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

CUSHMAN AND WAKEFIELD, INC.

and

Case 04-CA-094600
04-CA-102858

MICHAEL LITOSTANSKY, an Individual

*Henry R. Protas, Esq.*
for the General Counsel.
*Richard K. Muser, Esq., Clifton, Budd & DeMaria, LLP,*
for the Respondent.
*John Scully, Esq.,*
for the Charging Party.

# DECISION

## STATEMENT OF THE CASE

SUSAN A. FLYNN, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on September 4 and 5, 2013. The Charging Party, Michael Litostansky, filed the initial charge on December 10, 2012, and the Acting General Counsel issued the complaint on March 13, 2013. The charging party filed a second charge on April 12, 2013 and the Acting General Counsel issued the complaint on June 5, 2013.

The first complaint alleges that Respondent violated Section 8(a)(1) of the Act by interfering with, restraining and coercing employees in the exercise of rights guaranteed under Section 7 of the Act and violated Section 8(a)(1) and (2) of the Act by rendering unlawful assistance and support to a labor organization, that is, by deducting union dues from Michael Litostansky's paycheck without a valid dues check-off form. The second complaint alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby encouraging membership in a labor organization and violated Section 8(a)(4) and (1) of the Act by discriminating against employees for filing charges or giving testimony under the Act, that is, by prohibiting employees from discussing union issues or NLRB contact at the workplace, by threatening employees with loss of their jobs if they engage in such discussions or make such contact, and by issuing a written warning to Michael Litostansky. The Respondent filed answers denying the essential allegations of the complaints.

After the trial, Acting General Counsel, the Respondent, and the Charging Party filed briefs, which I have read and considered.[1] Based on the entire record in this case,[2] I make the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent co-manages property for J.P. Morgan Chase in Newark, Delaware. During a representative 1-year period, the Respondent derived gross annual revenue in excess of $100,000, and purchased and received goods and materials valued in excess of $5000 directly from suppliers located outside the State of Delaware. 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.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### THE FACTS

#### BACKGROUND

Respondent, Cushman and Wakefield (C&W), provides maintenance services for J.P. Morgan Chase at its Data Center located in Newark, Delaware. Its employees are responsible for day-to-day operations and provide round-the-clock electrical and HVAC maintenance and repair services to the equipment and facilities (7 buildings) in order to ensure that the bank's computers are kept cooled and operating efficiently and that the workspace is cooled and heated for the bank's employees. (Tr. 94.)

ABM Industries co-manages the Data Center with Cushman and Wakefield. Gregory Fernandez is the Group Engineering Manager for ABM Industries/NE Regional Manager for Operations, and he is located in Carlsbad, New Jersey. Fernandez oversees personnel, repair, maintenance, and operations at five different facilities, including the J.P. Morgan Chase Data Center campus in Newark, Delaware. ABM has no employees on-site; all maintenance work is performed by Cushman and Wakefield employees. (Tr. 8–9.)

The highest ranking employee at the Newark facility is Chief Engineer Matt Donovan. He oversees the operations onsite and signs the employees' timesheets and leave slips. (Tr. 30–31, 93–94.) Reporting to Donovan are two assistant chief engineers: David Carey and Robert Wheatley. They are responsible for day-to-day operations, working with contractors on projects, and assigning work to the employees. (GC Exh. 2.)

[1] In his brief, the General Counsel withdrew the allegation of giving the impression of surveillance. Therefore, that issue will not be addressed in this decision.

[2] Minor typographical errors in the transcript are not noted. However, on p. 129 at L. 11, there is a significant error. It should read "inadequate excuse," not "adequate excuse."

## ENGINEERS' SCHEDULES AND DUTIES

The Respondent's maintenance employees work three shifts: 7 a.m. to 3 p.m., 3 p.m. to 11 p.m., and 11 p.m. to 7 a.m. One group of three works Sunday to Thursday and the other group of three works Tuesday to Saturday. (Tr. 128.) The groups thus overlap on Tuesday, Wednesday, and Thursday. Michael Litostansky, the charging party, began his employment with the Respondent as an operating (or facilities) engineer in July 2010. Since early 2012, Litostansky has worked on the third shift, 11 p.m. Tuesday to 7 a.m. Sunday. The other two engineers in his group at the relevant time period were Timothy Owens and Albert Graham, Jr. (Tr. 37, 49, 51.) One of the three was given responsibility for the control center for the night, monitoring the systems. (Tr. 49.) None of the three "white shirts"[3] (Donovan, Carey, or Wheatley) work nights. The highest level employee working with Litostansky on Tuesday, Wednesday, and Thursday nights is Lead Engineer Earl Wolbert. On the weekends, there are only the three engineers, all at the same level. (Tr. 29.)

Each shift has routine duties (known as shift duties) that must be performed on a regular basis – daily, weekly, monthly, and annually. (Tr. 51, 96, 153.) There are also specific preventative maintenance duties that are assigned by an assistant chief engineer via a work order known as a PM (Preventative Maintenance) form. Shift duties are not assigned; the employees are trained as to those duties and are aware that they must perform those duties according to schedule. Prior to the relevant time period, specific assignments were given to the shift as a group rather than to individuals. PM assignments for the month were placed in a binder and the employees on the shift would split the duties amongst themselves. (Tr. 39–40, 63–64.) However, in September or October 2012, the procedure was changed. (Tr. 38–39.) Assignments were no longer given to the shift as a group, but were made to specific employees. Each employee had a folder in the binder, and his PMs for the day were placed in the folder. (Tr. 39–40, 64–65.) The assignment procedure was again changed in January 2013. (R. Exh. 3.) Now there is a binder for the shift, and each employee has a color-coded tabbed section. The PMs for each employee for the month are placed in the binder. (Tr. 43, 64.) PMs are not issued for shift duties such as rounds, taking readings of static transfer switches, or any other of the numerous shift duties, except water testing. (Tr. 162-164). Nonetheless, water testing is expected to be performed regardless whether there is a PM for that duty. (Tr. 15.)

## NEW UNION AND COLLECTIVE-BARGAINING AGREEMENT

The employees became unionized, having voted in favor of Plumbers and Pipefitters Local 74. The first collective-bargaining agreement (CBA) was signed and ratified in August 2011. (GC Exh. 5.) However, the CBA was effective retroactive to February 1, 2011 and expires January 31, 2015. All engineers, including Frank Berster, training engineer, and Rob Richardson, safety engineer, as well as Donovan, Carey, and Wheatley, are in the bargaining unit. Only the TCM, who serves as liaison between the data center and the Respondent, is not in the bargaining unit.

[3] They are not managers but foremen, and wear plain white shirts, while the engineers wear blue shirts with engineering service logos on them.

## UNION DUES AND FEES

Prior to ratification of the new CBA, the engineers had paid "window dues" to the International Union but no union dues to Local 74. The window dues were $24 per month, and they were paid at the union hall. (Tr. 24–25, 91.) The new CBA provides for dues and fees to be deducted from their paychecks, if the employee has signed a dues check-off card. (GC Exh. 5.)

## ENGINEERS' DISSATISFACTION WITH THE UNION AND IMPLEMENTATION OF THE CBA

Prior to his employment with Respondent, Litostansky had signed a dues check-off form for his current employer in April 2010. (R Exh 1.) However, he never signed a dues check-off form after he began working for the Respondent in July 2010. (Tr. 24.) Nonetheless, the Respondent deducted those dues from Litostansky's paychecks at the Union's request beginning at least July 1, 2012, and remitted them to Local 74. Further, the Union had never notified Litostansky of his *Beck* rights.[4] As a result, Litostansky filed a charge with the NLRB against the Union on September 21, 2012, that was amended December 10, 2012. (GC Exh. 6.) That charge was settled[5] and Respondent ceased deducting Litostansky's union dues April 4, 2013.[6] (GC Exh. 9; Tr. 48). After receiving his *Beck* rights, Litostansky became a *Beck* objector and nonunion member. (Tr. 24, 31.) He was the only engineer to become a *Beck* objector. (Tr. 84.)

Other employees were also upset about changes that occurred, or failed to occur, after the CBA was ratified. (Tr. 31, 57, 76.) Most were surprised at the amount of money deducted for the Union; they had understood it would be their dues and the window fee. However, additional fees, of which they had been unaware, were also deducted. Further, dues were deducted retroactive to February 2011, in a large lump sum. When that turned out to be insufficient, a second lump sum was deducted. (Tr. 56–58, 73–74.) Moreover, their health and welfare benefits were not only not retroactive, they did not receive those benefits until October 2011. (Tr. 76.) They were also upset because they were unable to contact their business agent, Tony Papili, to resolve the problems. Therefore, some of them, including Litostansky, asked management, specifically Fernandez and Donovan, about these concerns. (Tr. 26, 75, 79–80.) The employees engaged in much conversation about their complaints with regard to the Union during this time period. Additionally, two other employees, Ray (Reinaldo) Pabon (on the day shift) and Albert Graham, Jr. filed charges with the NLRB on November 5, 2012.[7] (GC Exh. 7, 8; Tr. 58.) Also, a petition was circulated to deauthorize the Union, seeking to prohibit Local 74 from enforcing the union-security clause. (Tr. 32.)

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[4] *Communication Workers of America, et al v. Beck*, 487 U.S. 735 (1988) (A union-security agreement authorizes unions to collect from nonmembers only those fees and dues necessary to fulfill its duties as collective-bargaining representative. If an employee chooses to resign his union membership and to object to the use of union security payments for any purpose other than those directly related to collective bargaining, he is called a *Beck* objector.).

[5] The settlement agreement was approved March 6, 2013. Litostansky was fully reimbursed for those monies. (Tr. 48.)

[6] The parties entered into a stipulation as to those dates and placed that stipulation on the record. (Tr. 11–12.)

[7] Those charges were resolved in the same settlement agreement as Litsostansky's. (GC Exh. 9.)

## NOVEMBER 7, 2012 SHIFT MEETINGS

On November 5 or 6, 2012, Pabon found one of the NLRB documents in his office mailbox with a post-it note from Donovan. The note stated that someone found the form in the copier and had placed it on Donovan's desk. (Tr. 80–81.) It is unclear whether it was the charge form or the deauthorization petition that was on Donovan's desk, as neither Donovan nor Pabon could recall which it was. (Tr. 80, 104.) Donovan testified that he was unaware of the charges filed by Pabon and Graham but he was aware that the petition was being circulated. (Tr. 104.) Although he was unsure, he believed it was the petition that was placed on his desk. Pabon was likewise unsure but did not think his name was on the petition, so he thought it was probably the charge.

Donovan conducts shift meetings when necessary, at the beginning of shifts, to communicate important information to the engineers. (Tr. 160.) On November 7, 2012, he conducted such meetings with each shift in the Control Room. He had observed that the engineers were highly distracted by contract issues, dues deductions, etc., and were not focusing properly on their work. (Tr. 102, 114, 115.) He conducted these meetings with the aim of reminding them how important the facility was and how critical their work was. He first met with the day shift, including Carey, Wheatley, Frank Berster (training engineer), and Rob Richardson (safety engineer). Donovan testified that he told them the distractions must stop, as he had seen the consequences of a "drop load."[8] He also mentioned that someone had put an NLRB form on his desk, and told them that they had to do that sort of activity on their own time, that they were there to work. He denied having said that people would be fired if J.P. Morgan Chase learned about the NLRB activity. He testified that he did say that people would probably be fired if they were to drop load due to not focusing or engaging in non-work related activity. (Tr. 103). Donovan said that he did complain about getting telephone calls from business agent Papili and the union attorney, calling him about grievances on his personal time. (Tr. 111–112, 116–117.) Donovan stated that, in the meeting, Pabon raised the issues of dues and the contract, the matters Donovan felt were the primary distractions. He suggested that the men make a list of their issues with the Union, and offered to set up a meeting with Papili. He hoped to accomplish this by December 1, so the matters could be resolved and the men would be able to focus on their work. (Tr. 105, 112, 124.) However, no list was ever provided to him.

Donovan said that he also met with the night shift, and said essentially the same thing, that the facility was critical and they had to focus on their work. He again asked for a list of issues with the Union. (Tr. 106.)

Litostansky testified that the night shift meeting was attended by engineers Wolbert, Graham, Owens, Mike Harrison, and himself. Donovan was angry and started out by stating that he had been receiving telephone calls from lawyers, at home, when he was eating dinner with his family. He was upset about this disruption to his family life. He stated that the union had been voted in and the contract signed, and if the engineers didn't like it, they could leave C&W. He also stated that someone had left an NLRB form in the office copier. He advised the employees that they could do whatever they wanted offsite, but they were supposed to work when at work. He said what they did on their own time was up to them, but it was important that they stay

[8] A "drop load" occurs when the technology equipment shuts down on the data center floor. (Tr 103.)

focused when at work. He reminded them of the serious consequences of becoming distracted, if the computers failed. (Tr. 32–35, 53–54.)

Graham testified that Wolbert, Owens, Litostansky, and he attended the meeting, and possibly another engineer, Tom Connelly. (Tr. 60.) Donovan said that it had come to his attention that some employees had gone to the NLRB, as he had seen a document left in the copy machine. He said he was sick and tired of this; that the employees could do what they wanted on their own time but not to bring it back to the building or they will be walked out. Donovan said that the NLRB stuff is going to take them off focus and that will "mess up" the operation, when it is their responsibility to ensure that the facility stays online. (Tr. 61.) Graham did ask Donovan about *Beck* rights, as he had raised the issue with shop steward Bill Matarese and business agent Papili but gotten no satisfactory response.

Graham further testified that when he was entering the room for the meeting, he overheard a portion of a conversation between Donovan and Wolbert. He heard Donovan say that Jen Carr (the Maintenance Manager or Facility Manager for Morgan Chase) would "not stand for this" and would walk people out of the building. (Tr. 59.)

Pabon testified that Donovan held a similar meeting with the day shift on November 7, 2012. (Tr. 78.) In attendance were Wheatley, Rob Richardson, Frank Berster, Hank Marchiani, Gary Wilhelm, Mike Lindsay, Matarese, and himself. Pabon said that Donovan was extremely angry. He said that he was upset about some members going to the NLRB, that he would not have any of that, and that if word of it got back to the bank, people would lose their jobs. He said he would see to it that people did lose their jobs if he heard that they were discussing such matters or any non work related matter at the workplace. (Tr. 79, 88.) Donovan told the employees they needed to stay focused on their jobs. (Tr. 86, 88.) He also complained of getting telephone calls from attorneys and the business agent at dinnertime, affecting his family life. Pabon told Donovan that the problem was the nonresponsiveness of the Union, that members had been unsuccessful in meeting with Papili. Donovan offered to try to set up such a meeting. (Tr. 86.) Lindsay told Donovan that he agreed with the others that the deductions for the Union exceeded what they had been led to believe during contract negotiations. (Tr. 80.)

Richardson testified that he recalled Donovan being upset about receiving telephone calls at home in the evenings, and that he wanted the engineers to stay focused on their jobs while at work. (Tr. 172, 176.) He did not recall Donovan saying people would lose their jobs; he recalls Donovan saying if they weren't happy there, they could leave. Richardson said Donovan did not threaten employees with termination or discipline for going to the NLRB, nor for going to the Union or filing grievances. He did not say he was upset that they had gone to the NLRB, nor that people would lose their jobs if it got back to the bank that they had contacted NLRB. Donovan did say he knew employees had contacted the NLRB, as paperwork had been found in the copy machine. He told the group that they could do what they wanted on their own time but were expected to do their jobs when they were at work. He reminded them of the potential consequences of dropping a load, and that the engineers would have to answer to the bank and to C&W about such a situation. The thrust of Donovan's message was that if you are at work, you are expected to do your job. After Donovan concluded, most of the meeting was spent on addressing union issues raised by the engineers. (Tr. 173–174.)

Donovan did not recall the conversation with Wolbert that Graham testified to overhearing. (Tr. 106.) He denied having threatened discipline or termination for contacting the NLRB. (Tr. 107.)

## WATER TREATMENT TESTING

J.P. Morgan Chase contracts with another company, Nalco, to conduct water treatment and testing of the water used at the facility. Nalco injects chemicals in the water and tests the water quality. (Tr. 170.) The purpose is to ensure that the water is stable, at the proper pH level, in order to protect the pipes. (Tr. 96.) However, C&W also performs testing, to ensure that Nalco is doing its work appropriately. The water that is treated includes the water used in the heating, ventilation and air conditioning systems, that control the temperature of the space and thus, the computers. (Tr. 94.) This is important, since the data center is one of only a few worldwide, and a crash could have catastrophic consequences for the economy, as trades would come to a halt until repairs were made.

One of the duties of the third shift is to conduct that water treatment testing. The testing is conducted periodically, by standard, for chemical variables. (Tr. 13, 36.) The testing is scheduled for the Monday, Wednesday, and Friday night shifts,[9] at 5 a.m., after Nalco has injected the chemicals at 2 a.m. It takes approximately 1–½ hours to complete the testing. (Tr. 14, 36, 49, 68, 153, 159.)

The engineers sample water from the open and closed water systems —i.e., the closed system that cools the computers and the open system for water faucets, drinking fountains, toilets, etc. (Tr. 52.) The water samples are placed in sterilized vials, that are placed in an incubator, to determine what undesirable elements may be in the system, such as Legionella, algae, etc. (Tr. 132, 165.) The test results are recorded on water treatment testing logs and signed by the engineer who conducted the test that day. (Tr. 17.) Training Engineer Berster is responsible for monitoring those logs.[10]

That water testing was historically a shift duty, and therefore no PMs were issued for that work. (Tr. 37.) Before Litostansky worked for Respondent, he had prior experience doing water testing. Therefore, he would usually take responsibility for performing that testing when the Friday night shift divided up duties for the night. (Tr. 36–37, 119, 123.) Harrison and Wolbert performed the majority of the tests on Monday and Wednesday nights. (GC Exh. 3, Tr. 118.)

In October 2012, Carey began issuing PMs for water testing. (Tr. 37, 38, 43, 65.) Carey testified that he started issuing these "sheets" for water testing in late 2012, as reminders. (Tr. 153). He said that the third shift had requested those reminders through Donovan. (Tr. 98, 154.) Carey testified that Donovan asked him to issue a "ticket" as a reminder and to track hours to justify staffing. Since the PMs already existed, Carey used them for these purposes rather than

[9] The testing actually occurs the following mornings, Tuesday, Thursday, and Saturday. (Tr. 97.)

[10] Berster is an operating engineer/training coordinator, responsible for overseeing the water treatment program. (Tr. 42.) He works the day shift.

creating a new form (Tr. 155.) Whichever engineer conducted the water testing would sign off on the PM as having completed it, and note the time it took to accomplish. (Tr. 155.)

Carey also testified that around June 2012, Donovan had asked him to make some changes to the PM program. He said that the PM program was in flux for about 6 months in 2012, as it was continually changing, so he met frequently with the engineers to communicate those changes. (Tr. 159.) Initially, all the PMs for the month were placed in a binder for the shift. The engineers would take them out and perform the assignments when they wished to do so. Donovan wanted more structure, so that the assignments were made to specific engineers, and Carey was to check to make sure they were completed. (Tr. 155–156.)

Carey testified that he did not recall any specific discussions with the engineers about PMs and water testing. (Tr. 156.) He denied telling any engineer that he would be issuing work orders for water testing. (Tr. 156.) He did tell them that he would be issuing the PMs as reminders to do the testing, as per their request. He recalled that occurring in January 2013, when each engineer received his individual assignments in a folder in the binder. (Tr. 157.) Carey sent an email to the group at the time. (R Exh. 3.) He denied telling any engineer that they should not do the water testing if they did not have a PM for it. (Tr. 157, 160.) Even as of January 2013, when PMs were issued for water testing, it remained a shift duty, to be done at 5 a.m. (Tr. 159.)

Litostansky testified that Carey notified the shift of the change in assignment procedure in October 2012. (Tr. 38.) Carey met with Graham, Owens, and Litostansky and directed them not to perform water testing unless it was assigned to an individual on a PM because he wanted them all to become proficient on all duties. Litostansky stated that PMs for water treatment testing began appearing in the assignment folders, and he continued to do that testing on most occasions since his coworkers would ask him to do it. (Tr. 38.)

Graham testified that Carey had told them not to perform any duty unless it was assigned on a PM, except in case of emergency. (Tr. 65, 66.) Carey also said that the assignment procedure would continue to change as management documented labor hours.

However, on several dates in December 2012, there were no PMs for water testing. Litostansky testified that he did not perform that testing on the nights it was normally scheduled to be done, since there were no PMs directing him to perform that task and no one asked him to do it.

Apparently, neither Litostansky nor either of the other engineers on the third shift on Fridays inquired of Carey or Donovan whether the water testing was supposed to be conducted, or whether failure to issue PMs for that testing was an oversight. Beginning in January 2013, PMs were being issued for water testing. (Tr. 43, 125–126.)

## WRITTEN WARNING ISSUED TO LITOSTANSKY

At the end of December 2012, Carey did a spot check of the water testing. He testified that since he is not a plumber, but an electrician, he did not routinely review the water testing logs. However, about once a month he would look at the log when he did rounds. If he saw that testing was being done, he checked the incubator and the log. At the end of December, he saw

that nothing was recorded for several dates in December. It was his practice to notify Donovan of such situations. (Tr. 168.)

Donovan testified that Frank Berster, the training engineer, brought the matter to his attention.[11] (Tr. 98.) Donovan said that he then checked the logs for November and December 2012 and noted that the testing had not been conducted on several days in December. Three of those days were Saturday mornings, December 1, 8, and 15, when Litostansky was on duty; the other three were Wednesday nights, December 5, 12, and 19. On December 5, Harrison or Wolbert would normally have been responsible; however, one of them was off that day. (Tr. 119.) The next date was December 8; normally Litostansky performed the task. (Tr. 119.) He was on duty with Graham; Owens was in the Control Center. The next date was December 10, when Harrison did it. It was not done on December 12; Donovan testified that "those guys" were on leave and therefore he took no action. It was a shift duty, and other engineers were on duty, but no one did it. (Tr. 121–122.) Donovan later clarified that either Harrison or Wolbert, who normally did the testing, had been on leave. (Tr. 127.) On December 19, Litostansky was one of the employees on leave. (Tr. 122.) Donovan testified that someone should have picked up the water treatment duty when the individual who normally did it was on leave, as it was a shift duty. (Tr. 129.)

Donovan brought Litostansky and Graham into the office and asked the reason the water testing had not been done on the three Saturday mornings in December. Graham said nothing but Litostansky told him that it was not done because there was no PM for water testing. (Tr. 40, 99–100.) Donovan told them they should have known the water testing needed to be done and done it, whether or not there was a PM.[12] (Tr. 41, 100.)

Donovan advised Fernandez that water testing had not been done on several occasions by the 11 p.m. to 7 a.m. shift. (Tr. 101, 120–121, 123, 131.) Fernandez asked to meet with all the third shift engineers, then checked the logs himself. (Tr. 132, 133.) Donovan continued with his investigation. He wrote up his findings and sent them to Fernandez. Those written findings were not placed into evidence. Donovan observed from his review of the logs that Litostansky had performed the majority of the water testing on Friday nights. (Tr. 123.)

Fernandez met with Wolbert and Harrison, possibly Connolly, who worked the third shift on weeknights. (Tr. 132.)

Donovan sent an email to Graham, Owens, and Litostansky, stating that Fernandez wanted to meet with each one of them, individually. Litostansky met with Fernandez in January 2013, along with shop steward Matarese. (Tr. 41–42.) Fernandez said he was gathering

[11] Berster worked the day shift and served as liaison with Nalco. He was responsible for monitoring the water treatment logs. (Tr. 99.)

[12] Donovan testified that he was unaware that Carey (or Berster) had begun issuing PMs for water testing in October 2012, since it was a shift duty. After Wolbert requested that documentation be kept of the hours spent on duties, Donovan told him to talk to Berster about making up a sheet to track the hours. He understood that the PMs for water testing were not issued as work orders, but were simply used to document hours. (Tr. 110, 125.) He said that PMs started being issued in 2013 for water testing. (Tr. 111.) He stated that, if the policy had changed in October, he would have issued an email and explained the change at shift meetings, as he did in January 2013. (Tr. 125.)

information about why the water testing had not been conducted on several days in December. He asked Litostansky why it had not been done. Litostansky testified that he replied that Carey had changed the procedure, and that there should have been a PM in his folder if Carey wanted him to do it. (Tr. 42.) Fernandez recalled Litostansky merely saying it was not done because there was no PM. (Tr. 133–134, 136, 143.) Fernandez also asked Litostansky about some test results; Fernandez thought they were high and wondered if Litostansky had reported that to anyone. Litostansky said no, he put the results in the log, and assumed that Frank Berster would notice when he reviewed the logs. (Tr. 42.)

Fernandez wrote a summary memo of his findings for management, dated February 7, 2013. (Tr. 134; R. Exh. 2.) He determined that Litostansky had been derelict in his duties, in not performing the water testing. (Tr. 135, 137, 142.) Although there were other engineers on the third shift, and water testing was a shift duty, his review of the logs for calendar year 2012 indicated that Litostansky had conducted the testing on most occasions. Even if PMs were being issued as of October 2012, Fernandez felt Litostansky should have brought it to Donovan or Carey's attention that there were no PMs for water testing and that it was not being performed, so that they could have remedied the situation. (Tr. 139.) Therefore, he felt that Litostansky was culpable. (Tr. 136.) Fernandez felt this warranted a written warning because it was the first step in progressive discipline, and Litostansky had already received an oral warning when he was first hired and was discovered sleeping on the job.[13] The written warning was issued to Litostansky by Fernandez on April 11, 2013, in the presence of Matarese, Donovan, and Carey. (Tr. 44; GC Exh. 10.) Further, although Fernandez noted "a few misses here and there" when he reviewed the logs, including the three Wednesdays in December, he felt they were explainable, due to power ups and power downs, utility disturbances, a hurricane, and other tasks that took precedence. (Tr. 140.) He recalled that, if the testing was not done on those Wednesdays, it was done the following night. (Tr. 141.) Therefore, no action was taken with respect to any other engineers on the third shift or any other individual. (Tr. 13.)

## III. ISSUES PRESENTED

A. Whether the Respondent violated the Act by deducting union dues from Litostansky's paycheck and remitting those dues to Local 74?

B. Whether the Respondent violated the Act by threatening employees with loss of their jobs for contacting the NLRB or discussing NLRB or union-related concerns at the workplace?

C. Whether the Respondent violated the Act by telling employees not to discuss NLRB or union-related concerns at the workplace?

[13] Although Litostansky testified that he did not recall receiving such a warning, or that Wheatley had found him sleeping on the job, I accept and credit Fernandez and Carey on this point. Carey testified that early in Litostansky's employment, he was observed by Wheatley sleeping in one of the UPS rooms. Wheatley advised Carey (who was then the chief engineer) of this, and Carey questioned Litostansky. (Tr. 161.) Carey talked to Fernandez and, based on the circumstances, it was decided to give him an oral warning, which is not formal discipline. I note that the parties stipulated that Litostansky's personnel file contains no mention of such an incident. (Tr. 109.)

D. Whether the Respondent violated the Act by issuing a written warning to Litostansky in retaliation for his activities in opposition to maintaining full membership in Local 74, in opposition to having Local 74 dues deducted from his paycheck, and in filing and giving testimony in NLRB cases 04–CB–089840 and 04–CA–094600?

## IV. DISCUSSION AND ANALYSIS

A. Whether the Respondent violated the Act by deducting union dues from Litostansky's paycheck and remitting those dues to Local 74?

An employee may agree to having union dues deducted from his paycheck by his employer and remitted directly to the Union. However, that agreement must be manifested by "clear and unmistakable language." *Electrical Workers IBEW Local 2088 (Lockheed Space Operations),* 302 NLRB 322, 328 (1991). Otherwise, the employer violates Section 8(a)(1) and (2) of the Act, as it is deemed giving unlawful support and assistance to the union. *Fieldston Ambulance & Medical Systems, Ltd.,* 242 NLRB 185, 178 (1979).

Litostansky signed a form at the union hall on April 16, 2010, authorizing his current employer to deduct dues and assessments from his paycheck and remit those dues to Local 74. (R. Exh. 1.) The form clearly limits the authorization to that current employer. At that time, Litostansky was employed by Jones, Lang and LaSalle, at the Honeywell site. He was not only not working for the Respondent, he had not yet applied for employment with Respondent. Therefore the Respondent had no valid form signed by Litostansky authorizing it to deduct his dues and remit them to Local 74. Nonetheless, from at least July 2012 until April 4, 2013, the Respondent did deduct union dues and fees from Litostansky's paycheck and remit them to Local 74. (Tr. 48.)

The Respondent argues that Litostansky signed the card in anticipation of his employment with Respondent, and that it could not have been intended for his then-current employer since that company was not unionized. First, Litostansky testified that his prior employer was in contract negotiations with the union, so it was in the same status as Respondent; neither had a CBA yet. (Tr. 130.) Litostansky began his employment with the Respondent in July 2010; the CBA was ratified in August 2011. Second, it makes no sense for Litostansky to have completed such a form for a company to which he had not even yet made application for employment. The circumstances make the form ambiguous at best; therefore it does not meet the "clear and unmistakable" standard.

I find that the Respondent violated Section 8(a)(1) and (2) of the Act.

B. Whether the Respondent violated the Act by threatening employees with loss of their jobs for contacting the NLRB or discussing NLRB or union-related concerns at the workplace?

In determining whether an employer's work rules violate Section 8(a)(1), the Board has held that:

> [A]n employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights. *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998). In determining whether a challenged rule is unlawful, the Board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights. Id. at 825, 827. Consistent with the foregoing, our inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule *explicitly* restricts activities protected by Section 7. If it does, we will find the rule unlawful.

*Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646–647 (2004); see *Lafayette Park Hotel*, NLRB 824, 825 (1998), enfd. mem. 203 F.3d 52 (D.C. Cir. 1999).

The Respondent has no official work rules prohibiting engaging in activities protected by Section 7. However, it is alleged that Donovan threatened that employees would lose their jobs for contacting the NLRB or engaging in discussions about NLRB or union-related activity at the workplace in his meeting with the day shift on November 7, 2012.

Pabon testified that Donovan said he was upset about some members going to the NLRB, that he would not have any of that, and that people would lose their jobs if word of it got back to the bank (J.P. Morgan Chase). He also testified that Donovan said he would see to it that people lost their jobs if he heard that they were discussing such matters or any non work related matter at the workplace. The General Counsel presented Graham's testimony regarding a portion of a conversation he overheard between Donovan and Wolbert, to bolster Pabon's assertion. Graham said that he heard Donovan say that Jen Carr (the Maintenance Manager or Facility Manager for Morgan Chase) would "not stand for this" and would walk people out of the building. However, Richardson testified that Donovan did not threaten employees with termination or discipline for going to the NLRB. He testified that Donovan did not say he was upset that they had gone to the NLRB, nor that people would lose their jobs if it got back to the bank that they had contacted NLRB. Donovan denied having said that people would be fired if J.P. Morgan Chase learned about the NLRB activity. He testified that he did say that people would probably be fired if they were to drop load due to not focusing or engaging in non work related activity.

Pabon and Richardson gave contrary testimony as to what Donovan said at the meeting. Moreover, Graham only heard a portion of the conversation between Donovan and Wolbert, and it is not clear what the conversation was about. It is hard to imagine why the bank's management would be concerned about employees filing NLRB charges against the Union, much less so concerned that they would fire people for having done so. Most importantly, Donovan denied threatening that employees would lose their jobs for contacting the NLRB. I accept and credit Donovan on this issue. That credibility determination is based in part on Donovan's testimony overall, and his willingness to admit having made some statements that are contrary to his interest. It is further based on the fact that he told the employees they were free to do what they wanted on their own time, referencing contacting the NLRB. He did tell them not to bring it back to the workplace, and that is addressed in the issue below. I find that the General Counsel has not met his burden on this issue.

This allegation is dismissed.

C. Whether the Respondent violated the Act by telling the employees not to discuss NLRB and union-related concerns at the workplace?

It is well-established that the existence of an overbroad rule violates the Act based on its potential chilling effect on employees' exercise of their Section 7 rights. *The Continental Group, Inc.,* 357 NLRB No. 39 (2011). Further, it is well-settled that "[I]nterference, restraint, and coercion under Section 8(a) (1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *American Freightways, Co.,* 124 NLRB 146, 147 (1959).

The Board stated "Thus, *Heck's*[14] and *Waco*[15] make clear that the finding of a violation is not premised on mandatory phrasing, subjective impact, or even evidence of enforcement but rather on the reasonable tendency of such a prohibition to coerce employees in the exercise of fundamental rights protected by the Act." *Radisson Plaza Minneapolis*, 307 NLRB 94 (1992).

In *Dickens Inc.,* 352 NLRB 667, 668 fn. 2 (2008), the Board found the employer violated the Act by discriminating against protected concerted activity when discussions about all other topics were permitted. Similarly, a violation was found in *Pacific Coast M.S. Industries Co.,* 355 NLRB No. 226 (2010).

> What Respondent was really doing here was imposing a no-union-talk barrier. Given the fact that Respondent had no rule against employees talking to one another about any subject, it cannot bar their discussions about the union so long as work is not being neglected.
>
> The Supreme Court has said, "The place of work is a place uniquely appropriate for dissemination of views concerning the bargaining representative and the various options open to the employees." *NLRB v. Magnavox Co. of Tennessee*, 415 U.S. 322, 325 (1974). That observation, of course, is tempered with the requirement that employees are expected to be performing their work during their worktime and should not be distracted from working by matters unrelated to work. Every employer knows that workers talk about all sorts of things while they work. They also know that talking can be distracting, but that it often is not. If a distraction of that nature occurs, it is easily correctible. But, prohibiting discussion of certain subject matters while allowing others is problematical. Thus, a rule which bars talking about any subject at all might theoretically pass muster under the Act. But, such a rule would make for a very unpleasant place to work and could not be easily enforced. For that reason, such rules are never seen. Recognizing that reality, the Board has held company rules which prohibit talking about matters protected by Section 7 during work while permitting talk about any other subjects violate Section 8(a)(1) of the Act. *Opryland Hotel*, 323 NLRB 723 (1997), citing *Teksid Aluminum Foundry*, 311 NLRB 711, 713–714 (1993); *Meijer, Inc.,* 318 NLRB 50, 57 (1995); *Jennie-O Foods*, 301 NLRB 305, 316 (1991); *T & T Machine Co.,* 278 NLRB 970 (1986); *Orval Kent Food Co.,* 278 NLRB 402 (1986); *Cerock Wire & Cable Group*, 274 NLRB 888, 897 (1985). Also *Saginaw Control & Engineering*, 339 NLRB 541 (2003).

[14] *Heck's, Inc.,* 293 NLRB 1111, 1119 (1989).
[15] *Waco Inc.,* 273 NLRB 746, 748 (1984).

> Such a rule does not prevent an employer from telling employees who have stopped work to talk to get back to work.

*Pacific Coast M.S. Industries Co., Ltd.,* supra.

In the instant case, the Respondent had no rule against employees talking to one another about any subject. They discussed personal matters, hobbies, and politics, and the Respondent permitted such discussions to occur. However, at the November 7, 2012, meetings with the day and night shifts, Donovan told the engineers not to discuss NLRB or union-related matters at the workplace. He told them that when they were at work, they were to focus on their work. He testified that he considered their conversations about the CBA and the amount of dues being deducted to be distractions that "needed to stop." (Tr. 102.) He told them they could do what they wanted on their own time but they were not to bring NLRB matters back to the workplace. Donovan testified that he had started observing employees off at a table, or off in a corner from the command center, when they were supposed to be working. (Tr. 114.)

I understand Donovan's concerns about employees being off focus, and even ceasing to perform their duties for periods of time, while engaged in conversations about NLRB and union-related matters. Those concerns are legitimate. The potential consequences of engineers' losing focus while engaged in such conversations are very serious. I appreciate the difference in intensity that such discussions may provoke, as compared to conversations about fishing, family, or even our nation's current wars. However, the appropriate way to deal with that is to address the conduct, not the subject matter of their conversations. It is a violation of the Act to prohibit workplace discussions of matters protected by Section 7.

I find that the Respondent violated Section 8(a)(1) of the Act.

D. Whether the Respondent violated the Act by issuing a written warning to Litostansky in retaliation for his activities in opposition to maintaining full membership in Local 74, in opposition to having Local 74 dues deducted from his paycheck, and in filing and giving testimony in NLRB cases 04–CB–089840 and 04–CA–094600?

The legal standard for evaluating whether a motive-based adverse employment action violates Section 8(a)(4), (3), and (1) of the Act is set forth in *Wright Line,* 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 30 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).[16] See *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 395 (1983) (approving the *Wright Line* analysis). Under *Wright Line,* the elements generally required to support such a showing are protected concerted activity by the employee, employer knowledge of that activity, and animus on the part of the employer. *Consolidated Bus Transit, Inc.,* 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009); see also *Relco Locomotives, Inc.,* 358 NLRB No. 37. slip op. at 14 (2012) (observing that "[e]vidence of suspicious timing, false reasons given in defense, failure to adequately investigate alleged misconduct, departures from past practices, tolerance of behavior for which the employee was allegedly fired, and disparate treatment of the discharged employee all support inferences of animus and discriminatory motivation").

[16] Although *Wright Line* involved only Section 8(a)(3), the analysis has been applied to Section 8(a)(4) cases was well.

If the General Counsel makes the required initial showing, then the burden shifts to the employer to prove that it would have taken the same action even in the absence of the employee's union or protected activity. *Consolidated Bus Transit, Inc.,* 350 NLRB at 1066; *Pro-Spec Painting,* 339 NLRB at 949; *Williamette Industries*, 341 NLRB 560, 563 (2004); *Bally's Atlantic City,*355 NLRB 1319, 1321 (2010) (where the General Counsel makes a strong initial showing of discriminatory motivation, the respondent's rebuttal burden is substantial), enfd. 646 F.3d 929 (D.C. Cir. 2011). The General Counsel may offer proof that the employer's reasons for the personnel decision were false or pretextual. *Pro-Spec Painting,* 339 NLRB at 949 (where an employer's reasons are false, it can be inferred that the real motive is one that the employer desires to conceal—an unlawful motive); *Rood Trucking Co.,* 342 NLRB 895, 897–898 (2004), citing *Laro Maintenance Corp. v. NLRB,* 40 56 F.3d 224, 229 (D.C. Cir. 1995) ("When an employer presents a legitimate basis for its actions which the factfinder concludes is pretextual . . . the factfinder may not only properly infer that there is some other motive, but that the motive is one that the employer desires to conceal—an unlawful motive.").

Litostansky had complained about the Respondent's deduction of union dues from his paycheck and the amount of dues deducted, and filed a charge against the Union with the Board.

Litostansky also complained directly to Fernandez and Donovan about the deduction of dues and the amounts deducted. (Tr. 26.) Those complaints started in the summer of 2012, shortly after the deductions started being taken from Litostansky's paychecks. On November 7, 2012, Donovan held meetings with each shift, primarily intended to quiet the employees' complaints about union issues. In late December 2012, Donovan notified Fernandez that water testing had not been performed on three dates in December 2012 when Litostansky was on duty.

On December 10, 2012, Litostansky filed a charge against the Respondent with the Board. Fernandez was notified of that charge by the Board. (GC Exh. 1(b); Tr. 136.)

Litostansky's earlier charge against the Union was settled March 6, 2013. The Notice to Members and Employees was sent to all union members and employees at the Newark, Delaware facility. (GC Exh. 9.) The Respondent then ceased deducting union dues and fees from Litostansky's paychecks.

The Respondent was served with the complaint and notice of hearing in the instant matter on March 13, 2013. (GC Exh. 1 (c), (d).)

Fernandez decided that Litostansky was culpable for not performing water testing on three occasions in December 2012. (Tr. 134, 135–136; R Exh. 2.) Subsequently, he issued Litostansky a formal written warning on April 11, 2013, for dereliction of duties during the last quarter of 2012.[17] The warning stated that it was determined that he intentionally failed to perform water treatment testing as he had done in the past as part of his shift duties.

I find, therefore, that the General Counsel has met his burden of establishing that the discipline was issued in retaliation for Litostansky's activities in opposing maintaining full

[17] Although the warning is signed by Andrew M. Duval, Director of Corporate Occupier & Investor Services, it was issued to Litostansky by Fernandez, and Fernandez testified that he drafted the document. (Tr. 136.)

membership in Local 74, in opposing having Local 74 dues deducted from his paycheck, and in filing and giving testimony in NLRB cases 04–CB–089840 and 04–CA–094600.

Fernandez felt that Litostansky should have either performed the water testing on December 1, 8, and 15, or brought it to Donovan, Carey, or Wolbert's attention that there were no PMs for those dates. Litostansky had been performing that duty on Saturday mornings for the third shift on a fairly regular basis, and he was well aware that the water testing needed to be performed. Additionally, Fernandez was probably annoyed with Litostansky's attitude at the meeting, when asked why the testing had not been done and whether he had reported some high readings to anyone. Although Litostansky testified that he told Fernandez that Carey had directed the engineers not to perform water testing without a PM, Fernandez testified that Litostansky merely said he had not done the testing because he did not have a PM. (Tr. 143.) I credit Fernandez's testimony on this point. Litostansky may have assumed that management was aware that PMs were required for water testing and neglected to add that explanation, but whatever the reason, I find that he did not. When Fernandez inquired whether Litostansky had reported some high readings to anyone, Litostansky said he simply recorded the results and assumed Berster would notice when he reviewed the logs. Clearly, Fernandez was disappointed that Litostansky had not upheld the high standards that he expected of the engineers.

However, there are several problems with the Respondent's action in disciplining Litostansky. Donovan notified Fernandez that water testing had not been performed on several dates in December. Donovan testified that he advised Fernandez of the other December dates (Dec. 5, 12, and 19, all Wednesday mornings) that water testing was not performed, not just the three Saturdays when Litostansky was on duty. I credit Donovan's account. Fernandez testified that initially Donovan told him there were some misses on the water treatment testing, and that he requested additional information from Donovan. (Tr. 131.) Fernandez reviewed the logs himself, and met with all the third shift engineers individually. (Tr. 132). He would have no reason to meet with all of them if he were only concerned with Saturdays. A review of the logs shows that there were misses on other days than December 1, 8, and 15, that Fernandez would have seen. However, Fernandez only referred to December 1, 8, and 15 in his February 7, 2013, investigative report. (R. Exh. 2.) That report was directed to his managers, and appears geared toward justifying action against Litostansky rather than explaining what had occurred.

Fernandez's report implies that PMs were issued for water testing beginning in October 2012. While I credit Carey's testimony that the PMs were used not as work orders beginning in October 2012, but as reminders as well as to track work hours, the fact remains that he started issuing PMs for water testing at that time. It appears that Litostansky and perhaps other engineers were confused by the instructions. I find it problematic that no one other than Litostansky was held accountable for the failures to do water testing on those three Saturday mornings. The employee to whom the PM was issued was responsible for performing the testing. If there was no PM issued, then Carey or Donovan should have been held responsible for not making the assignment. If no PMs were necessary due to water testing being a shift duty, then at least Graham should likewise have been disciplined for failure to do water testing on Saturday mornings.[18] Moreover, Berster was responsible for monitoring the water testing logs. Since he did not raise the alarm until the end of December, that suggests that he may have been remiss.[19]

[18] The evidence suggests that Owens was usually in the control center and therefore would not have

PMs were not issued at any time for any of the other numerous shift duties. The explanation that PMs were issued for water testing in order to track labor hours makes little sense under those circumstances. Moreover, it appears that the testing normally took 1–½ hours, occasionally 2 hours, so keeping a record other than the logs seems unnecessary.

Additionally, no discipline was taken against anyone for the failure to perform water testing on the three Wednesdays in December—December 5, 12, and 19. No specific explanations were given for those failures, only general explanations or speculation, and the explanations given by Donovan and Fernandez differed. The fact that Harrison or Wolbert were on leave, as Donovan explained, while other engineers were on duty who could have performed the testing, does not suffice. Nor does it suffice to say, as Fernandez testified, that other priorities interfered with water testing on those dates, without providing some specificity, rather than mere recitation of the types of things that would take precedence.

Therefore, I find that the Respondent's stated reasons for issuing the discipline are pretextual and that it did not meet its rebuttal burden.

I find that the Respondent violated Section 8(a)(4),(3), and (1) of the Act.

## 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. By deducting union dues from Litostansky's paycheck and remitting those dues to Local 74 in the absence of a valid authorization form, the Respondent assisted the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 74, AFL-CIO, and has violated Section 8(a)(1) and (2) of the Act.

3. By telling employees not to discuss NLRB or union-related concerns at the workplace, the Respondent has violated Section 8(a)(1) and (2) of the Act.

4. By issuing a written warning to Michael Litostansky in retaliation for his activities in opposition to maintaining full membership in Local 74, in opposition to having Local 74 dues deducted from his paycheck, and in filing and giving testimony in NLRB cases 04-CB-089840 and 04-CA-094600, the Respondent has violated Section 8(a)(4), (3) and (1) of the Act.

5. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

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been available to perform water testing. (Tr. 50.)

[19] I note that there was no testimony as to how often Berster was supposed to review the logs but given the Respondent's emphasis on the critical nature of the test results, one might suppose it would be done more than monthly.

6. The Respondent has not otherwise violated 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 therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

## ORDER

The Respondent, Cushman and Wakefield, Inc., located in Newark, Delaware, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Assisting the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 74, AFL–CIO, by deducting union dues from Litostanky's or other employees' paychecks in the absence of a valid authorization form;

(b) Telling employees not to discuss NLRB or union-related concerns at the workplace; and

(c) Issuing Michael Litostansky or any other employee a written warning or other discipline in retaliation for protected activities such as opposition to maintaining full membership in Local 74, opposition to having Local 74 dues deducted from his paycheck, or filing and giving testimony in NLRB cases.

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

(a) Within 14 days of the date of this Order, rescind the April 11, 2013, written warning issued to Michael Litostansky, and remove from all files any reference to that written warning, and, within 3 days thereafter, notify Michael Litostansky in writing that this has been done and that the written warning will not be used against him in any way,

(b) Within 14 days after service by the Region, post at J.P. Morgan Chase's Newark, Delaware, facility copies of the attached notice marked "Appendix."[21] Copies of the notice, on

[20] 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.

[21] 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."

forms provided by the Regional Director for Region 4, 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 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or no longer manages 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 the Newark, Delaware facility at any time since July 1, 2012.

(c) 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.

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

Dated: Washington, D.C. March 5, 2014

_____
Susan A. Flynn
Administrative Law Judge

APPENDIX

**NOTICE TO EMPLOYEES**

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

**WE WILL NOT** assist the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 74, AFL–CIO, by deducting union dues from Michael Litostanky's or other employees' paychecks in the absence of a valid authorization form.

**WE WILL NOT** tell you not to discuss NLRB or union-related concerns at the workplace.

**WE WILL NOT** issue Michael Litostansky or any other employee a written warning or other discipline in retaliation for protected activities such as opposition to maintaining full membership in Local 74, opposition to having Local 74 dues deducted from his paycheck, or filing and giving testimony in NLRB cases.

**WE WILL,** within 14 days of the date of the Board's Order, rescind the April 11, 2013, written warning issued to Michael Litostansky, and remove from all files any reference to that written warning and, **WE WILL,** within 3 days thereafter, notify Michael Litostansky in writing that this has been done and that the written warning will not be used against him in any way.

**CUSHMAN AND WAKEFIELD, INC.**
(Employer)

Dated _____ By _____
(Representative) (Title)

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

615 Chestnut Street, Suite 710, Philadelphia, PA 19106-4404
(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-5354.