

**Tecumseh Packaging Solutions, Inc. and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO.** Case 7-CA-49861

June 2, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

On July 16, 2007, Administrative Law Judge Karl H. Buschmann issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has considered the judge's decision and the record in light of the exceptions<sup>1</sup> and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.<sup>2</sup>

The judge found that the Respondent did not violate Section 8(a)(1) of the Act by promulgating and maintaining an overly broad no-loitering rule. We disagree. In *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), the Board found that a rule prohibiting "[l]oitering on company property (the premises) without permission from the Administrator" violated Section 8(a)(1) of the Act because it would reasonably chill employees in the exercise of their Section 7 rights. *Id.* at 655. In so finding, the Board explained that "employees could reasonably interpret the rule to prohibit them from lingering on the [r]espondent's premises after the end of

<sup>1</sup> No exceptions were filed to the judge's findings that the Respondent violated Sec. 8(a)(1) and (5) of the Act by unilaterally implementing the following changes in the unit employees' terms and conditions of employment: a wage increase, changes in health insurance, a change in the manner of calculating overtime hours, a new 401(k) plan, and a new employee handbook. There were also no exceptions to the judge's findings that the Respondent violated Sec. 8(a)(5) by effectuating a complaint procedure contained in the unlawfully implemented handbook, and Sec. 8(a)(1) by maintaining work rules containing overly broad solicitation and distribution prohibitions.

<sup>2</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

We will modify the judge's recommended Order to conform to the violations found and to the Board's standard remedial language. We will also substitute a limited bargaining order for the judge's recommended affirmative bargaining order in accordance with *Mimbres Memorial Hospital*, 337 NLRB 998, 998 fn. 2 (2002). We will substitute a new notice to conform to the Order as modified.

a shift in order to engage in Sec[ti]on 7 activities, such as the discussion of workplace concerns." *Id.* at 649 fn. 16. In this case, the work rule at issue prohibits "[l]oitering on Company property after working hours[.]" As in *Lutheran Heritage*, employees could reasonably interpret the rule to prohibit Section 7 activity.

The Respondent raises various concerns that may prompt an employer to ban after-hours loitering, such as prevention of violence and avoidance of liability for accidents and injuries. Such concerns may well be legitimate, but our decision does not prevent employers from maintaining rules and policies tailored to those concerns. What employers may not do, however, is maintain overbroad no-loitering rules that reasonably tend to chill the exercise of Section 7 rights.<sup>3</sup>

ORDER

The National Labor Relations Board orders that the Respondent, Tecumseh Packaging Solutions, Inc., Tecumseh, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining employee work rules containing overly broad prohibitions against loitering, solicitation, or distribution.

(b) Refusing to bargain with the Union as the representative of its employees in an appropriate bargaining unit by making unilateral changes in their terms and conditions of employment.

(c) Giving effect to a complaint procedure contained in its unilaterally implemented employee handbook.

(d) 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 its overly broad work rules prohibiting solicitation and distribution of union material during working hours and loitering on company property after working hours.

(b) Upon request of the Union, rescind the unilateral changes to unit employees' wages, health insurance,

<sup>3</sup> We reject the Respondent's suggestion that *Adtranz ABB Daimler-Benz Transportation v. NLRB*, 253 F.3d 19 (D.C. Cir. 2001), supports the judge's decision. *Adtranz* is distinguishable on two grounds. First, *Adtranz* concerned employer rules barring abusive and threatening language and limiting solicitation and distribution in the workplace during working time—not, as here, an after-hours no-loitering rule. Second, the rule at issue here was more likely than those in *Adtranz* to chill the exercise of Sec. 7 rights because it was maintained in the context of repeated, unlawful unilateral changes evidencing the Respondent's indifference to its obligations under the Act. See *Cardinal Home Products*, 338 NLRB 1004, 1006 (2003) (similarly distinguishing *Adtranz*).

manner of calculating overtime hours, 401(k) plan, and employee handbook.

(c) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All production and maintenance employees employed by the Respondent at its 707 S. Evans Street, Tecumseh, Michigan location; but excluding all supervisors, office workers, and guards.

(d) Rescind any discipline issued to unit employees as a result of the unilateral implementation of rules contained in the employee handbook, and make its employees whole for any losses suffered as a result of the unilateral implementation of those rules.

(e) Within 14 days from the date of this Order, remove from its files any reference to any such discipline, and within 3 days thereafter notify the employees in writing that this has been done and that the discipline will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility at 707 S. Evans Street, Tecumseh, Michigan, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, 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

<sup>4</sup> 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."

employees employed by the Respondent at any time since June 12, 2006.

(h) 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.

## 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 employee work rules containing overly broad prohibitions against loitering, solicitation, or distribution.

WE WILL NOT refuse to bargain with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (the Union), as the collective-bargaining representative of our employees in an appropriate bargaining unit by making unilateral changes in their terms and conditions of employment.

WE WILL NOT give effect to the complaint procedure contained in the employee handbook that we unlawfully implemented without bargaining with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights set forth above, which are guaranteed by Section 7 of the Act.

WE WILL rescind our overly broad work rules prohibiting solicitation and distribution of union material during working hours and loitering on company property after working hours.

WE WILL, if the Union asks us to, rescind the unilateral changes we made to employees' wages, health insurance, manner of calculating overtime hours, 401(k) plan, and employee handbook.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment, no-

tify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All production and maintenance employees employed by the Respondent at its 707 S. Evans Street, Tecumseh, Michigan location; but excluding all supervisors, office workers, and guards.

WE WILL rescind any discipline we issued any of you as a result of our unlawful unilateral implementation of rules contained in the employee handbook, and WE WILL make our employees whole for any losses suffered as a result of the unilateral implementation of those rules.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to any such discipline, and WE WILL, within 3 days thereafter, notify the affected employees in writing that this has been done and that the discipline will not be used against them in any way.

TECUMSEH PACKAGING SOLUTIONS, INC.

*Michael P. Silverstein, Esq.*, for the General Counsel.  
*Robert J. Brown, Esq. (Thompson Hine, LLP)*, of Dayton, Ohio,  
for the Respondent.

*John G. Adam, Esq. (Martens, Ice, Klass, Legghio & Israel, P.C.)*, of Royal Oak, Michigan, for the Charging Party.

#### DECISION

##### STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Detroit, Michigan, on March 28, 2007. The charge was filed by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, AFL-CIO (the Union) on September 6, 2006, as amended on November 6, 2006, and on December 13, 2006. The complaint was issued December 19, 2006. The complaint alleges that the Respondent, Tecumseh Packaging Solutions, Inc., violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). More specifically, it is alleged that the Respondent unilaterally and without bargaining with the Union implemented certain conditions of employment for its unit employees, including a wage increase, a change in the holiday and overtime calculation, a new 401(k) plan, new work rules contained in the employee handbook, a change in health insurance, and a changed grievance procedure. The complaint also challenges new work rules as an unlawful interference with the employees' rights guaranteed them under Section 7 of the Act. The Respondent filed an answer admitting the jurisdictional allegations in the complaint, but denying the commission of any unfair labor practices.

By order consolidating cases and notice of hearing, dated January 28, 2007, the Regional Director ordered that Case 7-RD-3544, a petition to decertify the Union, be consolidated for the purpose of a hearing to determine whether the unfair labor practices alleged in the complaint in Case 7-CA-49861 bear a

causal relationship to the employee disaffection reflected in the filing of the decertification petition. Following the hearing in Case 7-CA-49861 and having performed the function of the hearing officer in Case 7-RD-3544, as requested by the Regional Director, Case 7-RD-3544 was severed at the conclusion of the hearing and remanded to the Regional Director for appropriate disposition of the case in accordance with Section 102.64 through 104.66 of the Board's Rules and Regulations.

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

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent, Tecumseh Packaging Solutions, Inc., is an Ohio corporation, engaged in the manufacture, nonretail sale, and distribution of corrugated paperboard boxes and related products at its facility at 707 S. Evans Street, Tecumseh, Michigan, where it annually derived revenues in excess of \$500,000 and purchased goods and materials valued in excess of \$50,000 from points located outside the State of Michigan. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent, Tecumseh Packaging Solutions, Inc. is the successor to Tecumseh Corrugated Box (TCB), which manufactured and sold paper corrugated boxes in several facilities in Michigan, Ohio, and Indiana. The Union represented the production and maintenance employees at the Tecumseh, Michigan facility, which is the subject of the current proceeding. Their collective-bargaining agreement covering the 72 employees was effective from June 15, 2004 to June 15, 2008 (GC Exh. 2).

By letter of March 24, 2006, TCB advised the Union that management was considering the sale of its assets to Akers Packaging Service, Inc. and that the previous owners, Jeff and Jim Robideau, would continue their management roles in the new company (GC Exh. 3). On May 8, 2006, Jim and Bill Akers, the incoming owners met with the employees and formally announced the sale of TCB's assets to Akers Packaging Service. The new owners emphasized that the new arrangement would consist of an acquisition of assets without assuming any liabilities, that the new company would not recognize the Union nor honor the union contract. According to Akers, he had no problem with the employees wanting to be represented by a union, but that they would be wasting their money, because he would not give them anything in a bargaining agreement that he would not give them in regular work rules. Akers assured the employees that their hourly pay would remain the same, and that he would attempt to get them comparable medical insurance, but that other insurance benefits, such as disability, life, dental, and vision insurance, as well as a pension plan, would be the responsibility of the employees. The employees were told that the new company would start with about 50 em-

ployees and hopefully operate with 42 employees, and that applicants would go through an interview, take a drug test, and a physical. Instead of three shifts, Akers hoped to run the Company with two shifts.

Upon learning of the events, Connie Malloy, staff representative for the Union, contacted Jeff Robideau, president of TCB, to request bargaining over the effects of the pending sale of the Company to the new owners. As a result, the parties reached a supplemental agreement, dated May 18, 2007, governing the terms for the effects of the transaction upon the employees (GC Exh. 4).

Having completed the assets acquisition on June 12, 2006, the Respondent began operations without interruption at the same location using the same equipment with 28 full-time production and maintenance employees of the predecessor and approximately 6 temporary employees (Jt. Exh. 1). Jeff Robideau, the prior president, continued as the general manager of the newly named company. Initially, the Respondent operated with one shift, after a few weeks the Employer expanded the operation to two shifts. All employees received a set of work rules (GC Exh. 15). The rules contain the following prohibitions: Engaging in any unauthorized activity during working hours that is not related to the employee's regular job responsibilities; [p]osting, distribution [sic], or circulating of unauthorized notices, posters, and placards during working hours and in working areas. The rules also prohibit "[l]oitering on Company property after working hours."

By letter of June 20, 2006, the Union demanded recognition and requested bargaining on behalf of the production and maintenance employees and also demanded that the Respondent maintain the status quo regarding salary and other benefits until a new agreement is reached (GC Exh. 5). The Respondent by letter of June 2, 2006, agreed to recognize the Union, the duty to bargain, and to maintain the status quo (GC Exh. 6). The Respondent also offered to meet the Union on July 26, 2006, for an initial bargaining session.

Prior to any meeting with the Union, the Respondent held a meeting with the employees on or about July 14, 2006. Management informed the employees that they had done a good job and that they would get a 2.5 percent pay increase, effective July 1, 2006. The collective-bargaining agreement provided for a 2 percent increase in pay, effective June 15, 2006. The Respondent admitted that it did not inform the Union or bargain with the Union about the implementation of the pay raise.

The first bargaining session was held on July 26, 2006. Representing the Union were Timothy Michels, union president, and Connie Malloy. The Respondent was represented by Jeff Robideau, Bill Akers, Rob Waynick, production manager, and Robert J. Brown, attorney. The Union offered a contract proposal along the lines of the expired agreement (GC Exh. 8). The Union raised the issue of holiday and vacation pay for time lost as a result of a holiday. The Respondent took the position that an employee had to work at least 40 hours before getting overtime pay. The issue arose when employees were not scheduled for work on July 4, 2006, and worked on the following Saturday without getting overtime. The Union's contract proposal contains a proviso specifically dealing with the issue. Company witnesses disagreed that the issue was discussed at

the union meeting. The Union also discussed a 401(k) plan under which the Company would match 50 percent of an employee's contributions up to 4 percent. The Company did not submit a counterproposal. Also discussed at the meeting was health insurance. The Respondent had obtained Humana PPO health care coverage for the employees and informed the Union of the monthly medical premiums under that plan (GC Exh. 9, R. Exh. 6). The Union discussed its Blue Cross Blue Shield insurance and hoped to obtain a quote from that insurance carrier.

The parties did not meet for their next bargaining session until September 22, 2006. In the meantime, the Respondent implemented several terms and conditions of employment which, according to the General Counsel, should have been the subject of collective bargaining with the Union. As mentioned during its meeting with the employees on May 8, 2006, the Respondent instituted a 401(k) plan, effective September 1, 2006, and posted a memorandum to that effect on July 26, 2006 (GC Exh. 17). The Respondent admitted that it did not inform the Union or bargain with it about the implementation of the new 401(k) plan, even though the Union had proposed a 401(k) plan as a part of its contract offer (GC Exh. 8).

Similarly, the Respondent effectuated a change in computing overtime for employees who worked following a holiday. The Respondent posted a memorandum on July 26, 2007, entitled, "Notice Regarding Tecumseh Packaging Solutions, Inc. Overtime Pay Policy." The Respondent announced that there "has been a change to the way overtime hours are calculated when considering hours worked" (GC Exh. 16). Even though the Union had raised the issue at the bargaining table and made the same proposal in its contract offer, the Respondent failed to notify the Union and to bargain with the Union, when it posted the memorandum notifying the employees of the policy changes (GC Exh. 8, p. 6).

In August or September 2006, the Respondent conducted an informational meeting with the employees about the Company's 401(k) plan. Representatives from UBS Financial and Hartford Insurance were present and discussed investment options. The Respondent did not notify the Union of the meeting. In addition, the Company passed out the new employee handbook to the employees (GC Exh. 18). The handbook contained several provisions, the substance of which the Union had intended to discuss. However, the Respondent did not notify the Union, nor offer to bargain with it prior to implementing the provisions of the new handbook.

At the May 8, 2006 meeting with the employees, the Respondent assured the employees that it hoped to provide them with comparable medical insurance. The Respondent had obtained Humana PPO healthcare coverage for its employees (R. Exh. 6). During the July 26, 2006 bargaining session, the Union raised the issue of health insurance and offered to obtain a quote from the Steelworkers plan by Blue Cross Blue Shield of Massachusetts. In the meantime, the Respondent negotiated with Blue Cross Blue Shield (GC Exh. 26). On August 14, 2006, the Respondent had already decided to switch its medical plan back to Blue Cross Blue Shield of Michigan, effective October 1, 2006 (GC Exh. 25). Without notifying the Union or waiting for the quote from the Union's health plan, the Respon-

dent notified the employees by memorandum of August 30, 2006, entitled "Medical Coverage—Open Enrollment for Blue Cross Blue Shield" (GC Exh. 19). The Respondent provided the Union with the benefit details in September 2006 (GC Exh. 21). Admittedly, the Respondent did not consult with the Union nor offered to bargain with the Union about the switch to Blue Cross Blue Shield.

On September 22, 2006, the parties held their second bargaining session. The Union requested information about the Company's healthcare plan (GC Exh. 12). The Company provided certain cost information to the Union (GC Exh. 9). A discussion ensued about the Blue Cross Blue Shield insurance plans and the Union's healthcare proposal, dated September 5, 2006 (GC Exh. 14). The Respondent also submitted a contract proposal which was discussed at great length (GC Exhs. 13, 14).

The final issue involved Timothy Michels, an employee and union president of Local 1026. He submitted a grievance report, dated September 27, 2006, to Rob Waynick, production manager, complaining about the Company's failure to perform bidding for available jobs (GC Exh. 23). In the middle of October 2006, Waynick returned the grievance to Michels telling him that the Company would not accept the grievance, and advised him to use the company complaint procedure contained in the employee handbook. Michels requested Waynick to confirm this in writing. Waynick complied, stating: "For any issues in the workplace the employee's handbook has a complaint procedure that needs to be followed" (GC Exh. 24). The Union challenged the procedure, because the handbook was implemented without bargaining with the Union.

#### Analysis

The parties are in agreement that the Respondent is a successor corporation to TCB. This becomes clear, considering the totality of the circumstances showing a continuity of the business operation in the same plant with the same, albeit reduced, work force, performing the same work on the same equipment and producing the same products under the same manager, namely Jeff Robideau as general manager. As a successor employer, the Respondent has the right to set the initial terms of employment for the employees. However, the bargaining obligation attaches once a successorship exists, that is when the holdover employees constitute a majority of the employees. At that point unilateral changes in existing terms become unlawful. *NLRB v. Burns Security Services*, 406 U.S. 272 (1972); *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987).

The record shows that the Respondent told the employees at the May 8, 2006 meeting that it would not be bound by the predecessor's collective-bargaining agreement and announced the initial terms of employment, which included the employees' wages, their work shifts, different health insurance, and the elimination of the Employer's pension and insurance expenses. With the commencement of its operation on June 12, 2006, the Respondent had implemented its work rules, including health-care coverage for the employees by the Humana health plan.

By letter of June 20, 2006, the Union made its request to bargain. The Respondent acknowledged the Union's demand by letter of June 22, 2006, and consented to the Union's request.

Clearly the Union had made an unequivocal demand to bargain when the employer's obligation attached. Most of the Respondent's employees were employees of the predecessor obligating the Respondent to bargain with the employees' bargaining representative. *Jerry's Finer Foods*, 210 NLRB 52, 54 (1974). Nevertheless, on July 14, 2006, the Respondent announced to its employees that they would get an immediate wage increase of 2.5 percent even though it had earlier promised an increase of only 2 percent in accordance with the bargaining agreement. Admittedly, the Respondent did not notify the Union nor afford it an opportunity to bargain. The Respondent's unilateral implementation of the 2.5 percent pay raise of July 1, 2006, was therefore unlawful, even though the change benefited the employees. *NLRB v. Exchange Parts*, 375 U.S. 405 (1964).

In August 2006, the Respondent announced to the employees that it changed insurance companies from Humana to Blue Cross Blue Shield, effective October 1, 2006. As already discussed above, it was understood at the first bargaining session that the Union expected to obtain a quote from its health insurance carrier and to negotiate the issue with the Respondent. Yet the Respondent implemented the change without notifying the Union and without affording it the opportunity to bargain. The Respondent's explanation that initially it was forced to go with Humana insurance, and that it had intended all along to be covered by Blue Cross Blue Shield, certainly did not prevent it from notifying the Union and to bargain. It cannot be gainsaid that the Respondent effectuated a significant change in working conditions by switching from one insurance carrier to another without honoring its bargaining obligation. I accordingly find that the Respondent violated Section 8(a)(1) and (5) of the Act.

The Parties agree that the Company's work rules do not address the issue of overtime pay as a result of a holiday. However, the Union's contract proposal submitted at the July 26, 2006 bargaining session does contain such a provision, which states that "time lost from work due to vacation, holidays, and union business shall be considered as time worked for purposes of calculating overtime pay." The issue arose when an employee was not paid following the July 4 holiday. The issue was presented to David Degner, administrative manager. Degner posted a notice in July 2006 regarding the Company's holiday policy, stating that there "has been a change to the way overtime hours are calculated when considering hours worked." According to the notice, the Respondent agreed to consider holiday and vacation hours when figuring overtime so that employees were paid overtime following the July 4 holiday. The Respondent strongly argues that the matter was a mere ministerial correction rather than a change in policy, and points to the testimony of the Company's negotiators that the issue was not discussed at the bargaining session. The union witnesses disagreed and clearly recalled discussing the issue. Considering the demeanor of the witnesses, as well as the wording of the notice and the terms in the Union's contract proposal, I have resolved the credibility issue in favor of the General Counsel. I find that the Respondent unilaterally changed its policy on overtime pay without notice to the Union and without affording it an opportunity to bargain, in violation of Section 8(a)(1) and (5) of the Act.

At the May 8, 2006 meeting with the employees, the Respondent announced that it would offer a 401(k) plan. On about July 26, 2006, the Respondent posted a notice, entitled, new 401(k) plan, notifying the employees that the plan would be set up with the projected enrollment date of September 1, 2006, to be administered by UBS Financial Services and Hartford Insurance Company. Although the Respondent admitted that it did not inform nor bargain with the Union concerning the implementation of the plan, the Respondent argues that it had no obligation to do so, reasoning that the matter had been announced before the bargaining obligation attached and the Respondent had the right to set its own terms and conditions of employment. However, the General Counsel has shown that the program was not in effect at the May meeting, and that the Union had offered to bargain about the issue when it proposed its version of a 401(k) plan as part of its contract offer at the July 26, 2006 bargaining session. At that time the Respondent did not have any 401(k) plan in effect. The record does not show why the Respondent failed to notify the Union of its intentions during the bargaining session on July 26, 2006. Clearly, the Respondent ignored its bargaining obligation and violated the Act by its unilateral conduct.

In late August or early September when the employees were meeting with representatives of UBS and Hartford, the Respondent distributed to the employees a new handbook containing work rules. This was in addition to the work rules announced earlier, when as part of its hiring process, the Respondent issued work rules to the newly hired employees. The new handbook, dated August 8, 2006, is 22 pages long and contains detailed provisions governing employee conduct in the work place, including attendance and absenteeism, substance abuse, violence in the work place, a problem solving process, jury duty and bereavement policies, as well as employee services and benefits. The Respondent argues that the distribution of a handbook had been announced in the May meetings when the Company was permitted to establish its own terms. The General Counsel has shown that the handbook contained new terms and conditions of employment. It is also clear that the Union had proposed to bargain over work rules at the bargaining session. By distributing handbooks containing new work rules and policies affecting the employees without giving notice to the Union and without affording it to bargain, the Respondent acted unilaterally in violation of its promise to maintain the status quo during the negotiations. The Respondent's conduct violated Section 8(a)(1) and (8) of the Act.

Finally, the Respondent improperly rejected a grievance submitted by Timothy Michels to Rob Waynick, Respondent's production manager. The grievance, dated September 12, 2006, challenged the Company's bidding procedure. A month later, Waynick responded and directed Michels in a memorandum, dated October 13, 2007, to follow the Company's complaint procedure contained in the employee handbook. As discussed above, the complaint procedure was one of the provisions unilaterally implemented by the Respondent, when it distributed the employee handbook. Clearly, the Respondent effectuated an improperly implemented work rule contained in the employee handbook.

The General Counsel also challenges two work rules promulgated on June 12, 2006, as overly broad and a no-access rule as invalid. The Respondent concedes that its work rules which prohibit solicitation and distribution of literature during working hours are in conflict with established law and argues that no employees have been disciplined for violating the rules. I accept the Company's representation that none of the employees have been disciplined because of the prohibitions. But maintaining such provisions has a tendency to intimidate the employees. In this regard the law is clear, employees have the right to solicit or distribute union material on their own time. Prohibiting union activity during working hours, as distinguished from working time, is presumptively invalid. *Our Way, Inc.*, 268 NLRB 394 (1983). The record does not show that the Respondent has tolerated solicitation during breaktime or during nonworking time. Accordingly, the rules are facially invalid and unlawful. But I find the other prohibition against loitering on company property lawful. I agree with the Respondent that an employer should have the right to prohibit loitering on company property.

#### 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 Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(c) of the Act:

All production and maintenance employees employed by the Respondent at its 707 S. Evans Street, Tecumseh, Michigan location; but excluding all supervisors, office workers, and guards.

4. By implementing the following terms and conditions of employment without notice to the Union and without affording it an opportunity to bargain collectively and in good faith, the Respondent violated Section 8(a)(1) and (5) of the Act
  - (a) Unilaterally implementing a wage increase for the unit employees.
  - (b) Unilaterally implementing changes to the health insurance of unit employees.
  - (c) Unilaterally implementing a change in the manner of calculating unit employees' overtime hours related to holidays.
  - (d) Unilaterally implementing a new 401(k) plan for its unit employees.
  - (e) Unilaterally implementing a new employee handbook for its unit employees, and attempting to effectuate a complaint procedure contained in the handbook.
5. By maintaining work rules containing overly broad solicitation and distribution provisions, the Respondent interfered with the employees' Section 7 rights, in violation of Section 8(a)(1) of the Act.
6. The unfair labor practices found above affect commerce within the 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 it must be ordered to cease and

desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent failed to bargain collectively and in good faith by unilaterally implementing certain working conditions, it must be ordered to bargain in good faith with the Union and on request by the Union rescind its unilateral actions. The Respondent must also be ordered to rescind its overly broad solicitation rules, but a

make-whole remedy is not necessary here, where none of the employees have been disciplined pursuant to the rules, however, a make-whole remedy is indicated in connection with the implementation of the new handbook.

[Recommended Order omitted from publication.]