

Design Technology Group, LLC d/b/a Bettie Page Clothing and DTG California Management, LLC d/b/a Bettie Page Clothing, a Single Employer and Vanessa Morris. Case 20–CA–035511

October 31, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND SCHIFFER

On April 19, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB 777. Thereafter, the Charging Party filed a petition for review in the United States Court of Appeals for the Ninth Circuit, but subsequently withdrew that petition. The Respondent filed a petition for review in the United States Court of Appeals for the Ninth Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

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

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein.¹ Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB

¹ We agree with the judge that the Respondent violated Sec. 8(a)(1) by maintaining the "Wage and Salary Disclosure" rule set forth in its employee handbook. We find that its maintenance of a "Confidential Information Security" rule in the handbook, which prohibits employee disclosure of "personnel information" to "third parties," did not constitute a separate 8(a)(1) violation because it was neither alleged nor litigated. We nevertheless observe that any rule maintained by the Respondent that forbids employees from disclosing wages and compensation to each other or to any third party will be prohibited by par. 1(b) of our Order.

In agreeing that the employees' Facebook discussion was protected, concerted activity, we also rely on our decision in *Triple Play Sports Bar & Grille*, 361 NLRB 308 (2014).

777, which is incorporated herein by reference.² The Order, as further modified herein, is set forth in full below.

ORDER

The Respondent, Design Technology Group, LLC, d/b/a Bettie Page Clothing, and DTG California Management, LLC, d/b/a Bettie Page Clothing, a single employer, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for engaging in protected concerted activity.

(b) Maintaining a rule that forbids employees from disclosing wages and compensation to each other or to any third party.

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

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

(a) Within 14 days from the date of this Order, revise or rescind its unlawful handbook rule, entitled "Wage and Salary Disclosure," and advise employees in writing that it has done so, and that the rule will no longer be enforced.

(b) Furnish all current employees with inserts for the current employee handbook that (1) advise that the unlawful rule has been rescinded, or (2) provide the language of a lawful rule; or publish and distribute revised handbooks that (1) do not contain the unlawful rule, or (2) provide the language of a lawful rule.

(c) Within 14 days from the date of this Order, offer Vanessa Morris, Holli Thomas, and Brittany Johnson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

² In modifying the judge's recommended Order to include appropriate remedies for the handbook rule violation, we do not rely on *DirectTV U.S. DirectTV Holdings, LLC*, 359 NLRB 545 (2013), cited in the vacated Decision and Order. Instead, we rely on *Guardsmark, LLC*, 344 NLRB 809 (2005), enfd. in part 475 F.3d 369 (D.C. Cir. 2007), and *MasTec Advanced Technologies*, 357 NLRB 103, 109 (2011). In additional support of our requirement that the Respondent post a notice at all of the Respondent's locations where the handbook containing the unlawful rule was in effect, we rely on *Laurus Technical Institute*, 360 NLRB No. 133, slip op. at 1 fn. 2 (2014).

We shall modify the judge's recommended Order in accordance with our recent decision in *Don Chavas LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014). We shall also substitute new notices to conform to the modified Order and in accordance with our decision in *Durham School Services*, 360 NLRB 694 (2014).

(d) Make Vanessa Morris, Holli Thomas, and Brittany Johnson whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(e) Compensate Vanessa Morris, Holli Thomas, and Brittany Johnson for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Vanessa Morris, Holli Thomas, and Brittany Johnson, and within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

(g) 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.

(h) Within 14 days after service by the Region, post at its San Francisco, California facility copies of the attached notice marked "Appendix A" and within that same time period post at all its facilities companywide where its employee handbook is in effect copies of the attached notice marked "Appendix B."³ Copies of the notices, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility

involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 10, 2010.

(i) 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 A

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 discharge or otherwise discriminate against any of you for engaging in protected concerted activity.

WE WILL NOT maintain a rule that forbids employees from disclosing wages and compensation to each other or to any third party.

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

WE WILL, within 14 days of the Board's Order, revise or rescind our unlawful handbook rule entitled "Wage and Salary Disclosure," and WE WILL advise employees in writing that we have done so and that the unlawful rule will no longer be enforced.

WE WILL furnish all of you with inserts for the current edition of the employee handbook that (1) advise you that the unlawful provision has been rescinded, or (2) provide the language of a lawful rule; or WE WILL publish and distribute a revised employee handbook that (1) does not contain the unlawful rule or (2) provides the language of a lawful rule.

WE WILL, within 14 days from the date of the Board's Order, offer Vanessa Morris, Holli Thomas, and Brittany Johnson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent

³ 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."

positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Vanessa Morris, Holli Thomas, and Brittany Johnson whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest compounded daily.

WE WILL compensate Vanessa Morris, Holli Thomas, and Brittany Johnson for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Vanessa Morris, Holli Thomas, and Brittany Johnson, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

DESIGN TECHNOLOGY GROUP, LLC, D/B/A
BETTIE PAGE CLOTHING, AND DTG CALIFORNIA
MANAGEMENT, LLC, D/B/A BETTIE PAGE
CLOTHING, A SINGLE EMPLOYER

APPENDIX B

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

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

WE WILL, within 14 days of the Board's Order, revise or rescind our unlawful handbook rule entitled "Wage and Salary Disclosure," and WE WILL advise employees in writing that we have done so and that the unlawful rule will no longer be enforced.

WE WILL furnish all of you with inserts for the current edition of the employee handbook that (1) advise you that the unlawful provision has been rescinded, or (2) provide the language of a lawful rule; or WE WILL publish and distribute a revised employee handbook that (1) does not contain the unlawful rule, or (2) provides the language of a lawful rule.

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The Board's decision can be found at www.nlr.gov/case/20-CA-035511 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

