Littler
Employment & Labor Law Solutions Worldwide

Littler Mendelson, PC
One International Place
Suite 2700
Boston, MA 02110

Anthony D. Rizzotti
617.378.6009 direct
617.378.6000 main
617.904.1928 fax
arizzotti@littler.com

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WASH., D.C.

May 29, 2015

BY HAND DELIVERY

Margaret Carter, Clerk
U.S. Court of Appeals, First Circuit
2500 John Joseph Moakley U.S. Courthouse
One Courthouse Way
Boston, MA 02210

Re: ***Boch Imports, Inc. d/b/a Boch Honda, Petitioner v. National Labor Relations Board, Respondent***

Dear Ms. Carter:

Enclosed for processing, please find the following documents:

1. Petition for Review of the NLRB Decision and Order in Case No. 01-CA-083551; and

2. Our check in the amount of $500.00 representing the filing fee in this matter.

Please stamp the marked copy of the Petition with the date and fact of filing and return it to me via the awaiting messenger.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions.

Sincerely,

Anthony D. Rizzotti (mlp)

Anthony D. Rizzotti

Enclosures

cc: (w/enclosure)
Gary Shinners
David F. Fein
E. Michael Vartabedian
James D. Smith
Mark Schneider

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United States Court of Appeals
for the First Circuit

2015 MAY 29 P 4:01

FILED IN CLERKS OFFICE
U.S. COURT OF APPEALS
1st CIRCUIT

BOCH IMPORTS, INC. *d/b/a* BOCH HONDA, Petitioner	)	
v.	)	Petition for Review
NATIONAL LABOR RELATIONS BOARD, Respondent	)	

Boch Imports, Inc., *d/b/a* Boch Honda, hereby petitions the court for review of the Decision and Order of the National Labor Relations Board, in Case No. 01-CA-083551 entered on April 30, 2015, and prays that said Decision and Order be set aside, modified, or remanded for further proceedings.

Respectfully submitted:

/s/ Anthony D. Rizzotti
Anthony D. Rizzotti
arizzotti@littler.com

LITTLER MENDELSON, P.C.
One International Place, Suite 2700
Boston, MA 02110
617.378.6000

Attorney for the Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Petition for Review was served on May 29, 2014, via overnight mail on the following:

Gary Shinners, Executive Secretary
National Labor Relations Board
1099 14th St. N.W.
Washington, D.C. 20570-0001

Daniel F. Fein
Counsel for the Acting General Counsel
NLRB – Region 1
10 Causeway Street, 6th Floor
Boston, MA 02222-1072

E. Michael Vartabedian
Business Rep.
IAMAW, AFL-CIO, District Lodge 15
107 Main St., Suite A
Northborough, MA 01532-1913

James D. Smith
Grand Lodge Rep.
IAMAW, AFL-CIO, DL 4
Executive Plaza III
135 Merchant St., Suite 265
Cincinnati, OH 45246-3734

Mark Schneider
General Counsel
IAMAW, AFL-CIO
9000 Machinists Pl., Suite 202
Upper Marlboro, MD 20772-2675

/s/ Anthony D. Rizzotti
Anthony D. Rizzotti

RECEIVED

2015 JUN -1 PM 5:00

NLRB
ORDER SECTION

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Boch Imports, Inc. d/b/a Boch Honda *and* International Association of Machinists & Aerospace Workers, District Lodge 15, Local Lodge 447. Case 01–CA–083551

April 30, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND JOHNSON

On January 13, 2014, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. In addition, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.[1]

Introduction

The judge found that the Respondent violated Section 8(a)(1) of the Act by maintaining numerous provisions in its 2010 employee handbook that interfered with the exercise of Section 7 rights. In finding these violations, the judge found no merit in the Respondent's contention that it repudiated its unlawful maintenance of the rules by its May 2013 issuance of a new handbook containing revised rules.[2] The judge also found that the Respondent's 2010 and 2013 handbooks contained an overly broad dress code and personal hygiene policy that prohibits employees who have contact with the public from wearing insignias and other message-bearing clothing, and that the Respondent's maintenance of this rule also violated the Act. We agree with these findings, for the reasons stated by the judge.[3]

The General Counsel cross-excepts to the judge's failure to find that certain additional rules maintained in the 2010 handbook violated Section 8(a)(1)[4] and to the judge's further finding that the Respondent demonstrated special circumstances justifying its proscription of pins worn by its public-facing employees. As explained below, we find merit in the General Counsel's cross-exceptions. In addition, and also as explained below, we shall modify the judge's notice posting remedy to require the notice to be posted only at the Respondent's facilities.

Social Media Policy

The amended complaint alleges that the Respondent violated Section 8(a)(1) by maintaining a social media policy in its 2010 employee handbook that, among other things, (1) required employees to identify themselves when posting comments about the Respondent, the Re-

[1] We have modified the judge's recommended Order consistent with this decision and to comport with the Board's standard remedial language. We have also substituted a new notice to conform to the Order as modified and in accordance with our decisions in *Lily Transportation Corp.*, 362 NLRB No. 54 (2015), and *Durham School Services*, 360 NLRB No. 85 (2014).

[2] The Respondent does not contest the General Counsel's allegation that the rules in the 2010 handbook were overly broad. Rather, it contends only that it repudiated its unlawful maintenance of the rules.

[3] The judge's conclusion that the Respondent's issuance of a revised handbook in May 2013 did not constitute effective repudiation of its unfair labor practices is supported by applicable precedent. See *Lily Transportation Corp.*, supra, slip op. at 1 (respondent's attempted repudiation of its unfair labor practices found ineffective where it failed to explain to employees its reasons for issuing a revised handbook); *Casino San Pablo*, 361 NLRB No. 148, slip op. at 4–5 (2014) (respondent's attempted repudiation of its unfair labor practices found ineffective where it simply issued a revised handbook that deleted unlawful rules that appeared in its previous handbook). Our dissenting colleague cites *River's Bend Health & Rehabilitation Services*, and *Broyhill Co.*, in support of his claim that the requirements for effective repudiation need not strictly apply in this case. However, these cases are consistent with Board precedent requiring an employer to provide its employees with notice of its unfair labor practices to effectively repudiate its unlawful conduct. See *River's Bend Health & Rehabilitation Services*, 350 NLRB 184, 193 (2007) (respondent repudiated its unlawful increase in employees' meal price by canceling the increase, reimbursing an affected employee, and posting notices explaining that the increase was unlawful); *Broyhill Co.*, 260 NLRB 1366, 1366 (1982) (respondent repudiated its supervisor's unlawful conduct by posting notices stating that the conduct was "improper,' assuring employees that it would not interfere with their Sec. 7 rights, and explaining what those rights were). Further, the issue in those cases, whether the timing and substance of the respondents' notices should be subject to strict application under *Passavant*, is not presented here because the Respondent neither notified its employees of its unfair labor practices nor provided them assurances that it would not interfere with their Sec. 7 rights in the future. Such notice is required by *Passavant* for the same reasons that it is a standard--and venerable--Board remedy and is virtually always required in settlements. Like our dissenting colleague, we value cooperation to revise problematic rules and prompt remedying of unfair labor practices. But merely revising the unlawful rules does not remedy the unfair labor practices at issue, absent notice to the affected employees that the violations occurred and that they will not be repeated.

[4] With respect to the judge's finding that the Respondent maintained an overbroad confidentiality policy in its 2010 employee handbook, the General Counsel cross-excepts to the judge's failure to address the Respondent's treatment of information about prospective customers and suppliers and the Respondent's policies, procedures, and litigation activity as confidential. We agree with the General Counsel that the policy unlawfully treated that information as confidential, and we shall modify the Order in accordance with this finding.

spondent's business, or a policy issue, and (2) prohibited employees from using the Respondent's logos in any manner. The judge did not make findings of fact concerning these allegations, and the General Counsel cross-excepts to the failure to find the maintenance of these rules unlawful. We find merit in the General Counsel's cross-exception.

As stated above, the social media rule required employees to identify themselves when posting comments about the Respondent, the Respondent's business, or a policy issue. This rule was overly broad, because employees would reasonably construe it to cover comments about their terms and conditions of employment, and the self-identification requirement reasonably would interfere with their protected activity in various social media outlets. See generally *Farah Manufacturing Co.*, 202 NLRB 666, 675 (1973) (employer unlawfully used color coded name tags to identify and interfere with employees engaged in union activity in other departments during nonwork time).[5] Similarly, employees would reasonably read the prohibition of using the Respondent's logos "in any manner" to cover protected employee communications. See *Pepsi Cola Bottling Co.*, 301 NLRB 1008, 1019–1020 (1991), enfd. mem. 953 F.2d 638 (4th Cir. 1992) (violation found where employer failed to provide any business reason that would outweigh employees' Section 7 right to engage in union activity while wearing a uniform bearing logos or trademarks of the company's product); see also *Spirit Construction Services*, 351 NLRB 1042, 1045 (2007). We therefore find that the Respondent's maintenance of these rules violated Section 8(a)(1), as alleged.

Dress Code and Personal Hygiene Policy

The Respondent's 2010 and 2013 employee handbooks contain a "Dress Code and Personal Hygiene Policy" that includes the following rule: "Employees who have contact with the public may not wear pins, insignias, or other message clothing." The judge found that the Respondent violated the Act by prohibiting the display of insignias and other message-bearing clothing, but not by prohibiting pins. The Respondent excepts to the former finding, and the General Counsel cross-excepts to the latter. For the reasons discussed below, we find that the Respondent has not justified any portion of its rule, and therefore the maintenance of the rule violated Section 8(a)(1).

It is well settled that an employer violates Section 8(a)(1) when it prohibits employees from wearing union insignia at the workplace, absent special circumstances. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–803 (1945); *Ohio Masonic Home*, 205 NLRB 357, 357 (1973), enfd. mem. 511 F.2d 527 (6th Cir. 1975). "The Board has found special circumstances justifying proscription of union insignia and apparel when their display may jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image that the employer has established, as part of its business plan, through appearance rules for its employees." *Bell-Atlantic-Pennsylvania,* 339 NLRB 1084, 1086 (2003), enfd. *Communications Workers of America, Local 13000 v. NLRB*, 99 Fed.Appx. 233 (D.C. Cir. 2004). However, a rule that curtails employees' Section 7 right to wear union insignia in the workplace must be narrowly tailored to the special circumstances justifying maintenance of the rule, and the employer bears the burden of proving such special circumstances. See *W San Diego*, 348 NLRB 372, 373, 374 (2006) (special circumstances that justified employer's ban on buttons worn in public areas did not justify the ban on buttons worn in nonpublic areas).

Clearly, the Respondent's proscription curtails employees' Section 7 right to wear union insignia. As such, it is overly broad. See *P.S.K. Supermarkets*, 349 NLRB 34, 34–35 (2007) (employer's ban on buttons overly broad because it would include buttons bearing union insignia). Absent special circumstances, then, it is unlawful. Regarding insignias and message-bearing clothing, the judge found that the Respondent's asserted interest in maintaining its public image did not constitute a special circumstance justifying its prohibition. See, e.g., *Meijer, Inc.*, 318 NLRB 50 (1995), enfd. 130 F.3d 1209 (6th Cir. 1997). We agree for the reasons he stated.[6]

With regard to pins, the Respondent contends that the rule was implemented to prevent injury to employees and damage to vehicles. The judge found that a pin could fall off of an employee's uniform and possibly damage the

[5] See also *Allegheny Ludlum Corp.*, 333 NLRB 734, 737 (2001) (addressing coercive effects of employers' "efforts to discern the union sentiments of employees" and Sec. 8(a)(1)'s application "not only in cases involving explicit questions concerning an employee's union activities or sentiments, but also in cases where an employer seeks to learn employees' views on union representation by more subtle means"), enfd. 301 F.3d 167 (3d Cir. 2002).

[6] *W San Diego*, supra, cited by the Respondent in its exceptions, does not warrant a different result. The Board's holding in that case turned on the employer's fact specific demonstration that its strict uniform policy was intended to create a specific and unique environment: a "Wonderland" experience distinct from that of other hotels. No comparable evidence was provided here. To the contrary, the Respondent's own managers testified that the company-branded clothing its employees were required to wear would be worn by employees at other Honda dealerships. In short, the narrow factual circumstances that the Board found to justify a different result there are absent here.

engine, interior, or exterior of a vehicle on which the employee was working, or it could become a projectile and injure the employee. Contrary to the judge and our dissenting colleague, we find that the rule is not "narrowly tailored" to address those concerns. As written, the rule applies to employees who have contact with the public, regardless of whether they come into contact with the Respondent's vehicles. Indeed, the rule applies to employees who do not typically have contact with vehicles (e.g., finance and administrative personnel), and to other employees during their performance of tasks that do not require vehicle contact. Further, the record includes no evidence supporting actual safety concerns related to pins worn by public facing employees. Although the record does contain evidence that employees have caused damage to vehicles, none of that damage was shown or even asserted to be related to employee pins. Finally, the handbooks do not include any statement even arguably linking the rule to safety considerations. Rather, they state that "[t]he purpose of the Dress Code/Personal Hygiene Policy is to ensure that employee dress and personal hygiene are consistent with their job function and the Company's interest in presenting a professional image to the public."[7] Employees would reasonably understand that image, not safety, was the Respondent's justification for the entire rule, including its ban on pins.[8] For all these reasons, we find that the Respondent has not demonstrated special circumstances justifying its overly broad rule, and therefore the Respondent's maintenance of the rule violated Section 8(a)(1) as alleged.

Notice Posting

The judge found that the Respondent's 2010 and 2013 handbooks were maintained at other enterprises owned by Ernie Boch, and he therefore concluded that the notice to employees should be posted at all of Ernie Boch's dealerships and related retail businesses. In support, the judge relied on the handbooks' statement that "Boch Enterprises retail company presently include[s] the various Boch new motor vehicle dealerships, as well as related retail businesses," and on Kathleen Genova's testimony that the "Boch Enterprises" handbook applies to employees at all dealerships owned by Ernie Boch. We find that the judge's notice posting remedy is too broad.

The complaint alleged that the Respondent, "Boch Imports, Inc. d/b/a Boch Honda," at its Norwood, Massachusetts facility, maintained various overbroad rules that violated Section 8(a)(1). In the proceeding before the judge, the General Counsel adduced testimony that the "Boch Enterprises" handbook applies to employees at all vehicle dealerships and related retail businesses owned by Ernie Boch. In view of that testimony, the General Counsel sought to elicit evidence on the relationship between the Respondent and other dealerships listed on its website, but the Respondent objected. The General Counsel then abandoned that line of questioning and moved to amend the complaint to name as respondents other vehicle dealerships and retail businesses owned by Ernie Boch. The judge denied the General Counsel's motion, stating that he would not allow "at this point an amendment to add all these other companies." There were no exceptions to the judge's ruling.

In these circumstances, especially in the absence of a litigated finding that the Respondent was responsible for the implementation and maintenance of the same handbook policies at other "Boch" entities, we find that the appropriate remedy is to require the named Respondent, Boch Imports, Inc. d/b/a Boch Honda, to post notices only at the facility or facilities it owns or operates. We leave to compliance the determination of whether the Respondent owns or operates facilities, other than the Norwood, Massachusetts facility identified in the complaint, at which the rules found unlawful were or are in effect. See *Jack in the Box Distribution Center Systems*, 339 NLRB 40 (2003) (finding that appropriate notice posting remedy is one that is "coextensive with the [r]espondent's application of its handbook"); *Marriott Corp.*, 313 NLRB 896 (1994) (in the absence of evidence that unlawful rule was maintained at respondent's other locations, remedial order was limited to the "location at which a violation was alleged and litigated").

ORDER[9]

The National Labor Relations Board orders that the Respondent, Boch Imports, Inc. d/b/a Boch Honda, Nor-

[7] In addition, the handbooks contain a separate safety section that does not refer to either the dress code or to pins. Thus, the Respondent's asserted safety rationale for its ban on pins appears to be simply a post hoc invention.

[8] *Komatsu America Corp.*, 342 NLRB 649, 650 (2004), and *E & L Transport Co.*, 331 NLRB 640, 640 (2000), cited in support by our dissenting colleague, are inapplicable as in neither case did the Board decide the issue presented here. In *Komatsu America Corp.*, the Board found that the respondent lawfully instructed employees to stop wearing a union t-shirt that displayed an offensive and provocative appeal to ethnic prejudices, and did not determine whether concerns about damage to the respondent's machinery or products would have justified its demand that union employees stop wearing the union T-shirt. Id. at 650. In *E & L Transport Co.*, the Board found it "immaterial that the [r]espondent might be able to demonstrate 'special circumstances' that would justify a narrower rule" based on its concerns about personal injury or property damage, because the respondent promulgated the rule at issue for unlawful retaliatory reasons. Id. at 640.

[9] With regard to provisions in its 2010 employee handbook that we have found unlawful and that the Respondent has already rescinded, including the Social Media Policy, the Order consists of cease and desist provisions but no affirmative rescission requirements.

wood, Massachusetts, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Maintaining an overly broad rule that prohibits current and former employees from disclosing or authorizing the disclosure or use of "Confidential Information," including the identity of the Respondent's current and prospective customers and suppliers, and the Respondent's compensation structures, incentive programs, policies, procedures, and litigation activity.

(b) Maintaining an overly broad rule that prohibits employees from "engaging in any activity which could harm the image or reputation of the Company."

(c) Maintaining an overly broad rule that prohibits employees from providing "personal information of any nature concerning another employee (including references) to any outside source unless approved by the Human Resources Department and authorized, in writing, by the employee."

(d) Maintaining an overly broad rule that prohibits persons not employed by the Respondent from soliciting and distributing literature or other materials, for any purpose at any time, on property adjacent to the Respondent's premises.

(e) Maintaining an overly broad social media rule that prohibits employees from disclosing information about employees or customers.

(f) Maintaining an overly broad social media rule that requires employees to identify themselves when posting comments about the Respondent, the Respondent's business, or a policy issue.

(g) Maintaining an overly broad social media rule that prohibits employees from referring to the Respondent in postings that would negatively impact the Respondent's reputation or brand.

(h) Maintaining an overly broad social media rule that prohibits employees from engaging in "conduct that has or has the potential to have a negative effect" on the Respondent "even if the conduct occurs off the property or off the clock."

(i) Maintaining an overly broad social media rule that prohibits employees from using the Respondent's logos in any manner.

(j) Maintaining an overly broad social media rule that prohibits employees from posting videos or photos that are recorded in the workplace.

(k) Maintaining an overly broad social media rule that requires employees to contact the Respondent's Vice President of Operations before making a statement to the media.

(l) Maintaining an overly broad social media rule that allows the Respondent to request access to any commentary that employees post on social media sites.

(m) Maintaining an overly broad social media rule that requires employees who choose to write or post to do so respectfully.

(n) Promulgating, maintaining, or enforcing an overly broad rule that prohibits employees who have contact with the public from wearing pins, insignias, or other message clothing.

(o) 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 the employee handbook rule prohibiting employees who have contact with the public from wearing pins, insignias, or other message clothing.

(b) Furnish its employees at all Boch Imports, Inc., d/b/a Boch Honda facilities with an insert for the current employee handbook that (1) advises that the unlawful provision regarding pins, insignias, and other message clothing has been rescinded, or (2) provides a lawfully worded provision on adhesive backing that will cover the unlawful provision; or publish and distribute to employees revised employee handbooks that (1) do not contain the unlawful provision, or (2) provide a lawfully worded provision.

(c) Within 14 days after service by the Region, post at all facilities of Boch Imports, Inc. d/b/a Boch Honda, copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the no-

[10] 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."

tice to all current employees and former employees employed by the Respondent at any time since December 21, 2011.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 1 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 30, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER JOHNSON, dissenting in part.

Contrary to my colleagues, I disagree with finding that the Respondent violated Section 8(a)(1) of the Act by maintaining several overbroad policies in its 2010 handbook that were rescinded with the issuance of a new handbook in 2013. Instead, I find merit in the Respondent's assertion that it effectively repudiated the alleged misconduct. I also disagree with the reversal of the judge's finding that the Respondent lawfully prohibited employees who have contact with the public from wearing pins.

1. *Rescission of Allegedly Unlawful Provisions in the 2010 Handbook.* My colleagues agree with the judge's finding that, under *Passavant Memorial Area Hospital,* 237 NLRB 138 (1978), the Respondent's rescission of the 2010 handbook policies was ineffective as a repudiation of alleged misconduct because it failed to provide employees with assurances that it would not interfere with employees' Section 7 rights in the future and the dress code policy remained the same in the 2013 handbook as in its predecessor. Based on the totality of the circumstances presented here, I disagree with this conclusion. In my view, the *Passavant* test need not and should not be strictly applied here.[1]

To begin, the evidence clearly establishes that the Respondent cooperated with the Region during the investigation of the charges based on the Respondent's 2010 handbook and, further, communicated its willingness to work with the Region in remedying the alleged violations, all of which were based on perceived ambiguities in language. After the complaint issued, the Respondent continued to work with the Region on revising its handbook, ultimately providing the Region with its proposed revisions. Following the Region's review and approval of the new handbook, the Respondent issued its new handbook in May 2013. Here, we should recognize that the best, quickest way to achieve universal handbook legal compliance with Section 7 standards is to *encourage* employers to involve the Agency in redrafting problematic provisions rather than to effectively punish them. See also GC Memorandum 15–04, "Report of the General Counsel Concerning Employer Rules" at 2–3 (discussing communications with the employer to fix unlawful rules).

Further, in determining the need for express assurances that the Respondent would not interfere in the future with employees' Section 7 rights, I believe it is relevant that the General Counsel alleges only that all of the rescinded policies were fatally ambiguous, not that they explicitly restricted Section 7 activity. There is no evidence or argument that they were applied to restrict such activity. Indeed, the Respondent has no demonstrated history of objecting to or interfering with employees' exercise of their Section 7 rights. On the contrary, prior to the issuance of the 2013 handbook, employees engaged in an active organizing campaign that included picketing on the Respondent's property.

In these circumstances, where there has been no overt interference with Section 7 activity and an employer has taken pains to fully comply with the Act through a line-by-line revision of its handbook in cooperation with the Region and with its approval, *Passavant* need not be applied with hyper-technical precision. See, e.g., *River's Bend Health & Rehabilitation Service,* 350 NLRB 184, 193 (2007) (finding repudiation adequate despite that it "does not completely accord with the *Passavant* criteria with regard to timeliness and lack of ambiguity"); *Broyhill Co.*, 260 NLRB 1366 (1982) (rejecting dissenters' application of *Passavant* criteria "in a highly technical and mechanical manner"). Doing so discourages respondents from taking such actions to remedy alleged unfair labor practices far more promptly than after sometimes lengthy and expensive litigation.

2. *Dress Code Policy.* Contrary to my colleagues, I would adopt the judge's finding that the Respondent demonstrated special circumstances justifying its dress code prohibition of pin wearing for employees interact-

[1] Accordingly, I need not pass on whether I generally agree with all elements of the *Passavant* test.

ing with the public.[2] Automobiles are expensive, and the Respondent has demonstrated that it experiences significant annual losses as a result of property damage to its vehicles. Service technicians, service advisors, and salespersons working with customers are in frequent physical contact with the vehicles--in their interior (including the easily-damaged fabrics that often are used in modern automobiles), around their exterior, and showing off or working on the vehicle's internal machinery. Because it is reasonably foreseeable that sharp objects could scratch, rip, fall into the internal compartments of, or otherwise damage the vehicles, the judge correctly found that special circumstances exist that justify the Respondent's prohibition. See *Komatsu America Corp.*, 342 NLRB 649, 650 (2004) (special circumstances justify proscription of wearing certain items when their display "damage[s] machinery or products"); see generally, *E & L Transport Co.*, 331 NLRB 640, 640 (2000) (preventing property damage is a legitimate interest where a rule is not promulgated in retaliation for Section 7 activity).[3]

Dated, Washington, D.C. April 30, 2015

Harry I. Johnson, III, Member

NATIONAL LABOR RELATIONS BOARD

[2] I agree with my colleagues and the judge that under longstanding precedent the Respondent has made an insufficient showing of special circumstances justifying its dress code prohibition of wearing insignia and message clothing. In my view, however, that precedent has been too restrictive in its evaluation of business considerations that an employer such as the Respondent determines as essential to maintenance of its public image and competitive status. The Respondent here has argued that its dress code restrictions are essential to the maintenance of its status as the number one Honda dealership "on the planet.' This public image business concern is every bit as cognizable to me as a special circumstance as the hotelier's public image interest in *W San Diego*, 348 NLRB 372, 373 (2006). However, I agree that the Respondent has failed to present specific evidence that its professional appearance clothing standards for employees dealing with the public are *uniquely* supportive of its brand or that the wearing of message clothing of any size or shape would *necessarily* harm its own brand message. For example, the Respondent did not present evidence either that it "commissions special uniforms in order to achieve a trendy, distinct, and chic look" different from that of other dealers (id. at 373) or that insignia or message clothing of whatever design would necessarily interfere with Respondent's message that it was Earth's leading Honda dealership.

[3] The fact that *Komatsu* and *E & L Transport* were decided on other grounds does not detract from the validity of their statement of the general principle that a legitimate business concern about property damage is cognizable as a special circumstance warranting prohibition of the wearing of pins. To the extent my colleagues are suggesting this is not so, they are mistaken.

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.

In May 2013, we distributed to you a new employee handbook. That new handbook revised the previous employee handbook to modify or eliminate rules that were alleged to violate Federal labor law. The National Labor Relations Board has now found that those rules were unlawful.

WE WILL NOT make and/or maintain overly broad rules that restrain you in the exercise of the rights set forth above by:

Prohibiting current and former employees from disclosing or authorizing the disclosure or use of "Confidential Information," including the identity of our current and prospective customers and suppliers, and our compensation structures, incentive programs, policies, procedures, and litigation activity.

Prohibiting employees from "engaging in any activity which could harm the image or reputation of the Company."

Prohibiting employees from providing "personal information of any nature concerning another employee (including references) to any outside source unless approved by the Human Resources Department and authorized, in writing, by the employee."

Prohibiting persons who are not employed by the company from soliciting and distributing literature or other materials, for any purpose at any time, on property adjacent to the company's premises.

Prohibiting employees from disclosing information about employees or customers on social media.

Requiring employees to identify themselves when posting comments on social media about the company, the company's business, or a policy issue.

Prohibiting employees from referring to the company in social media postings that would negatively impact the company's reputation or brand.

Prohibiting employees from engaging, on social media, in "conduct that has or has the potential to have a negative effect" on the company "even if the conduct occurs off the property or off the clock."

Prohibiting employees from using the company's logos in any manner on social media.

Prohibiting employees from posting on social media videos or photos that are recorded in the workplace.

Requiring employees to contact the company's Vice President of Operations before making a statement to the media.

Allowing the company to request access to any commentary that employees post on social media sites.

Requiring employees "to write or post respectfully" if they choose to write or post on social media.

Prohibiting employees who have contact with the public from wearing pins, insignias, or other message clothing.

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

WE WILL rescind the overbroad policy in our current handbook prohibiting employees who have contact with the public from wearing pins, insignias, or other message clothing.

WE WILL furnish you with an insert for the current employee handbook that (1) advises that the unlawful provision regarding pins, insignias, and other message clothing has been rescinded, or (2) provides a lawfully worded provision on adhesive backing that will cover the unlawful provision; or WE WILL publish and distribute a revised employee handbook that (1) does not contain the unlawful provision, or (2) provides a lawfully worded provision.

WE HAVE rescinded the remaining rules listed above and have modified or deleted them in the handbook we distributed to you in May 2013.

BOCH IMPORTS, INC. D/B/A BOCH HONDA

The Board's decision can be found at www.nlrb.gov/case/01-CA-083551 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.

Daniel Fein, Esq. and *Karen Hickey, Esq.*, for the General Counsel.

Thomas J. McAndrew, Esq. (Thomas J. McAndrew & Associates), for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me in Boston, Massachusetts, on November 18, 2013.[1] The amended complaint herein, which issued on June 17 and was based upon an unfair labor practice charge that was filed on June 20, 2012, by International Association of Machinists & Aerospace Workers, District Lodge 15, Local Lodge 447, herein called the Union, alleges that Boch Imports, Inc., d/b/a Boch Honda, herein called the Respondent, maintained certain overly restrictive rules in its employee handbook in violation of Section 8(a)(1) of the Act. As to the allegations contained in Paragraphs 7 and 8 of the amended complaint, which allege that these Employee Handbook provisions were in effect from about December 21, 2011, to about May 2013, Respondent defends that ". the Company modified the terms and conditions of its Employee Handbook in concert with the Regional Director's office." and that the General Counsel should be estopped from alleging that these provisions violate the Act. The only provision of the Handbook that was not changed is paragraph 9 of the amended complaint, which states: "In or about May 2013, Respondent implemented and has since maintained the following rule in its Employee Handbook: Employees who have contact with the public may not wear pins, insignias, or other message clothing." Only the legality of this provision was litigated at the hearing.

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union has been a labor organization within the meaning of the Act.

II. THE FACTS

Paragraphs 7 and 8 of the amended complaint allege as follows:

7. From about December 21, 2011 to about May 2013, Respondent maintained an Employee Handbook containing the following rules and policies:

(a) Confidential and Proprietary Information, which defined

[1] Unless stated otherwise, all dates referred to herein relate to the year 2013.

confidential information to include all information that has or could have commercial value or other utility in the Company's business; the identity of the Company's customers, suppliers, and/or prospective customers and suppliers; compensation structures and incentive programs; Company policies, procedures, and litigation activity; and prohibited employees during and after their employment from disclosing or authorizing the disclosure or use of any Confidential Information;

(b) Discourtesy, which stated the following:

All employees are expected to be courteous, polite and friendly both to customers and to their fellow employees. The use of profanity or disrespect to a customer or co-worker, or engaging in any activity which could harm the image of the Company, is strictly prohibited;

(c) Inquiries Concerning Employees, which stated in relevant part:

All inquiries from outside sources concerning employees should be directed to the Human Resources Department. An employee shall not provide personal information of any nature concerning another employee (including references) to any outside source unless approved by the Human Resources Department and authorized, in writing by the employee;

(d) Dress Code and Personal Hygiene, which stated in relevant part:

Employees who have contact with the public may not wear pins, insignias, or other message clothing which are not provided to them by the Company; and

(e) Solicitation and Distribution Policy, which restricts persons who are not employed by Respondent from soliciting and distributing literature or other materials at any time on property adjacent to Respondent's premises.

8. From about December 21, 2011 to about May 2013, Respondent maintained a Social Media Policy in its employee handbook with the following requirements:

(a) prohibited employees from disclosing any information about employees or customers;

(b) required employees to identify themselves when posting comments about Respondent or related to Respondent's business or a policy issue;

(c) prohibited employees from referring to Respondent in postings that would negatively impact the Respondent's reputation or brand;

(d) prohibited employees from engaging in activities that could have a negative effect on Respondent, even if it occurs off Respondent's property or off the clock;

(e) prohibited employees from using Respondent's logos for any reason;

(f) prohibited employees from posting videos or photos that are recorded in the work place;

(g) required employees to contact Respondent's Vice President of Operations before making a statement to the media;

(h) required employees to provide Respondent access to any commentary posted by employees on social media sites; and

(i) required employees to write and post respectfully.

At the hearing, the parties stipulated that, after consultation with the Board's regional office, the Respondent changed these provisions, with the exception of the dress code provision, to the satisfaction of the region, and the region is no longer alleging that, with that one exception, the employee handbook provisions contained in paragraphs 7 and 8 are still in effect. Further, in May 2013, the Respondent issued a revised employee handbook containing the corrected provisions, and this revised employee handbook was distributed to all employees who received the prior handbook.

The only provision contained in the employee handbook presently in effect that is alleged to violate the Act is contained in paragraph 9 of the amended complaint (also Paragraph 7(d) above), and is listed under the classification dress code and personal hygiene policy, which states:

> In or about May 2013, Respondent implemented and has since maintained the following rule in its Employee Handbook:
>
> Employees who have contact with the public may not wear pins, insignias, or other message clothing.[2]

The employee handbook states:

> Welcome to a Boch Enterprise retail company, which presently include the various Boch new motor vehicle dealerships as well as related retail businesses which may be established from time-to-time (each referred to herein as the "Company")
>
> As an employee, you will want to know what you can expect from our Company and what we expect from you. This Handbook provides information regarding our Company's current benefits, practices, and policies as well as some of the Company's expectations regarding your performance.

David Carlson, Respondent's service director, testified that the service department operates seven days a week and employs a service manager as well as about 16 or 17 service technicians who work Monday through Wednesday and about the same number of service technicians who work Thursday through Sunday. They are required to wear a blue and gray company jacket, as well as a company hat, which the Respondent provides. The Respondent has never placed any pins or buttons on these uniforms. The technicians perform all facets of repair and maintenance of the automobiles brought to the facility. He testified that safety is one reason for the rule against wearing pins or buttons on the uniform. The technicians, obviously, work on the vehicle's engine and while they are leaning over the engine if a pin or button got loose and fell into the engine it could be dangerous to the technician because it could become a projectile or, more likely, it could fall into the engine, and damage or ruin the engine, depending on where it landed. Additionally, while a technician was working on the vehicle, a pin could damage the interior of the car, or scratch the exterior paint. In addition to maintaining and repairing customer's vehicles, the technicians perform predelivery inspections of new cars delivered to the dealership as well as used cars acquired by the dealership. During those inspections, pins or buttons could

[2] The only change to this provision is that the 2013 employee handbook removes the words: "which are not provided to them by the Company," which was in the 2010 employee handbook.

fall into the engine or damage the inside or outside of the vehicle in the same manner. If a pin or button worn by a technician damaged a customer's car, the dealership would pay to repair that damage.

The technicians also interact with customers, either on a road test, or if the customer requests to look at the car while the technician is working on it, but this interaction occurs only about once a day, on average, for the service technicians. In addition the technicians occasionally, meet with the customers in the parking lot or at the cashier station. The customer waiting area at the facility has a large glass window that allows the customers to observe the technicians while they are waiting for their cars to be serviced. The service advisors are the employees who meet with the customers, get in the car, check the odometer as well as the exterior of the vehicle for any damage and, if the customer agrees, they will top off the washer fluid. The customer tells the service advisor what work has to be done, and they will recommend what work needs to be done depending upon the mileage and condition of the vehicle, and write up the service orders: "They're the face of our service organization."

Carlson also testified that employees are permitted to wear message clothing or pins and buttons to and from work and to have stickers or buttons on their car or toolbox. In fact, Respondent moved into evidence a picture of a technician's tool box with stickers encouraging support of the Union, without complaint from the Respondent. In addition, Respondent recognizes technicians for exemplary service with a sticker or magnetic award that he can put on his tool box, rather than with a button or pin.

Mark Doran, Respondent's general manager, oversees all departments within the dealership. He testified that Respondent tries to be professional in everything that they do, in appearance and conduct. It is the number one Honda Dealership "on the planet" and spends millions of dollars yearly on advertising to maintain that position. Pins have never been allowed at the dealership; during a blood drive, Red Cross and American flag pins were not permitted, nor are pins recognizing individuals with intellectual disabilities. In addition to image, safety concerns are also important in prohibiting pins; they could damage a car, as Carlson testified. Even without pins, Respondent pays out about $250,000 a year to repair customers' vehicles. The sales employees have a choice of wearing Boch Honda jerseys or their own shirt and tie. Like Carlson, he testified that employees can wear anything when reporting to work, or leaving from work, as long as they change when they arrive and look "professional." At one time, after the Boston Marathon terrorist bombing, the Respondent conducted a fundraiser for Boston Strong and, on that day, the Respondent permitted the employees to wear Boston Bruins, Boston Red Sox, and similar shirts.

III. ANALYSIS

It is initially alleged that from about December 21, 2011, to about May 2013, the Respondent's employee handbook maintained provisions regulating confidential and proprietary information, discourtesy, inquiries concerning employees, dress code and personal hygiene, solicitation and distribution and social media policy that were overly restrictive and in violation of Section 8(a)(1) of the Act. After consultation with the Board's regional office, the Respondent changed all of these provisions with the exception of the dress code provision prohibiting employees who had contact with the public from wearing pins, insignias or other message clothing, and the Respondent issued a revised employee handbook in 2013 containing the corrected provisions, which was distributed to all employees who had received the prior handbook. The region is no longer alleging that these provisions with the exception of the allegation in paragraph 9 of the complaint, are still in effect.

Counsel for the Respondent argues that the allegations contained in paragraphs 7 and 8 are moot and do not merit any finding of a violation because after discussions with the Board's regional office, the Respondent rescinded these provisions, replaced them with corrected provisions and distributed a new employee handbook to all those employees who had received the prior handbook. Although I originally agreed with counsel for the Respondent that it would not effectuate the policies of the Act to spend time on these allegations which had already been remedied, a careful examination of the Board's cases, convinces me that my initial impression was incorrect.

In *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), 2 days prior to the issuance of a complaint, the respondent's administrator published a statement in the employees' newsletter repudiating an unlawful statement made by a supervisor. The respondent argued that this disavowal obviated the need for any remedial action. The Board disagreed, stating:

> It is settled that under certain circumstances an employer may relieve himself of liability for unlawful conduct by repudiating the conduct. To be effective, however, such repudiation must be "timely,' "unambiguous,' "specific in nature to the coercive conduct,' and "free from other proscribed illegal conduct. ' Further, there must be adequate publication of the repudiation to the employees involved and there must be no proscribed conduct on the employer's part after the publication. And, finally, the Board has pointed out that such repudiation or disavowal of coercive conduct should give assurances to employees that in the future their employer will not interfere with the exercise of their Section 7 rights. [citations omitted]

An additional factor to consider in these situations is whether the unfair labor practice was repudiated before or after the issuance of the complaint. *IBEW, Local 1316*, 271 NLRB 338, 341 (1984).

The complaint herein issued on December 31, 2012. Subsequently, the Respondent and the Board's regional office entered into discussions on modifications to the employee handbook so that it would not unlawfully restrict employees' Section 7 rights, and in May, the Respondent issued a new employee handbook modifying the provisions alleged to be unlawful in the December 31, 2012 complaint, with the exception of the dress code provision, paragraph 9 of the complaint. Clearly, not all the requirements set forth in *Passavant* have been met. While there has been an adequate publication to the affected employees, the dress code provision remains as is in the handbook, and there have been no assurances by the Respondent that, in the future, it will not interfere with the employees' Sec-

tion 7 rights.

The 2010 employee handbook's confidential and proprietary information provision defines such information as: "All information that has or could have commercial value or other utility in the Company's business. The unauthorized disclosure or use of this information could be detrimental to the Company's interests whether or not such information is specifically identified as Confidential Information by the Company. Employees who have access to the Company's Confidential Information will be required to sign the Company's Confidential Information Agreement as a condition of Employment." Included in the definition of confidential information are customers, suppliers, compensation structures and incentive programs. A lead case on this subject, *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), stated that an 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. Citing *Lafayette Park Hotel*, 326 NLRB 824 (1998), the Board stated:

> 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. 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. If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

As there is no evidence that any of the rules involved herein were promulgated pursuant to either (2) or (3) above, or that they *explicitly* restrict Section 7 activity, the issue is whether a reasonable construction of the rules would prohibit Section 7 activity. I believe that a reasonable reading of this provision, particularly the restriction on "compensation structures" and "incentive programs" could lead an employee to believe that his ability to discuss his terms and conditions of employment with fellow employees, the media or a union were limited by this provision. I therefore find that the confidential andpProprietary information policy provision in the 2010 handbook violates Section 8(a)(1) of the Act. *Labinal, Inc.*, 340 NLRB 203, 210 (2003); *Flex Frac Logistics, LLC*, 358 NLRB No. 127 (2012).

The discourtesy policy, under general rules of conduct, states:

> All employees are expected to be courteous, polite and friendly, both to customers and to their fellow employees. The use of profanity or disrespect to a customer or co-worker, or engaging in any activity which could harm the image or reputation of the Company, is strictly prohibited.

I find that no reasonable reading of the first sentence, as well as the first half of the second sentence (up to coworker) could be construed as limiting or prohibiting Section 7 rights. *Adtranz ABB Daimler-Benz Transp., NA, Inc.*, 331 NLRB 291 (2000); *Lutheran Heritage*, supra, at 647. An employer is certainly permitted to maintain order in its workplace and promote harmonious relations between its employees, other employees and its customers. However, the provision prohibiting any activity which could harm the image or reputation of the company is clearly susceptible of being understood to limit employees in their right to engage in a strike, work stoppage or similar forms of concerted activities. The discourtesy policy provision therefore violates Section 8(a)(1) of the Act. *Karl Knauz Motors, Inc.*, 358 NLRB No. 164 (2012).

The inquiries concerning employees provision in the 2010 handbook states, inter alia:

> All inquiries from outside sources concerning employees should be directed to the Human Resources Department. An employee shall not provide personal information of any nature concerning another employee to any outside source unless approved by the Human Resources Department and authorized in writing, by the employee.

Although this provision is limited to sharing information with "outside sources," it would clearly prevent an employee from discussing employees' terms and conditions of employment with union representatives, and would also prevent employees from cooperating with the Board, the media or other governmental agencies, investigating matters involving the Respondent. This provision clearly violates Section 8(a)(1) of the Act. *Supervalu Holdings, Inc.*, 347 NLRB 425 (2006).

The 2010 handbook's solicitation and distribution provision states, inter alia:

> Persons who are not employed by the Company are prohibited from soliciting and from distributing literature and other materials, for any purpose and at any time, within the Company's buildings or property or on or adjacent to the Company's premises.

The Board, in *Bristol Farms, Inc.*, 311 NLRB 437 (1993), stated: "It is beyond question that an employer's exclusion of union representatives from public property violates Section 8(a)(1) so long as the union representatives are engaged in activity protected by Section 7 of the Act." As this is right on point, I find that the solicitation and distribution provision violates Section 8(a)(1) of the Act.

The 2010 handbook's social media policy provision is rather extensive, with definitions and fifteen subparagraphs, briefly stated, inter alia:

> 1. The Company requires its employees to confine any and all social media commentaries to topics that do not disclose any personal or financial information of employees, customers or other persons, and do not disclose any confidential or proprietary information of the Company.
> 2. If an employee posts comments about the Company or related to the Company's business or a policy issue, the employee must identify him/herself.
> 5. If an employee's online blog, posting or other social media activities are inconsistent with, or would negatively impact the Company's reputation or brand, the employee should not refer to the Company, or identify his/her connection to the

Company.

7. While the Company respects employees' privacy, conduct that has, or has the potential to have a negative effect on the Company might be subject to disciplinary action up to, and including, termination, even if the conduct occurs off the property or off the clock.

8. Employees may not post videos or photos which are recorded in the workplace, without the Company's permission.

9. If an employee is ever asked to make a comment to the media, the employee should contact the Vice President of Operations before making a statement.

10. The Company may request that an employee temporarily confine its social media activities to topics unrelated to the Company or a particular issue if it believes this is necessary or advisable to ensure compliance with applicable laws or regulations or the policies in the Employee Handbook. The Company may also request that employees provide it access to any commentary they posted on social media sites.

11. Employees choosing to write or post should write and post respectfully regarding current, former or potential customers, business partners, employees, competitors, managers and the Company. Employees will be held responsible for and can be disciplined for what they post and write on any social media. However, nothing in this Policy is intended to interfere with employees' rights under the National Labor Relations Act.

12. Managers and supervisors should think carefully before "friending," "linking" or the like on any social media with any employees who report to them.

It requires little discussion to find that a number of these provisions clearly violate the Act as employees would reasonably construe these provisions as preventing them from discussing their conditions of employment with their fellow employees, radio and television stations, newspapers or unions, or limiting the subjects that they could discuss. *Cintas Corp.*, 344 NLRB 943 (2005); *Crowne Plaza Hotel*, 352 NLRB 382 (2008); *Karl Knauz Motors*, supra. I therefore find that Provisions 1, 5, 7, 8, 9, 10, and 11 of the social media provision of Respondent's 2010 employee handbook violates the Act.

The remaining issue is the dress code contained in both the 2010 and 2013 employee handbooks stating: "Employees who have contact with the public may not wear pins, insignias, or other message clothing.' This provision applies to the service technicians, the service advisors, as well as the salespeople. An often cited case, *Kendall Co.*, 267 NLRB 963, 965 (1983), stated:

> While employees have the right to wear union insignia at work, employers have the right to take reasonable steps to ensure full and safe production of their product or to maintain discipline. Therefore the Board holds that a rule which curtails that employee right is presumptively invalid unless special circumstances exist which make the rule necessary to maintain production or discipline, or to ensure safety.

Such special circumstances would include situations where the wearing of insignias or "other message clothing" might jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image that the employer has established, or when necessary to maintain decorum and discipline among employees. *Nordstrom, Inc.*, 264 NLRB 698, 700 (1982); *United Parcel Service*, 312 NLRB 596, 597 (1993); *Komatsu American Corp.*, 342 NLRB 649, 650 (2004). In *United Parcel*, supra, the Board stated: "In determining whether an employer, in furtherance of its public image business objective, may lawfully prohibit uniformed employees who have contact with the public from wearing union insignia, the Board considers the appearance and message of the insignia to determine whether it reasonably may be deemed to interfere with the employer's desired public image.' However, customer exposure to such insignia, alone, is not a special circumstance allowing the employer to prohibit such a display. *Meijer, Inc.*, 318 NLRB 50 (1995).

The Respondent defends that the special circumstances herein are that pins are a safety hazard that could injure its employees and damage its vehicles, and, additionally, that as number 1 on the planet, it is protecting its image. I agree with its initial defense, but disagree with the latter. Obviously, pins can fall from the clothing that they are attached to and, possibly, damage the engine or interior or exterior of a vehicle that the employee is working on, or could become a projectile and injure the employee. *Kendall Co.*, supra; *E & L Transport Co., LLC*, 331 NLRB 640, 649 (2000). Therefore, they can be lawfully prohibited. However, although the Respondent established that the employees have direct contact with the customers, and that the customers can observe the service technicians through the large glass window in the waiting area, it has not established any special circumstances warranting the prohibition of wearing "insignias or other message clothing." It is more likely that the display would be a Boston Red Sox or Boston Strong display, rather than an offensive or defamatory display. *Pathmark Stores, Inc.*, 342 NLRB 378 (2004). There are numerous factors that need to be weighed to determine whether a displayed item constitute special circumstances and should be permitted, including size and the message thereon. A blanket prohibition such as the instant one, therefore violates Section 8(a)(1) of the Act. *Titus Electric Contracting, Inc.*, 355 NLRB 1357 (2010).

CONCLUSIONS OF LAW

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

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by maintaining in its employee handbook from about December 21, 2011, to about May 2013, provisions relating to confidential and proprietary information, discourtesy, inquiries concerning employees, dress code and personal hygiene, solicitation and distribution policy, and social media policy. All of these provisions, with the exception of dress code and personal hygiene, were modified by the Respondent and codified in a new employee handbook dated May 2013, and therefore require no remedy.

4. Respondent violated Section 8(a)(1) of the Act by implementing and maintaining a rule in its employee handbook, effective May 2013, stating: "Employees who have contact with the public may not wear insignias, or other message clothing.'

5. Respondent did not violate the Act by prohibiting its em-

ployees from wearing pins.

THE REMEDY

Having found that Respondent has unlawfully maintained the dress code and personal hygiene policy since about December 2011, I recommend that the Respondent rescind this provision (with the exception of the prohibition on wearing pins) from its employee handbook and notify its employees that it has done so and that this provision is no longer in effect. An issue arose at the hearing as to which unit of employees would be affected by this hearing and remedy. The Respondent is Boch Imports, Inc., d/b/a Boch Honda; however, the Employee Handbook, under the caption: "WELCOME,' states: "Welcome to a Boch Enterprise retail company, which presently includes the various Boch new motor vehicle dealerships, as well as related retail businesses which may be established from time-to-time (each referred to herein as the 'Company').' Kathleen Genova, the Respondent's vice president and general counsel, testified that the employee handbook applied to employees at all of Mr. Boch's dealerships. At the hearing, counsel for the General Counsel introduced in evidence a listing of Boch dealerships from Boch's website and moved to amend the complaint to allege that the handbooks are unlawful at all of Respondent's enterprises where they are in effect. I denied this request to amend the complaint. In *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), the Board stated:

> Concerning the scope of notice posting, we have consistently held that, where an employer's overbroad rule is maintained as a companywide policy, we will generally order the employer to post an appropriate notice at all of its facilities where the unlawful policy has been or is in effect. .There is no dispute in this case that the unlawful rules apply to all of the Respondent's employees nationwide. Accordingly, we will modify the judge's Order to provide for nationwide posting of the remedial notice.

In *Raley's, Inc.*, 311 NLRB 1244 (1993), the Board found that because the respondent did not except to the judge's finding that the dress code applied to employees at all of its stores, the remedy would apply to all stores. As the judge stated (at p. 1252): "the remedy directed herein shall be coextensive with Respondent's application of its union button prohibition rule.' In *Marriot Corp.*, 313 NLRB 896, the General Counsel excepted to the judge's failure to require the Respondent to rescind the unlawful prohibition at all of its facilities where the unlawful rule was promulgated and maintained. The Board refused to do so stating: "Given the absence of any evidence, finding or stipulation that the unlawful rule was promulgated or maintained at any other of the Respondent's facilities, we find that the issue of more widespread violations was not fully litigated.' In the instant matter, the handbook states that it applies to all "Boch new motor vehicle dealerships as well as related retail businesses,' and Genova testified that it applied to employees of all of Mr. Boch's dealerships. As the employee handbook is effective at all Boch dealerships, and employees at all the dealerships presumably received the handbook, it is appropriate that employees at all of these dealerships be aware of the findings herein.

Upon the foregoing findings of fact, conclusions of law, and on the entire record, I hereby issue the following recommended[3]

ORDER

The Respondent, Boch Imports, Inc., d/b/a Boch Honda, Norwood, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and enforcing an overly broad appearance policy prohibiting employees who have contact with the public from wearing insignias or other message clothing.

(b) In any like or related manner interfering with, restraining, or coercing its 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 the dress code provision prohibiting its employees from wearing insignias or other message clothing, and notify the employees at all of its dealerships and related businesses, by a corrected employee handbook, email or by letter, that it has done so and that this prohibition is no longer in effect.

(b) Within 14 days after service by the Region, post at each of its dealerships and related retail businesses, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 1, 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 employees employed by the Respondent at any time since December 21, 2011.

(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 amended complaint be dismissed insofar as it alleges that the wearing of pins by employees with contact with the public violates the Act.

Dated, Washington, D.C. January 13, 2014

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[3] 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.

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

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose 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.

Although our 2010 employee handbook contained some overly restrictive policies that interfered with certain of the rights guaranteed you by Section 7 of the Act, we have rescinded those policies, with the exception of the dress code and personal hygiene policy referred to below, and replaced them in our 2013 employee handbook.

WE WILL NOT promulgate or enforce an overly broad appearance policy prohibiting employees who have contact with the public from wearing insignias or other message clothing, and WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL modify our employee handbook by rescinding the dress code provision that prohibits employees who have contact with the public from wearing insignias or other message clothing.

BOCH IMPORTS, INC. D/B/A BOCH HONDA