No. 93, slip op. at 3–4 (2019) (Board holds Employer's confidentiality rule lawful as it narrowly applies to Employer's "own nonpublic, proprietary records" including its customer and vendor lists).

Instead, here Respondent's prohibition on disclosing confidential or proprietary information extends beyond Respondent to prohibit all disclosure of confidential or proprietary information of Respondent employees' coworkers. (Jt. Exh. 14, par. 2 of the Social Media rule, p. 20 of sec. 4 of the employee handbook.) In addition, the confidentiality rule here does not specifically list Respondent's dispatch call volume records, its shift bid schedules, its ambulance deployment schedules, its unit hour allocation or its employees' personal medical event records as part of its confidential or proprietary information though it easily could spell this out in the rule especially since its handbook is 170 pages and its manual is 126 pages. (Jt. Exhs. 14 and 15.)

The General Counsel argues that without any examples or definitions of what information Respondent considers confidential or proprietary, employees would reasonably interpret the prohibition on disclosing information regarding the company or [their] coworkers to include information about wages and working conditions." See *Flamingo-Hilton Laughlin*, 330 NLRB 287–292 (1999) (Board found rule unlawful that prohibited the disclosure of confidential information regarding hotel's customers, coworkers, or hotel's business); see also *Aroostook County Regional Ophthalmology Center v. NLRB*, 81 F.3d 209, 212–213 (D.C. Cir. 1996) (relying on context of rule and its location in the manual to conclude that rule was not unlawful on its face). Moreover, the General Counsel further argues that Respondent employees would reasonably conclude information about compensation and other terms and conditions of employment are confidential based on Respondent's other rule discussed below that provides: "[o]nly Rudy, Helen, or human resources can give out any information on current and former employee compensation." (GC Br. at 14 citing Jt. Exh. 14 at 116.)

Here, I find that Respondent's prohibition on disclosing "confidential or proprietary information regarding your coworkers" would reasonably be interpreted to include employees' wages and other terms and conditions of employment protected under Section 7. This prohibition interferes with employees' NLRA right to discuss properly obtained employee information such as wages, terms and conditions of employment, and contact information with, inter alia, coworkers and a union. See *Rio All-Suites Hotel & Casino*, 362 NLRB 1690, 1691 (2015); *Flex-Frac Logistics, LLC*, 358NLRB 1131, 1131 (2012), enfd. 746F.3d 205 (5th Cir. 2014); and *Labinal, Inc*., 340 NLRB 203, 210 (2003). Under the Act, information concerning wages, hours, and working conditions is precisely the type that may be shared by employees, provided to unions, or given to governmental agencies. *Hyundai America Shipping Agency, Inc*., 357 NLRB 860, 871 (2011), revd. on other grounds 805 F.3d 309 (D.C. Cir. 2015).

As stated above, I note that the provision follows a heading entitled "confidentiality," not "*patient* confidentiality." Also, confidential or proprietary *company* information is distinguishable and specifically listed later in the employee handbook to include *company* copyrights, trademarks, trade secrets and other *company* sensitive information unrelated to *coworkers*. The rule's broad reach prohibiting employees from disclosing and discussing broad confidential information regarding their coworkers has a significant impact on the employees' NLRA right to disclose or discuss properly obtained employee information such as wages, terms and conditions of employment, and contact information with, inter alia, coworkers and a union, far out-weighing the Respondent's stated justifications. As a result, I further find that this confidentiality rule is ambiguous and interpreted as limiting employee disclosure and discussion of wages and other terms and conditions of employment with coworkers. Under *Century Fast Foods, Inc*., 363 NLRB 891, 901 (2016), the ambiguity must be resolved against the Respondent. Therefore, I further find that this confidentiality provision of Respondent's employee handbook violates Section 8(a)(1) of the Act.

D. The Respondent's Maintenance of Its No Disparage/No Denigration of Company Reputation Rule Violates Section 8(a)(1)*. (Complaint Par. 5(e))*

Paragraph 5(e) of the General Counsel's complaint alleges that since about August 28, 2016, Respondent has maintained the following policies in its employee handbook:

> "You may not use the company name to endorse, promote, denigrate or otherwise comment on any product, opinion, cause or person," as stated in numbered paragraph 4 of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook.

Once again, Pierson and/or Bonifay generally testified that this rule is necessary due to privacy concerns of Respondent's patients and customers private personal patient information and their medical conditions and fear of incurring a HIPAA regulations violation. (Tr. 134–135, 187.) Pierson further justified the rule by opining that the rule was put in so that Respondent would not be associated with employee social media postings about patient-related issues. (Tr. 187–188.) Pierson clarified that Respondent would not discipline an employee under this rule if they wanted to criticize their supervisors about how bad they are or use Respondent's logo when they wanted to talk about what a lousy place Respondent is to work. (Tr. 187–189.)

The General Counsel argues that Section 7 protects an employee's right to publicly identify her employer to comment on an ongoing labor dispute or to initiate, induce, or prepare for group action. (GC Br. at 16.) Moreover, the General Counsel adds that the "Board has repeatedly held rules that prohibit employees from using their employer's name are unlawful" and that here, the rule prohibiting use of Respondent's name would also be reasonably interpreted to prohibit publicly identifying Respondent in posts commenting on an ongoing labor dispute, a union organizing campaign, or a concerted attempt to improve terms and conditions of employment. Id.

I find that this rule, reasonably construed, would restrict employees' protected activities. I also agree that the rule applies to all social media use and that employees have the right to communicate with each other and comment about the terms and conditions of employment and they also have the right to seek support from the public over their working conditions. See, e.g., *Boch Honda*, 362 NLRB 706, 715–716 (2015)(Rules preventing negative impact on a Company's reputation and requiring respectful postings regarding the Company violate the Act as employees would reasonably construe these provisions as preventing them from discussing their conditions of employment with fellow employees and other third-parties such as unions and

newspapers.); *Kinder-Care Learning Centers*, 299 NLRB 1171, 1171–1172 (1990)(Employer's parent communications rule violates Sec. 8(a)(1) because it restricts employees' Sec. 7 rights to communicate not only with employee-parents but with all parents and rule also found unlawful because it interfered with employees' statutory right to complain about their employment to persons and entities other than the Employer including a union or the Board.). Here, the Respondent's rule limiting an employee from identifying the Respondent in communications to third parties is extraordinarily broad and inconsistent with employees protected right to seek outside support concerning their terms and conditions of employment. It is a facially neutral rule in that it does not expressly interfere with Section 7 rights.

Moving to the *Boeing* balancing test, the Respondent's only justification for the rule was to protect patient-related medical information from disclosure. But requiring employees not to post or comment anything harmful using the Respondent's name or reputation is an attempt to shield the company from criticism by its employees—a protected right. See *Jimmy John's*, 361 NLRB 283, 284 (2014)(Board held that employees are protected under the "mutual aid or protection" clause of Section 7 when they seek to improve their lot as employees through channels outside the immediate employee-employer relationship.); *Southern Maryland Hospital*, 293 NLRB 1209, 1222 (1989)(Rule prohibiting "derogatory attacks" on hospital representatives found unlawful because it does nothing more than place the Employer hospital or its representatives, including physicians, in an unfavorable light.). The specific justification provided by Pierson could be addressed with a rule much more narrowly written than the current rule in question. I find that the rule's broad reach would have a significant impact on the exercise of Section 7 activity, far outweighing the Respondent's stated justification. Accordingly, I find this prohibition of using the Respondent's name rule prohibiting the use of the company name to endorse, promote, denigrate, or otherwise comment on any product, opinion, cause or person, at complaint paragraph 5(e), violates Section 8(a)(1) of the Act.

E. The Respondent's Maintenance of Its No Posting of Coworker Photos on Social Media Without Consent Rule Violates Section 8(a)(1)*. (Complaint Paras. 5(f) and 6(b))*

Paragraph 5(f) of the General Counsel's complaint alleges that since about August 28, 2016, Respondent has maintained the following policies in its employee handbook:

> "Do not use or post photos of coworkers without their express consent," as stated in numbered paragraph 5 of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook.

Similarly, paragraph 6(b) of the General Counsel's complaint also alleges that since about August 28, 2016, Respondent has maintained the same following policies in its policies and procedures manual:

> Prohibiting employees from "post[ing] pictures of . . . other employees on a Web site without obtaining written permission," as stated at paragraphs III(C) and III(F) of the Internet Social Networking and Blogging Policy #105.04.01 of the Policies & Procedures manual.

Pierson opined that no one should be sharing a coworker's photo without their consent as employees live with each other on 24-hours shifts and people can get into precarious situations. (Tr. 189–190, 202.) Pierson added more justification for this rule saying that it protects the sanctity of the station that employees work on sometimes over a 24-hour period of time. (Tr. 190.) Pierson stated that another justification for these rules is to prevent employees from posting pictures of injuries or accidents. (Tr. 147.) Pierson further insists that by requiring consent, Respondent wants to make sure that the posted partner or person is ok with having their photo posted by another employee. Id. Pierson concludes saying that an employee could be disciplined under this rule if they posted photos of their coworker without that coworker's consent. (Tr. 191–192.) An exception, according to Pierson, is that it would not be a rule violation subject to discipline if an employee posts a photo of another employee who has not consented to the photo but where the photo is used to communicate unsafe work conditions or to OSHA for the same reason. Id.

The General Counsel argues that Section 7 protects an employee's right to post photographs on social media that comment on an ongoing labor dispute or seek to initiate, induce, or prepare for group action. (GC Br. at 17.)

I find that these rules, reasonably construed, would restrict employees' protected activities. Photography, including the posting of photographs on social media, is protected by Section 7 if employees are acting in concert for their mutual aid and protection and no overriding employer interest is present. *Whole Foods,* 363 NLRB No. 87, slip op. at 3 (2015); *Rio All-Suites Hotel & Casino*, 362 NLRB No. 190, slip op. at 4 (2015). See also *Bettie Page Clothing*, 359 NLRB 777 (2013), reaffirmed and incorporated by reference 361 NLRB 876 (2014) (posting on social media site constitutes protected concerted activity); *White Oak Manor*, 353 NLRB 795, 795 fn. 2 (2009) (photography was part of the *res gestae* of employee's protected concerted activity), reaffirmed and incorporated by reference at 355 NLRB 1280 (2010), enfd. 452 Fed.Appx 374 (4th Cir. 2011).

In considering the legality of a rule prohibiting photography in *Flagstaff,* the Board emphasized the "weighty" privacy interests of the patients and the hospital's "significant interest in preventing the wrongful disclosure of individually identifiable health information," as required by Federal law. 357 NLRB at 663. The Board concluded that the rule in *Flagstaff* was lawful, finding that employees would understand the rule as a "legitimate means of protecting the privacy of patients and their hospital surroundings." Id.

In analyzing the rule prohibiting employees from posting photos of coworkers at an emergency and non-emergency medical transportation company at issue here, I presume that all of the Respondent's patients and customer hospitals and health-care facilities have significant privacy interests similar to those articulated in *Flagstaff*. The Respondent's EMT employees perform a similar function as hospital workers in the *Flagstaff* case. Pierson's justification for the rules involve his consistent concern for patient privacy and to prevent employees from posting pictures of injuries or accidents. Thus, I find that there is a legitimate basis in the record and an identifiable government policy

under HIPAA and Medicare to justify my presumption that all Respondent's clients have common privacy concerns of comparable weight.

However, the Respondent's assertion that the rules are designed to protect customer privacy is undercut by the language of each of the rules, which solely prohibits posting images of its own *coworkers* without their consent, but says nothing about the posting of images of Respondent's patients or customers or their customer's workplace in isolation from the Respondent's employees. In the absence of any basis for finding that the rules are tailored to protect a legitimate privacy concern of similar weight to the patient privacy concern in *Flagstaff,* I find that Respondent's employees would reasonably interpret the rules to restrict Section 7 activity. See *G4S Secure Solutions (USA), Inc*., 364 NLRB No. 92, slip op. at 1, 5 (2016) (Sec. 7 protects an employee's right to post photographs on social media that comment on an ongoing labor dispute or seek to initiate, induce, or prepare for group action.). Moreover, co-worker consent to post these photos is unnecessary because the Board has found that an employer could not discipline employees for protected social media posts on the basis of the subjective reaction of others. *Hispanics United of Buffalo, Inc*. 359 NLRB 368, 370 (2012) citing *Consolidated Diesel Co*., 332 NLRB 1019, 1020 (2000), enfd. 263 F.3d 345 (2001). Accordingly, I find this prohibition on the use or posting of photos of coworkers without their express consent, complaint paragraphs 5(f) and 6(b), violates Section 8(a)(1) of the Act.

F. The Respondent's Maintenance of Its Protecting Company [Employee Compensation] Information Rule Violates Section 8(a)(1)*. (Complaint Par. 5(g))*

Paragraph 5(g) of the General Counsel's complaint alleges that since about August 28, 2016, Respondent has maintained the following policies in its employee handbook:

> Only Rudy, Helen or human resources can give out any information on current or former employee compensation," as stated in the second paragraph of the Protecting Company Information rule, found on page 24 of Section 4 of the Employee Handbook.

Pierson admits that this rule does not prohibit employees from discussing wages and work hours amongst themselves at any time. (Tr. 194–195.) Pierson further opines that this rule is to make sure that when Respondent is asked questions about an employee and some third party want to verify an employee's wages or employment, the three company officials listed - Pierson's Uncle Rudy, his mother Helen, or human resources (HR) are responsible for verified HR information or accurate Respondent-held information to report to third parties such as for a background check for a new job, or for employment verification for a new house purchase or a rental agreement. (192–195.)

The General Counsel argues that Section 7 protects an employee's right to discuss her wages with a third-party such as a union, the public, or the Board and that this right is central to the Act. (GC Br. At 7–8.)

I find that this rule, reasonably construed, would restrict employees' protected activities. The Act has long protected the rights of employees to discuss their wages and other terms and conditions of employment with others. *The Exchange Bank,* 264 NLRB 822, 831 (1982), citing *T.V. and Radio Parts Co., Inc.,* 236 NLRB 689 (1978), and *Poly Ultra Plastics, Inc.,* 231 NLRB 787 (1977). Forbidding employees from discussing the wages of other employees, without the permission of the other employees, was found to have violated the Act. *Labinal, Inc.,* 340 NLRB 203, 210 (2003). An admonition prohibiting employees from disclosing any company knowledge to any client has similarly been held violative of the Act. *Trinity Protection Services,* 357 NLRB 1382, 1383 (2011). Under the Act, information concerning wages, hours, and working conditions is precisely the type that may be shared by employees, provided to unions, or given to governmental agencies. *Hyundai America Shipping Agency, Inc.,* 357 NLRB 860, 871 (2011), revd. on other grounds 805 F.3d 309 (D.C. Cir. 2015).

I find that Respondent has not provided sufficient evidence to justify this rule which expressly prohibits Respondent's employees from sharing information regarding employees' wages and compensation with other employees and third-parties, the union and governmental agencies. Respondent has not set forth a compelling justification for maintaining its limitations on sharing current or former employee compensation information.

I find that none of the reasons advanced by Respondent's witnesses for the maintenance of the limitations on the sharing of employee compensation information rule outweigh its adverse impact on its employees' protected conduct. Thus, I find that Respondent's maintenance this rule at paragraph 5(g) of the complaint violates Section 8(a)(1) of the Act.

G. The Respondent's Maintenance of Its Discipline/Impermissible Conduct/No Access Rule Violates Section 8(a)(1)*. (Complaint Pars. 5(h) and 6(c))*

Paragraph 5(h) of the General Counsel's complaint alleges that since about August 28, 2016, Respondent has maintained the following policies in its employee handbook

> Prohibiting employees from "Conducting personal business on company time or company property" for any purpose during working hours without prior authorization from management," as stated at the fourth page of the Discipline/Impermissible Conduct rule found on pages 34–37 of Section 4 of the Employee Handbook.

Similarly, Paragraph 6(c) of the General Counsel's complaint also alleges that since about August 28, 2016, Respondent has maintained the same following policies in its policies and procedures manual:

> Prohibiting employees from "Conducting personal business on company time or company property, as stated at paragraphs II(B)(1)(iii)(i) and II(B)(1)(iii)(j) of the Discipline and Corrective Action Policy #106.03.01 of the Policies & Procedures manual.

Pierson opined that the rules were justified to prevent employees from selling stuff at work. (Tr. 174–175.) He also opined that employees should not have to be solicited for things that are not work-related. (Tr. 170.) Pierson added that union employees know there is an exception to this rule for conducting union activities or business because the collective-bargaining agreement

addresses this and nonunion employees in Sacramento need only ask Respondent management for permission to conduct union business or any personal business on company time or company property. (Tr. 195–197, 203–206.) Moreover, Pierson also opines that if any employee wants to solicit their personal business such as selling Girl Scout cookies at work during business hours, the employee need only seek prior approval from Respondent's management team. (Tr. 199.)

The General Counsel argues that these rules are overbroad and that they fail to clarify that the restrictions do not apply during nonwork time and that they also do not apply in non-work areas such as Respondent's break room, kitchen, backyard, and parking lots. (GC Br. at 25–27.)

Rather than be facially neutral, I find that the rules at issue explicitly restrict activities protected by Section 7 of the Act since "personal business" is broad enough to include protected "union business" and other protected activities. *Lutheran Heritage Village Livonia*, 343 NLRB 646, 646, fn. 5 (2004) (*Lutheran*) (a rule prohibiting solicitation, which is not limited to working time, violates the Act because the rule explicitly prohibits employee activity that the Board has found to be protected). The Board has long held that rules are overbroad to the extent they ban Section 7 activity (1) on company property (since employees are entitled to engage in such activity on company property during breaks and other non-working time) and (2) during "working hours" (without clarifying that the restriction does not apply to non-working time). *UPMC, UPMC Presbyterian Shadyside*, 366 NLRB No. 142 (2018); *Hyundai America Shipping Agency*, 357 NLRB 860 (2011), revd. on other grounds 805 F.3d 309 (D.C. Cir. 2015); *Laidlaw Transit, Inc.*, 315 NLB 79, 82 (1994); *Valley Special Needs Program, Inc.*, 314 NLRB 903, 913 (1994). Based on the above, I find that Respondent's rules prohibiting employees from conducting personal business on company time or company property are unlawful because the proffered justifications for these work rules do not outweigh the significant potential impact of the rules on substantial core Section 7 rights. Thus, I find that Respondent's maintenance these rules at paragraphs 5(h) and 6(c) of the complaint violates Section 8(a)(1) of the Act.

H. The Respondent's Maintenance of Its No Solicitation or Distribution During Working Hours Rule Violates Section 8(a)(1)*. (Complaint Par. 5(i))*

Paragraph 5(i) of the General Counsel's complaint alleges that since about August 28, 2016, Respondent has maintained the following policies in its employee handbook:

> (i) Prohibiting employees from "Solicitation or distribution of literature for any purpose during working hours without prior authorization from management," as stated at the fourth page of the Discipline/Impermissible Conduct rule found on pages 34-37 of Section 4 of the Employee Handbook.

Similarly, Paragraph 6(d) of the General Counsel's complaint also alleges that since about August 28, 2016, Respondent has maintained the same following policies in its policies and procedures manual:

> (d) Prohibiting employees from "Solicitation or distribution of literature for any purpose during working hours without prior authorization from management," as stated at paragraphs II(B)(1)(iii)(i) and II(B)(1)(iii)(j) of the Discipline and Corrective Action Policy #106.03.01 of the Policies & Procedures manual.

Pierson opined that the rules were justified to prevent employees from selling stuff at work. (Tr. 174–175.) He also opined that employees should not have to be solicited for things that are not work-related. (Tr. 170.) Pierson also stated that a business justification for this rule is specific to the distribution by employees of training literature and it is intended to ensure proper compliance of Respondent and its employees to applicable Federal, State, and local laws and regulations covering the EMT industry. (Tr. 197–198, 205–206.) Pierson also repeats his opinion from earlier that an exception to this rule also applies for an employee to solicit another employee to go to union meetings or distribute literature about after-hours union meetings during working hours. If an employee has any question that this union meeting exception to the rule exists, they need only ask Respondent's management team, a direct supervisor, or their shop steward for confirmation. (Tr. 170–171, 198–199.) Moreover, Pierson also opines that if any employee wants to solicit their personal business such as selling Girl Scout cookies at work during business hours, the employee need only seek prior approval from Respondent's management team. (Tr. 199.)

Again, the General Counsel argues that these rules are overbroad and that they fail to clarify that the non-solicitation/distribution restrictions do not apply during non-work time and that they also do not apply in non-work areas such as Respondent's break room, kitchen, backyard, and parking lots. (GC Br. at 25–27.)

I find that these rules, reasonably construed, would restrict employees' protected activities. It is well established that employees have a right to solicit during nonworking time and distribute literature during nonworking time in nonworking areas. *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615 (1962); see also *Republic Aviation*, 324 U.S. 739 (1945) (Restrictions on solicitation, without limitations or exceptions for nonwork time or nonwork areas have long been found contrary to the purposes of the Act.). Also, the Board has long recognized the principle that "[w]orking time is for work," and thus has permitted employers to adopt and enforce rules prohibiting solicitation during "working time," absent evidence that the rule was adopted for a discriminatory purpose. *Conagra Foods, Inc.*, 361 NLRB 944, 945 (2014), citing to *Peyton Packing Co.*, 49 NLRB 828, 843 (1943), enfd. 142 F.2d. 1009 (5th Cir. 1944), cert. denied 323 U.S. 730 (1944).

However, solicitation cannot be banned during nonworking times in nonworking areas, nor can bans be extended to working areas during nonworking time. *UPS Supply Chain Solutions, Inc.*, 357 NLRB 1295, 1296 (2011). In addition, rules prohibiting the distribution of union literature during nonworking times in nonworking areas are presumptively unlawful. See, e.g., *Titanium Metals Corp.*, 340 NLRB 766, 774–775 (2003); *Chromalloy Gas Turbine Corp.*, 331 NLRB 858, 858–859 (2000). "Interference with employee circulation of protected material in nonworking areas during off-duty periods is presumptively a violation of the Act unless the employer can affirmatively

demonstrate the restriction is necessary to protect its proper interest." *Waste Mgmt. of Arizona, Inc.*, 345 NLRB 1339, 1346 (2005), quoting *Champion International Corp.*, 303 NLRB 102, 105 (1991).

The Respondent's non-solicitation, non-distribution policy bans solicitation and distribution "during working hours without prior authorization from management." The broad definition of solicitation encompasses union activity, because it includes canvassing, soliciting, or seeking to obtain membership in or support for any organization, requesting contributions, and posting or distributing handbills, pamphlets, petitions, and the like of any kind. Given the rules' use of the disjunctive, the Respondent has banned union solicitation and distribution during nonwork time. Moreover, banning solicitation or distribution during working hours is overbroad and presumptively invalid, as it would reasonably be construed as prohibiting such conduct during break times or periods when employees are not actually working. *Laidlaw Transit, Inc.*, 315 NLRB 79, 82 (1994). The Respondent's stated justification for the rule—limiting distributions by employees during working hours to distribution of training literature intended to ensure proper compliance of Respondent and its employees to applicable Federal, State, and local laws and regulations covering the EMT industry—does not apply to the ban on activity which occurs during nonwork time. In addition, I further find that being required to seek management's preapproval of an employee's solicitation or distribution is coercive and also unlawful. See, e.g., *Brunswick Corp.*, 282 NLRB 794, 795 (1987) (Board affirms prior holdings that any rule that requires employees to secure permission from their employer as a precondition to engaging in protected concerted activity on an employee's free time and in nonwork areas is unlawful.). Accordingly, the Respondent's maintenance of the non-solicitation/non-distribution rules as alleged in paragraphs 5(i) and 6(d) of the complaint violates Section 8(a)(1).

I. The Respondent's Maintenance of Its No Use of Social Media to Disparage Company or Anyone Else Rule Violates Section 8(a)(1)*. (Complaint Par. 6(a))*

Paragraph 6(a) of the General Counsel's complaint alleges that since about August 28, 2016, Respondent has maintained the following policies in its policies and procedures manual:

Prohibiting employees from "us[ing] blogs, SNS, or personal Web sites to disparage the company, its associates, customers, vendors, business practices, patients, or other employees of the company," and from "post[ing] pictures of. . . other employees on a Web site without obtaining written permission," as stated at paragraphs III(C) and III(F) of the Internet Social Networking and Blogging Policy #105.04.01 of the Policies & Procedures manual (bate stamped pages 306-307).

Pierson and/or Bonifay generally testified that this rule is necessary due to privacy concerns of Respondent's patients and customers private personal information and their medical conditions and fear of incurring a HIPAA and Medicare regulations violation. (Tr. 134–135; 151, 199–202.) Nothing in this rule, however, prohibits the disclosure of patient information so I reject this justification as illegitimate.

The General Counsel argues that this rule is overbroad as it prohibits all employee disparagement of Respondent, its business practices, and terms and conditions of employment. (GC Br. at 19–21.) Moreover, the General Counsel further argues that Section 7 of the Act protects an employee's right to publicly disparage her employer to gain support for an ongoing labor dispute or induce group action as long as the communication is not malicious. Id.

I find that this rule, reasonably construed, would restrict employees' protected activities. As indicated by the General Counsel, employees have a right under the Act to use social media to communicate with each other and with the public to improve their terms and conditions of employment. See, e.g., *Three D, LLC*, 361 NLRB 308 (2014), affd. 629 Fed.Appx. 33 (2d Cir. 2015). On its face Respondent's blogging rule would potentially interfere with that right by effectively discouraging employees from using the common and most efficient method of identifying and directing coworkers and others to the Respondent's website to obtain further information and communicate directly with the Respondent in support of the employees' work-related concerns or disputes. Cf. *UPMC*, 362 NLRB 1704, 1704–1705 and fn. 5 (2015) (employer's prohibition against employees using its logos or other copyrighted or trademarked materials on social media unlawfully interfered with employee rights under the Act).

In addition, as argued by the General Counsel, the Board has long recognized that Section 7 protects employees' rights to seek support from and speak with third parties, including customers, concerning labor disputes and other workplace concerns. See, e.g., *First Transit Inc.*, 360 NLRB 619 (2014), and *Karl Knauz Motors, Inc.*, 358 NLRB 1754 (2012), and cases cited therein. Although the Board recognizes that there are limits to what an employee might say to a customer or the public about the employer, specifically, they are not protected when they engage in disparagement of the employer's product or to engage in malice, the Board also recognizes that sometimes these protected discussions with third parties may result in putting the employer in a bad light, without a loss of protection of the Act.

Here, the Respondent's blogging rule limiting employee communications to third parties about the employer, its employees, and terms and conditions of employment are extraordinarily broad and are not consistent with employees protected right to seek outside support concerning their terms and conditions of employment. These are facially neutral rules, in that they do not expressly interfere with Section 7 rights. However, in encompassing the right to reach out to third parties about their working conditions, these rules have a reasonable tendency to interfere with employees' Section 7 rights. The Respondent has not asserted any specific justification for these rules, although it is understandable that the Respondent would want to control its image and the information made public, and that it would not want its customers to be dissuaded from maintaining their relationship with the Respondent. However, these generalized explanations for the rules do not outweigh the important, long-recognized protected right of employees to seek support from third parties, including customers or the public, in labor disputes or a concerted attempt to improve terms and conditions of employment. Thus, on balance, I find that this blogging rule at paragraph 6(a) of the complaint violates Section 8(a)(1) of the Act pursuant to the *Boeing* balancing test.

J. Respondent's Other Affirmative Defenses Lack Merit

I reject Respondent's argument that the Union waived its right to challenge the maintenance of Respondent's Employee Handbook and Manual rules as no evidence in support of this argument was provided that the Union explicitly stated that it was waiving the Section 7 rights implicated by Respondent's rules.[11] Also, a union cannot waive an employee's right to solicit during non-worktime and distribute literature in non-work areas, as this waiver right resides with the employee and not the union.

In addition, I further reject as irrelevant Respondent's evidence and argument that it did not enforce its rules to restrict Section 7 activity and that Respondent's employees have not complained about its rules. The rules are found to be unlawful due to their likely interference with employees' protected activity regardless whether a grievance has been filed or they have been disciplined under the questioned 13 rules. Moreover, Respondent has issued a written discipline to an employee for speaking to a union representative during non-work time in a non-work area, although Respondent subsequently rescinded the written discipline. (R Exh. 2.) This shows that even some Respondent supervisors interpret these rules and policies to restrict Section 7 activity.

Finally, the CBA does not supersede any of the 13 questioned rules as it only supersedes Respondent's policies that conflict with the express terms of the CBA and none of these questioned rules conflict with the terms of the CBA. (Jt. Exh. 17, pp. 4 and 33.)

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent has unlawfully interfered with employees' exercise of their NLRA rights in violation of Section 8(a)(1) of the Act by maintaining the following rules in its employee handbook and manual:

(a) "The e-mail system is intended for business use only. The use of the company's e-mail system to solicit fellow employees or distribute non job-related information to fellow employees is strictly prohibited," as stated in the second paragraph of the Electronic Mail and Monitoring rule found on pages 12 and 13 of Section 4 of the employee handbook. (Jt. Exh. 14 at sec. 4, 12–13.)

(b) Prohibiting employee use of the company's email System "To solicit employees or others," as stated at the third page of the Acceptable Use of Electronic Communications rule found on pages 16 to 19 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at sec. 4, 18.)

(c) "Inappropriate communications . . . even if made on your own time using your own resources, may be grounds for discipline up to and including immediate termination," as stated at the first page of the Social Media rule, found on pages 20 and 21 of Section 4 of the employee handbook. (Jt. Exh. 14 at sec. 4, 20.)

(d) "Do not disclose confidential or proprietary information regarding the company or your coworkers," as stated in numbered paragraph 2 of the Social Media rule, found on pages 20 and 21 of section 4 of the employee handbook. (Jt. Exh. 14 at sec. 4, 20.)

(e) "You may not use the company name to endorse, promote, denigrate or otherwise comment on any product, opinion, cause or person," as stated in numbered paragraph 4 of the Social Media rule, found on pages 20 and 21 of section 4 of the employee handbook. (Jt. Exh. 14 at sec. 4, 21.)

(f) "Do not use or post photos of coworkers without their express consent," as stated in numbered paragraph 5 of the Social Media rule, found on pages 20 and 21 of section 4 of the employee handbook. (Jt. Exh. 14 at sec. 4, 21.)

(g) "Only Rudy, Helen or human resources can give out any information on current or former employee compensation," as stated in the second paragraph of the Protecting Company Information rule, found on page 24 of section 4 of the employee handbook. (Jt. Exh. 14 at sec. 4, 24.)

(h) Prohibiting employees from "Conducting personal business on company time or company property" as stated at the fourth page of the Discipline/Impermissible Conduct rule found on pages 34–37 of section 4 of the employee handbook. (Jt. Exh. 14 at sec. 4, 37.)

(i) Prohibiting employees from "Solicitation or distribution of literature for any purpose during working hours without prior authorization from management," as stated at the fourth page of the Discipline/Impermissible Conduct rule found on pages 34–37 of Section 4 of the employee handbook. (Jt. Exh. 14 at sec. 4, 37.)

(j) Prohibiting employees from "us[ing] blogs, SNS, or personal Web sites to disparage the company, its associates, customers, vendors, business practices, patients, or other employees of the company," as stated at paragraphs III(C) and III(F) of the Internet Social Networking and Blogging Policy #105.04.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #105.04.01, C. at 000306.)

(k) Prohibiting employees from "post[ing] pictures of . . . other employees on a Web site without obtaining written permission," as stated at paragraphs III(C) and III(F) of the Internet Social Networking and Blogging Policy #105.04.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #105.04.01, F. at 000307.)

(l) Prohibiting employees from "Conducting personal business on company time or company property, as stated at paragraphs II(B)(1)(iii)(i) and II(B)(1)(iii)(j) of the Discipline and Corrective Action Policy #106.03.01 of the Policies & Procedures manual." (Jt. Exh. 15 at Policy #106.03.01, II.B.1.iii.i at 000315.)

(m) Prohibiting employees from "Solicitation or distribution of literature for any purpose during working hours without prior authorization from management," as stated at paragraphs II(B)(1)(iii)(i) and II(B)(1)(iii)(j) of the Discipline and Corrective Action Policy #106.03.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #106.03.01, II.B.1.iii.j at 000315; Tr. 199–200.)

The above unfair labor practices affect commerce within the

[11] As pointed out by the General Counsel, Respondent's rules are undisputedly unlawful with respect to its nonunit employees. GC Br. at 31.

meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that they must cease and desist such practices and take certain affirmative action designed to effectuate the policies of the Act. In a typical case involving unlawful workplace rules, the promulgator of the rules is ordered to rescind the unlawful provisions, provide inserts of revisions to the employee handbooks and manual and post an appropriate notice at Respondent's Solano and Sacramento Counties facilities.

On these findings of fact, conclusions of law, and upon the entire record, I issue the following recommended[12]

ORDER

The Respondent, Medic Ambulance Service, Inc., Sacramento and Solano Counties, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining the following unlawful employee handbook and manual rules that state that:

- "The e-mail system is intended for business use only. The use of the company's e-mail system to solicit fellow employees or distribute non job-related information to fellow employees is strictly prohibited," as stated in the second paragraph of the Electronic Mail and Monitoring rule found on pages 12 and 13 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 12-13.)
- "Prohibiting employee use of the company's email System "To solicit employees or others," as stated at the third page of the Acceptable Use of Electronic Communications rule found on pages 16 to 19 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 18.)
- "Inappropriate communications . . . even if made on your own time using your own resources, may be grounds for discipline up to and including immediate termination," as stated at the first page of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 20.)
- "Do not disclose confidential or proprietary information regarding the company or your coworkers," as stated in numbered paragraph 2 of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 20.)
- "You may not use the company name to endorse, promote, denigrate or otherwise comment on any product, opinion, cause or person," as stated in numbered paragraph 4 of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 21.)
- "Do not use or post photos of coworkers without their express consent," as stated in numbered paragraph 5 of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 21.)
- "Only Rudy, Helen or human resources can give out any information on current or former employee compensation," as stated in the second paragraph of the Protecting Company Information rule, found on page 24 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 24.)
- "Prohibiting employees from "Conducting personal business on company time or company property" as stated at the fourth page of the Discipline/Impermissible Conduct rule found on pages 34-37 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 37.)
- "Prohibiting employees from "Solicitation or distribution of literature for any purpose during working hours without prior authorization from management," as stated at the fourth page of the Discipline/Impermissible Conduct rule found on pages 34-37 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 37.)
- "Prohibiting employees from "us[ing] blogs, SNS, or personal Web sites to disparage the company, its associates, customers, vendors, business practices, patients, or other employees of the company," as stated at paragraphs III(C) and III(F) of the Internet Social Networking and Blogging Policy #105.04.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #105.04.01, C. at 000306.)
- "Prohibiting employees from "post[ing] pictures of . . . other employees on a Web site without obtaining written permission," as stated at paragraphs III(C) and III(F) of the Internet Social Networking and Blogging Policy #105.04.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #105.04.01, F. at 000307.)
- "Prohibiting employees from "Conducting personal business on company time or company property, as stated at paragraphs II(B)(1)(iii)(i) and II(B)(1)(iii)(j) of the Discipline and Corrective Action Policy #106.03.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #106.03.01, II.B.1.iii.i at 000315.)
- "Prohibiting employees from "Solicitation or distribution of literature for any purpose during working hours without prior authorization from management," as stated at paragraphs II(B)(1)(iii)(i) and II(B)(1)(iii)(j) of the Discipline and Corrective Action Policy #106.03.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #106.03.01, II.B.1.iii.j at 000315; Tr. 199–200.)

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

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

(a) Rescind the following provisions located in Respondent's employee handbook and manual:

- "The e-mail system is intended for business use only. The use of the company's e-mail system to solicit fellow employees or distribute non job-related information to fellow employees is strictly prohibited," as stated in the second

[12] 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.

paragraph of the Electronic Mail and Monitoring rule found on pages 12 and 13 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 12-13.)

- "Prohibiting employee use of the company's email System "To solicit employees or others," as stated at the third page of the Acceptable Use of Electronic Communications rule found on pages 16 to 19 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 18.)
- "Inappropriate communications . . . even if made on your own time using your own resources, may be grounds for discipline up to and including immediate termination," as stated at the first page of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 20.)
- "Do not disclose confidential or proprietary information regarding the company or your coworkers," as stated in numbered paragraph 2 of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 20.)
- "You may not use the company name to endorse, promote, denigrate or otherwise comment on any product, opinion, cause or person," as stated in numbered paragraph 4 of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 21.)
- "Do not use or post photos of coworkers without their express consent," as stated in numbered paragraph 5 of the Social Media rule, found on pages 20 and 21 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 21.)
- "Only Rudy, Helen or human resources can give out any information on current or former employee compensation," as stated in the second paragraph of the Protecting Company Information rule, found on page 24 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 24.)
- "Prohibiting employees from "Conducting personal business on company time or company property" as stated at the fourth page of the Discipline/Impermissible Conduct rule found on pages 34-37 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 37.)
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and remove such rules from any and all employee publications or documents to which it is a party.

(b) Furnish employees at the Solano and Sacramento Counties facilities with inserts for the current policies that (1) advise employees that the unlawful prohibition or restriction has been rescinded, or (2) provide the language of a lawful prohibition or restriction, or to the extent that the Respondent has not already done so, publish and distribute revised policies that (1) do not contain the unlawful prohibition or restriction, or (2) provide the language of a lawful prohibition or restriction.

(c) Within 14 days after service by the Region, post at its facilities in and around Solano and Sacramento Counties, California, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall also be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the 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 February 23, 2017.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, at Washington, D.C. October 25, 2019

[13] 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."

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 a representative 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 do anything to prevent you from exercising the above rights.

WE WILL NOT maintain the following rules in our employee handbook or manual, or anywhere else, that can be construed to prohibit you from talking to each other about your wages, hours, and other terms and conditions of employment, or otherwise restrict you from engaging in protected activities:

- "The e-mail system is intended for business use only. The use of the company's e-mail system to solicit fellow employees or distribute non job-related information to fellow employees is strictly prohibited," as stated in the second paragraph of the Electronic Mail and Monitoring rule found on pages 12 and 13 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 12–13.)
- "Prohibiting employee use of the company's email System "To solicit employees or others," as stated at the third page of the Acceptable Use of Electronic Communications rule found on pages 16 to 19 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 18.)
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- "Only Rudy, Helen or human resources can give out any information on current or former employee compensation," as stated in the second paragraph of the Protecting Company Information rule, found on page 24 of Section 4 of the Employee Handbook. (Jt. Exh. 14 at Sect. 4, 24.)
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- "Prohibiting employees from "post[ing] pictures of . . . other employees on a Web site without obtaining written permission," as stated at paragraphs III(C) and III(F) of the Internet Social Networking and Blogging Policy #105.04.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #105.04.01, F. at 000307.)
- "Prohibiting employees from "Conducting personal business on company time or company property, as stated at paragraphs II(B)(1)(iii)(i) and II(B)(1)(iii)(j) of the Discipline and Corrective Action Policy #106.03.01 of the Policies & Procedures manual. (Jt. Exh. 15 at Policy #106.03.01, II.B.1.iii.i at 000315.)
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WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind the employee handbook and manual rules set forth above, and either WE WILL (1) furnish all current employees with inserts for our employee handbook and manual that (a) advise that the overly-broad provisions or requirements have been

rescinded, or (b) provide language of the lawful provisions or requirements; or (2) publish and distribute revised employee handbooks and manuals that (a) do not contain the overly-broad provisions or restrictions, or (b) provide language of the lawful provisions or restrictions.

MEDIC AMBULANCE SERVICE, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CA-193784 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.