UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

JUN 11 2015

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DISTRICT OF COLUMBIA CIRCUIT
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PACIFIC BELL TELEPHONE COMPANY d/b/a AT&T and NEVADA BELL TELEPHONE COMPANY d/b/a AT&T, Petitioners, v. NATIONAL LABOR RELATIONS BOARD, Respondent.	15-1165 Case No. _____

PETITION FOR REVIEW OF A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Petitioners Pacific Bell Telephone Company and Nevada Bell Telephone Company hereby petition the United States Court of Appeal for the District of Columbia Circuit for review of the decision and order of the Respondent National Labor Relations Board, entered on June 2, 2015, in Cases 20-CA-80400, *et al.*, which is found at 362 NLRB No. 105. A copy of the Decision and Order is

attached to this petition as Exhibit A. This petition is proper under 29 USC § 160(f) and Rule 15 of the Federal Rules of Appellate Procedure.

DATED: June 11, 2015

Attorneys for Petitioners, Pacific Bell Telephone Company and Nevada Bell Telephone Company:

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CERTIFICATE OF SERVICE

I certify that I am a citizen of the United States and an employee in Washington, D.C. I am over the age of eighteen years old and not a party to the within action.

I hereby certify that I filed the PETITION FOR REVIEW with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by hand delivery on June 11, 2015.

On June 11, 2015, I caused the foregoing document(s) described as: PETITION FOR REVIEW on the interested parties by electronic service as follows:

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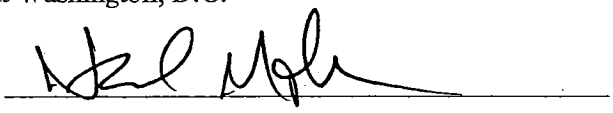
I declare that I am a member of the bar of this court at whose direction the service was made.

Executed on June 11, 2015, at Washington, D.C.



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.

Pacific Bell Telephone Company d/b/a AT&T and Nevada Bell Telephone Company d/b/a AT&T *and* Communication Workers of America, AFL–CIO. Cases 20–CA–080400, 20–CA–080432, 20–CA–102438, 21–CA–081778, 21–CA–081871, 21–CA–081874, 21–CA–082299, 21–CA–082750, 21–CA–088795, 31–CA–081065, 31–CA–083124, 31–CA–092772, 32–CA–079500, 32–CA–080823, 32–CA–086853, 32–CA–086921, 32–CA–087867, 32–CA–089371, 32–CA–090993[1]

June 2, 2015

DECISION AND ORDER

BY MEMBERS MISCIMARRA, HIROZAWA, AND MCFERRAN

On April 23, 2014, Administrative Law Judge John J. McCarrick issued the attached decision. The Respondents filed exceptions and a supporting brief. The General Counsel and the Union filed answering briefs, and the Respondents filed a reply brief. The General Counsel and the Union filed cross-exceptions and supporting briefs. The Respondents filed answering briefs, and the General Counsel filed a reply 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,[2] and conclusions and to adopt the recommended Order as modified and set forth in full below.[3]

Facts

The Union represents a unit of employees that includes various types of technicians who work out of the Respondents' facilities in California and Nevada. Of particular relevance here are premises technicians (prem techs) and maintenance splicing techs (splicing techs). Prem techs work exclusively inside customers' homes or businesses installing and repairing telephone, cable, and internet services. Splicing techs install services and repair the Respondents' equipment both inside and outside of customers' homes and businesses.

The Respondents and the Union have had a collective-bargaining relationship for many years. This case arises

[1] The ALJ considered the unfair labor practices alleged in Cases 20–CA–102438 and 31–CA–092772, but failed to include these case numbers in the caption to his decision. We correct this inadvertent error.

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

In affirming the judge's findings, we find it unnecessary to rely on his citation to *Chinese Daily News*, 353 NLRB 613 (2008), and *First Student, Inc.*, 353 NLRB 512, 517 (2008), two cases decided by a two-member Board. See *New Process Steel v. NLRB*, 130 S.Ct. 2635 (2010). In place of *First Student*, we rely on *Daily News of Los Angeles*, 315 NLRB 1236, 1237 (1994), enfd. 73 F.3d 406 (D.C. Cir. 1996), cert. denied 519 U.S. 1090 (1997), also cited by the judge. The judge cited a third case decided by a two-member Board, *Wayneview Care Center*, 352 NLRB 1089 (2008). Although the D.C. Circuit vacated that decision pursuant to *New Process Steel*, supra, we rely on it here because a three-member panel of the Board subsequently incorporated the decision by reference, and that decision has since been enforced. See 2010 WL 5173270 (D.C. Cir. 2010) (order vacating and remanding to the Board), 356 NLRB No. 30 (2010), enfd. 664 F.3d 341 (D.C. Cir. 2011). We also note that the judge cited *Mardi Gras Casino & Hollywood Concessions, Inc.*, 359 NLRB No. 100 (2013), a case decided by a panel that included two persons whose appointments to the Board were not valid. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). This decision was subsequently incorporated by reference in a decision issued by a panel of three confirmed members. See 361 NLRB No. 59 (2014). Lastly, we find it unnecessary to rely on the judge's citation to *World Color (USA) Corp.*, 360 NLRB No. 37 (2014), enf. denied and remanded 776 F.3d 17 (D.C. Cir. 2015).

[3] The Union excepts to "the failure of the Order and Remedy to make it clear that all postings be nationwide for AT&T.' We find no merit to this exception. There is no basis on which to order nationwide notice posting, as the Respondents here operate only in California and Nevada, and this was the alleged and admitted scope of their operations. The Union has also requested a number of special remedies. We decline to order any of the requested remedies, as the Union has not provided any reasons why the Board's traditional remedies are not sufficient to remedy the unfair labor practices found.

We shall provide separate Orders for each Respondent, and we shall further modify the judge's recommended Order to conform to the violations found and to the Board's standard remedial language. Because none of the unfair labor practices we find herein involved cessation of employment status, we amend the judge's remedy to provide that backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971).

The judge found that the Respondents unlawfully implemented and enforced rules prohibiting employees from placing union stickers on company-owned vehicles, laptops, and lockers at its facilities in Otay and El Centro, California. The judge dismissed similar allegations with respect to the Respondents' Othello, California facility, finding that the evidence submitted to support this allegation was insufficient. The Respondents do not except to the judge's finding that they violated the Act, but they argue that the remedy for this violation should apply only to the Otay and El Centro facilities. We find merit in this exception. As the judge correctly found, the evidence does not show that the Respondents enacted a regionwide rule or actually prohibited employees from placing stickers on their lockers, laptops, and trucks and/or removed stickers from company property at other facilities. We shall further modify the Order to require notice posting for this violation only at the Otay and El Centro facilities. See, e.g., *Bruce Packing Co.*, 357 NLRB No. 93, slip op. at 1 fn. 4 (2011); *Consolidated Edison Co. of New York*, 323 NLRB 910, 911–912 (1997). Compare *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 10 (2014).

We shall substitute new notices to conform to the Orders as modified.

EXHIBIT A

in the context of negotiations for a successor to a collective-bargaining agreement that was effective from April 5, 2009, to April 7, 2012.

Splicing techs are covered by appendix A of the collective-bargaining agreement and have never had any formal appearance standards. Prem techs have been covered by appendix E since the position was created in 2006. Appendix E contains a Branded Apparel Program (BAP) provision, which states:

> In order to provide employees with a consistent, recognizable appearance to customers which differentiates the Company from its competitors, the Company may, at its discretion, implement a mandatory branded apparel program. Employees will be required to wear the branded apparel while working on Company time. The Company may change the program at its discretion .
>
> Once implemented, the Company can cancel the program with thirty (30) days notice.

Appendix E also contains an "Appearance Standards/Dress Code" provision, which states:

> The Company may [] implement appearance standards and/or a dress code which requires employees to have a professional appearance appropriate for the business environment, consistent with State and Federal laws. The standard and code will be uniformly applied to all employees. The Company may change the standards and code upon notice to the Union.

During bargaining in 2006, the parties agreed that branded apparel shirts would display both the "AT&T" logo and the "CWA" logo. This agreement was not included in appendix E.

The Respondents issued new Premises Technician Guidelines (the Guidelines) on January 22, 2009. For the first time, the Guidelines included a restriction on wearing buttons and stickers. Paragraph 13.3 stated that branded apparel "may not be altered in any way which includes adding buttons, pins, stickers, writing etc."[4]

As the judge found, from 2006 until the collective-bargaining agreement expired on April 7, 2012, prem techs wore various items of non-BAP apparel while working at customers' homes and in the presence of their supervisors, including a variety of ball caps, raingear, sweatshirts, and buttons or stickers. Employees also wore a variety of items bearing union insignia, including pins, stickers, lanyards, bracelets, hoodies, and T-shirts. Employees were not disciplined for wearing nonbranded apparel. Splicing techs also wore union buttons in the presence of supervisors and customers.

Shortly after the 2009–2012 collective-bargaining agreement expired, the Union began distributing various buttons and stickers for employees to wear. These buttons and stickers included ones reading "WTF, Where's The Fairness," "FTW Fight To Win," "CUT the CRAP! Not My Healthcare," "KEEP AT&T OFF THE HEALTHCARE LOW ROAD," "MOURN for the dead, FIGHT for the living," "TAKE THE HIGH ROAD FOR JOBS AND CUSTOMERS," "TAKING A STAND FOR JOBS & HEALTH CARE," "I WON'T SCAB," and "NO ON PROP 32."[5] On various dates between April 7 and June 7, 2012, the Respondents refused to allow certain technicians to be dispatched to the field unless they removed the union buttons and stickers. Technicians who refused were sent home. Technicians who were sent home were not paid for any time on these days, and each of those techs received an "absence occurrence" (an unexcused absence, which is placed in employees' personnel files and can be considered when subsequent discipline is imposed).

Discussion

The complaint alleges, and the judge found, that Respondent Pacific Bell Telephone Company (Pacific Bell) violated Section 8(a)(1) by (1) maintaining an overly broad rule prohibiting employees from wearing union insignia; (2) implementing rules prohibiting employees from wearing union insignia or placing union stickers on company-owned vehicles, laptops, and lockers; (3) threatening employees with absence occurrences and job loss if they did not remove union insignia; (4) threatening employees with unspecified reprisals for distributing union insignia; and (5) removing union stickers from company-owned vehicles, lockers, and laptops. The judge found that Pacific Bell violated Section 8(a)(3) and (1) by prohibiting employees from working unless they removed union insignia, and Section 8(a)(5) and (1) by implementing the rules above without notice to or bargaining with the Union. The judge found that Respondent Nevada Bell likewise violated Section 8(a)(1) by maintaining an overly broad rule prohibiting employees from wearing union insignia, and Section 8(a)(3) and (1) by disciplining and prohibiting employees from working unless they removed union insignia.

The Respondents except only to the judge's findings as they relate to those buttons and stickers reading "WTF Where's the Fairness," "FTW Fight to Win," "Cut the

[4] The Guidelines also stated that "U-verse BAP is mandatory for all Premises Technicians. No other shirt, hat or jacket will be worn without management approval. " (Par. 13.2.)

[5] Proposition 32 was a measure on California's general election ballot in the November 2012 election that would have prohibited unions from using payroll-deducted funds for political purposes.

Crap! Not My Healthcare," and "No on Prop 32." The Respondents argue that their ban on these four particular buttons and stickers was lawful for a variety of reasons. For the reasons discussed below, we affirm the judge's findings that the Respondents violated the Act by prohibiting these buttons and stickers.

"WTF," "FTW," and "Cut the Crap!" Buttons and Stickers

The Respondents argue, first, that they could lawfully prohibit all technicians from wearing the buttons and stickers reading "WTF Where's the Fairness," "FTW Fight to Win," and "Cut the Crap! Not My Healthcare" while working because the content of the buttons and stickers was so vulgar and offensive as to lose the protection of the Act. See, e.g., *Southwestern Bell Telephone Co.*, 200 NLRB 667 (1972). The judge rejected this argument, finding that the "WTF" and "FTW" buttons and stickers plainly defined WTF as "Where's the Fairness" and FTW as "Fight to Win" in lettering clearly visible to any customer who might observe them, thereby clarifying any confusion created by the use of the acronyms. With respect to the "Cut the Crap!" button, the judge found that illustration of the word "crap" had no "scatological" content, as argued by the Respondents, and that these buttons also did not lose the protection of the Act. The judge further found that none of the three buttons and stickers impugned the Respondents' reputation with their customers.

We agree with the judge that the content of the "WTF," "FTW," and "Cut the Crap!" buttons and stickers was not so vulgar and offensive as to cause employees wearing them to lose the protection of the Act. In particular, we emphasize that the "WTF" and "FTW" buttons and stickers provided a nonprofane, nonoffensive interpretation on their face. Unlike in *Southwestern Bell*, supra, where the Board found that an employer could lawfully prevent employees from wearing sweatshirts reading "Ma Bell Is A Cheap Mother," the acronyms here did not stand alone as a potentially profane statement; the buttons and stickers provided the acronyms along with text that established their meanings and negated any offensive connotation. Further, this text was legible and clearly visible to customers that the technicians would encounter. We find that the possible suggestion of profanity, or "double entendre," as the Respondents characterize it, is not sufficient to render the buttons and stickers unprotected here, where an alternative, nonprofane, inoffensive interpretation is plainly visible and where, further, the buttons and stickers were not inherently inflammatory and did not impugn the Respondents' business practices or product.[6] See *Southern California Edison Co.*, 274 NLRB 1121 (1985) (finding "Stick Your Retro" slogan was not vulgar or obscene); *Borman's, Inc.*, 254 NLRB 1023 (1981) (affirming judge's finding that "double entendre" of phrase "I'm tired of busting my ass" did not make union insignia unprotected), enf. denied 676 F.2d 1138 (6th Cir. 1982). Compare *Komatsu America Corp.*, 342 NLRB 649, 650 (2004) (finding employer lawfully prohibited T-shirts that made "clear appeal to ethnic prejudices").

With respect to the "Cut the Crap!" buttons, the Respondents do not argue that the word "crap" is itself offensive; instead, they take issue with the way the word is illustrated. While we agree with the Respondents that it is possible for an illustration to be so vulgar or obscene as to lose the protection of the Act, we agree with the judge that the "Cut the Crap! Not My Healthcare" buttons here did not cross that line.

The Respondents next argue that, even assuming that the "WTF," "FTW," and "Cut the Crap!" buttons and stickers were not so vulgar and offensive as to lose the protection of the Act, they have nevertheless demonstrated "special circumstances" that justify their prohibition on prem techs[7] being dispatched while wearing those three particular buttons and stickers.

Employees generally have a protected right under Section 7 to wear union insignia, including union buttons, in the workplace. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–803 (1945); *P.S.K. Supermarkets*, 349 NLRB 34, 35 (2007). This right, however, may give way when the employer demonstrates special circumstances sufficient to outweigh employees' Section 7 interests and legitimize the regulation of such insignia. See *Komatsu America Corp.*, 342 NLRB at 650. Special circumstances may include, inter alia, "situations where display of union insignia might '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.'" *P.S.K. Supermarkets*, 349 NLRB at 35 (quoting *Bell-Atlantic-Pennsylvania*, 339 NLRB 1084, 1086 (2003), enfd. 99 Fed. Appx. 233 (D.C. Cir. 2004)). The burden is on the respondent to prove the existence of special circumstances that would justify a restriction. See *W San Diego*, 348

[6] The buttons and stickers, with subtext, do not contain language with the same explicitly vulgar connotations as the "bone us" language found unprotected in *Honda of America Mfg., Inc.*, 334 NLRB 746, 747 (2001).

[7] Assuming that the "WTF," "FTW," and "Cut the Crap!" buttons and stickers remain protected, the Respondents do not argue that they have demonstrated any special circumstances that justified preventing splicing techs from wearing the buttons and stickers.

NLRB 372, 372 (2006). The requirement that employees wear a uniform is not alone a special circumstance justifying a button prohibition. See *P.S.K. Supermarkets*, 349 NLRB at 35; *United Parcel Service*, 312 NLRB 596, 596–598 (1993), enf. denied 41 F.3d 1068 (6th Cir. 1994). Customer exposure to union insignia, standing alone, is also not a special circumstance. *Meijer, Inc.*, 318 NLRB 50, 50 (1995), enfd. 130 F.3d 1209 (6th Cir. 1997).

The Respondents argue that they have established appearance rules for prem techs and that allowing these techs to wear the disputed buttons and stickers would unreasonably interfere with their desired public image. See *W San Diego*, 348 NLRB at 373. To support their argument, the Respondents point to the provisions of the collective-bargaining agreement allowing the Respondents, at their discretion, to implement a mandatory branded apparel program and a dress code for prem techs, as well as their unilaterally issued Premises Technicians Guidelines, which, beginning in 2009, purported to restrict prem techs from altering their branded apparel by adding buttons or stickers.

We, like the judge, find that the Respondents have not demonstrated special circumstances sufficient to outweigh employees' Section 7 right to wear union insignia. First, there are no exceptions to the judge's finding that neither the provisions of the collective-bargaining agreement cited by the Respondents nor the 2009 Premises Technicians Guidelines constitute a waiver of the Union's right to bargain over employees' right to wear union insignia, and the Union has not agreed to allow the Respondents to unilaterally place restrictions on union insignia worn by employees.[8] See *Meijer, Inc.*, 318 NLRB at 50. Second, the Respondents attempt to justify the ban as an application of their branded apparel program is unavailing because the judge found that the Respondents have not enforced this policy in a consistent and nondiscriminatory manner and, prior to April 2012, prem techs were permitted to wear a variety of similarly sized and colored buttons and stickers, as well as baseball caps and other items of non-BAP apparel, both union-related and nonunion-related. Given the Respondents' history of lax enforcement of its BAP policy, we agree with the judge that the Respondents have not demonstrated special circumstances that outweigh employees' right to wear union insignia. See *Airport 2000 Concessions, LLC*, 346 NLRB 958, 960 (2006) (finding that employer could not establish special circumstances where uniform policy was inconsistently applied).

The Respondents asserted to the judge that special circumstances justified their ban on all union buttons and stickers. On exceptions, the Respondents limit their claim of special circumstances to a subset of the buttons and stickers—those reading "WTF," "FTW," and "Cut the Crap!." As the judge found, however, the specific content of these buttons and stickers does not change the outcome of the special circumstances analysis. Although the "WTF," "FTW," and "Cut the Crap!" buttons and stickers may be in questionable taste, they were not overtly vulgar or obscene, and the wearing of these buttons and stickers, as discussed above, remained protected activity. This fact, combined with the Respondents' history of allowing prem techs to wear a variety of nonbranded apparel, as discussed above, undermines the Respondents' argument that they banned union button and stickers in order to maintain a professional public image with their customers.[9] See *Meijer, Inc.*, 318 NLRB at 50–51. Further, the Respondents' ban was not narrowly tailored to prohibit only those buttons and stickers the Respondents viewed as offensive; instead, the Respondents prohibited prem techs from wearing any union buttons and stickers, even those with no arguably offensive content. Compare *Leiser Construction, LLC*, 349 NLRB 413, 415 (2007) (finding special circumstances established where prohibited sticker was vulgar and obscene and employee was permitted to display other union-related stickers), enfd. 281 Fed. Appx. 781 (10th Cir. 2008). In these circumstances, we agree with the judge that the Respondents have not demonstrated special circumstances concerning the "WTF," "FTW," and "Cut the Crap!" buttons and stickers that outweigh employees' Section 7 right to wear union insignia.

[8] Because the Respondents do not except to the judge's finding that the Union did not clearly and unmistakably waive its right to bargain over employees' right to wear union insignia, either through the language of appendix E of the collective-bargaining agreements or through its conduct when the Respondents issued the 2009 Premises Technicians Guidelines, we find it unnecessary to address the General Counsel's argument that, even if the Union had waived employees' Sec. 7 right to wear union insignia, that waiver did not survive the expiration of the parties' collective-bargaining agreement on April 7, 2012.

[9] The Respondents argue that the situation here is the same as that in *BellSouth Telecommunications*, 335 NLRB 1066 (2001), vacated and remanded 393 F.3d 491 (4th Cir. 2005), supplemented 346 NLRB 637 (2006), where the Board found that an agreement between an employer and union that bargaining unit employees would be required to wear a uniform that displayed both the employer's and the union's logos did not intrude on employees' Sec. 7 rights to refrain from union activity. The Board found that the policy advanced the employer's public image business objective and that this "special circumstance" outweighed any intrusion on employees' Section 7 rights. Id. at 1071. We agree with the judge that *BellSouth* is not analogous to the present set of facts. As the judge noted, *BellSouth* involved the compelled wearing of a union logo as the result of collective bargaining and not, as here, a restriction on employees' Sec. 7 rights imposed unilaterally by the employer.

"No on Prop 32" Buttons

Respondent Pacific Bell also excepts to the judge's finding that it violated the Act by refusing to allow employees to work unless they removed "No on Prop 32" buttons. We agree with the judge, for the reasons he stated, that employees wearing the buttons were not engaged in conduct or speech "so purely political or so remotely connected to the concerns of employees as employees as to be beyond the protection of the [mutual aid or protection] clause." *Eastex, Inc. v. NLRB*, 437 U.S. 556, 570 fn. 20 (1978).

The Respondent, pointing to Justice White's concurring opinion in *Eastex v. NLRB*, id. at 578–580, argues that the "No on Prop 32" buttons were unprotected for an additional reason, namely because customers, seeing the button on employees' branded apparel, "could well have concluded that [the Respondent] had taken a position on this highly controversial political issue."[10] We find no merit to this argument. Although it is possible that an employer's desire to remain neutral on a controversial political issue could establish special circumstances sufficient to justify a restriction on union insignia, such a claim, even under Justice White's view, must be substantiated by the record, which the Respondent has not done. The buttons here do not, on their face, suggest that the Respondent has taken a position on Proposition 32, and there is nothing about these buttons that would make a customer any more likely to ascribe the wearer's views to the company than any other button/sticker/ball cap, etc. that the record shows employees were routinely permitted to wear while interacting with customers. Moreover, the Respondent has presented nothing beyond conclusory testimony to support its argument that Prop 32 was "highly controversial" and that it was concerned about potentially offending customers when it prohibited employees from wearing the buttons. The Respondent's speculative, conclusory testimony is not sufficient to meet its burden of demonstrating special circumstances sufficient to outweigh employees' Section 7 rights. See, e.g., *Boise Cascade Corp.*, 300 NLRB 80, 82 (1990) ("[G]eneral, speculative, isolated or conclusory evidence of potential disruption does not amount to 'special circumstances.'"). As with any political issue, it is likely that some of the Respondent's customers supported Prop 32 and disagreed with the message of the buttons. This fact alone is not sufficient to allow the Respondents to restrict employees' rights to wear the buttons, however, as a potentially negative response from customers does not create special circumstances justifying a ban on a protected message. See *Howard Johnson Motor Lodge*, 261 NLRB 866, 868 fn. 6 (1982), enfd. 702 F.2d 1 (1st Cir. 1983). See also *Inland Counties Legal Services*, 317 NLRB 941 (1995).

ORDER

A. The National Labor Relations Board orders that the Respondent, Pacific Bell Telephone Company d/b/a AT&T, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and enforcing an overly broad rule prohibiting employees from wearing union insignia.

(b) Maintaining a rule prohibiting employees from placing stickers on company-owned vehicles, laptops, and lockers at its facilities in Otay and El Centro, California.

(c) Threatening employees with absence occurrences and loss of their jobs if they do not remove union insignia.

(d) Threatening employees with unspecified reprisals for passing out union insignia.

(e) Removing union stickers from company-owned vehicles, laptops, and lockers at its facilities in Otay and El Centro, California.

(f) Refusing to allow employees to work unless they remove union insignia.

(g) Refusing to allow employees to work unless they remove "No on Prop 32" buttons.

(h) Disciplining employees for wearing union insignia by issuing absence occurrences and denying them pay.

(i) Unilaterally and without bargaining with the Communication Workers of America, AFL–CIO (the Union) implementing rules prohibiting employees from wearing union insignia.

(j) Unilaterally and without bargaining with the Union, implementing a rule prohibiting employees from placing stickers on company-owned vehicles, laptops, and lockers at its facilities in Otay and El Centro, California.

(k) 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.

[10] Justice White agreed that the distribution at issue in *Eastex* was protected by Sec. 7, but went on to say that, in his view, it was possible that an employer could justifiably restrict distributions that "might concern goals and ends about which his work force, considered as a whole, as well as the public, may be deeply divided, with which he may have no sympathy whatsoever, or in connection with which he would not care to have it inferred that he supports one side or the other." Id. at 579. Justice White stated that these considerations, if substantiated by the record, "would appear to be substantial factors to be weighed" in the balance when determining whether the employer has violated the Act. Id. Justice White was not addressing the argument that an employer could prohibit employees who come in direct contact with customers from wearing "controversial" political union insignia. *Eastex* involved distribution on the employer's property, and Justice White appeared to be primarily concerned with ensuring that employers' property rights were not unduly infringed, an issue not implicated here.

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

(a) Rescind the overly broad rule prohibiting employees from wearing union insignia, and advise employees in writing that this unlawful rule is no longer being maintained.

(b) Rescind the overly broad rule prohibiting employees from placing stickers on company-owned vehicles, laptops, and lockers at its facilities in Otay and El Centro, California, and advise employees in writing that this unlawful rule is no longer being maintained.

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

> Employees, including but not limited to Premises Technicians and Splicing Technicians, covered by the most recent Collective-Bargaining Agreement between the Union and Respondents Pacific Bell, Nevada Bell, AT&T Services, Inc., and SBC Global Services, Inc.

(d) Make affected employees 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 as amended in this decision.

(e) Compensate affected employees 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 references to the unlawful absence occurrences issued to its employees for wearing union insignia, and within 3 days thereafter, notify the employees in writing that this has been done and that the absence occurrences 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 and other earnings and benefits due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facilities in Otay and El Centro, California, copies of the attached notice marked "Appendix A"[11] and, within 14 days after service by the Region, post at its remaining facilities in California copies of the attached notice marked "Appendix B."[12] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the 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 October 24, 2011.

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

B. The National Labor Relations Board orders that the Respondent, Nevada Bell Telephone Company d/b/a AT&T, Reno, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and enforcing an overly broad rule prohibiting employees from wearing union insignia.

(b) Refusing to allow employees to work unless they remove union insignia.

(c) Disciplining employees for wearing union insignia by issuing absence occurrences and denying them pay.

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

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

(a) Rescind the overly broad rule prohibiting employees from wearing union insignia, and advise employees

[11] If this Order is enforced by a judgment of the United States court of appeals, the words in the notices 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."

[12] See fn. 11, supra.

in writing that this unlawful rule is no longer being maintained.

(b) Make affected employees 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 as amended in this decision.

(c) Compensate affected employees 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.

(d) Within 14 days from the date of this Order, remove from its files any references to the unlawful absence occurrences issued to its employees for wearing union insignia, and within 3 days thereafter, notify the employees in writing that this has been done and that the absence occurrences will not be used against them in any way.

(e) 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 and other earnings and benefits due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facilities in Reno, Nevada, copies of the attached notice marked "Appendix C."[13] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall 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 notice to all current employees and former employees employed by the Respondent at any time since October 24, 2011.

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

Dated, Washington, D.C. June 2, 2015

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

Pacific Bell's Otay and El Centro facilities

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain or enforce a rule prohibiting you from wearing union insignia.

WE WILL NOT maintain a rule prohibiting you from placing stickers on company-owned vehicles, laptops, and lockers.

WE WILL NOT threaten you with absence occurrences and loss of your job if you do not remove union insignia.

WE WILL NOT threaten you with unspecified reprisals for passing out union insignia.

WE WILL NOT remove union stickers from company-owned vehicles, laptops, and lockers.

WE WILL NOT refuse to allow you to work unless you remove union insignia.

[13] See fn. 11, supra.

WE WILL NOT refuse to allow you to work unless you remove "No on Prop 32" buttons.

WE WILL NOT discipline you for wearing union insignia by issuing absence occurrences and denying you pay.

WE WILL NOT, unilaterally and without bargaining with the Communication Workers of America, AFL–CIO (the Union) implement rules prohibiting you from wearing union insignia.

WE WILL NOT, unilaterally and without bargaining with the Union, implement a rule prohibiting you from placing stickers on company-owned vehicles, laptops, and lockers.

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 rule prohibiting you from wearing union insignia, and after the rescission WE WILL advise you in writing that this unlawful rule is no longer being maintained.

WE WILL rescind the rule prohibiting you from placing stickers on company-owned vehicles, laptops, and lockers, and after the rescission WE WILL advise you in writing that this unlawful rule is no longer being maintained.

WE WILL, before implementing any changes in your wages, hours, or other terms and conditions of employment, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

> Employees, including but not limited to Premises Technicians and Splicing Technicians, covered by the most recent Collective-Bargaining Agreement between the Union and Respondents Pacific Bell, Nevada Bell, AT&T Services, Inc., and SBC Global Services, Inc.

WE WILL make affected employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, plus interest compounded daily.

WE WILL compensate affected employees 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 references to the unlawful absence occurrences issued for wearing union insignia, and WE WILL, within 3 days thereafter, notify affected employees in writing that this has been done and that the absence occurrences will not be used against them in any way.

PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T

The Board's decision can be found at www.nlrb.gov/case/20-CA-080400 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.

APPENDIX B

All of Pacific Bell's facilities in California except those in Otay and El Centro

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain or enforce a rule prohibiting you from wearing union insignia.

WE WILL NOT threaten you with absence occurrences and loss of your job if you do not remove union insignia.

WE WILL NOT threaten you with unspecified reprisals for passing out union insignia.

WE WILL NOT refuse to allow you to work unless you remove union insignia.

WE WILL NOT refuse to allow you to work unless you remove "No on Prop 32" buttons.

WE WILL NOT discipline you for wearing union insignia by issuing absence occurrences and denying you pay.

WE WILL NOT, unilaterally and without bargaining with the Union, implement rules prohibiting you from wearing union insignia.

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 rule prohibiting you from wearing union insignia, and after the rescission WE WILL advise you in writing that this unlawful rule is no longer being maintained.

WE WILL, before implementing any changes in your wages, hours, or other terms and conditions of employment, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

> Employees, including but not limited to Premises Technicians and Splicing Technicians, covered by the most recent Collective-Bargaining Agreement between the Union and Respondents Pacific Bell, Nevada Bell, AT&T Services, Inc., and SBC Global Services, Inc.

WE WILL make affected employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, plus interest compounded daily.

WE WILL compensate affected employees 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 references to the unlawful absence occurrences issued for wearing union insignia, and WE WILL, within 3 days thereafter, notify affected employees in writing that this has been done and that the absence occurrences will not be used against them in any way.

PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T

The Board's decision can be found at www.nlrb.gov/case/20-CA-080400 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.

APPENDIX C

Nevada Bell's facilities

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain or enforce a rule prohibiting you from wearing union insignia.

WE WILL NOT refuse to allow you to work unless you remove union insignia.

WE WILL NOT discipline you for wearing union insignia by issuing absence occurrences and denying you pay.

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 rule prohibiting you from wearing union insignia, and after the rescission WE WILL advise you in writing that this unlawful rule is no longer being maintained.

WE WILL make affected employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, plus interest compounded daily.

WE WILL compensate affected employees 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 references to the unlawful absence occurrences issued for wearing union insignia, and WE WILL, within 3 days thereafter, notify affected employees in writing that this has been done and that the absence occurrences will not be used against them in any way.

NEVADA BELL TELEPHONE COMPANY D/B/A AT&T

The Board's decision can be found at www.nlrb.gov/case/20-CA-080400 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.

Carmen Leon, Esq., for the General Counsel.
J. Al Latham Jr., Esq. and *Cameron W. Fox, Esq.*, for the Respondents.
Judith Belsito, Esq., and *David A. Rosenfeld, Esq.*, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried in Sacramento, Los Angeles, and San Francisco, California, over a 9-day period between September 24 and November 20, 2013, upon the amended consolidated Complaint, and notice of hearing, as amended[1] (the complaint), issued on June 18, 2013, by the Regional Director for Region 20.

The complaint alleges that Pacific Bell Telephone Company (Pacific Bell) d/b/a AT&T and Nevada Bell Telephone Company (Nevada Bell) d/b/a AT&T (collectively called Respondents) violated the Act by engaging in the following unfair labor practices:

The complaint alleges Respondent Pacific Bell violated Section 8(a)(1) of the Act by maintaining an overly broad rule that prohibits employees from wearing union insignia; by refusing to allow employees to work unless they removed their union insignia; by telling employees they could not wear union insignia; by threatening employees with absence occurrences and loss of their jobs if they did not remove their union insignia; by threatening employees with reprisals for passing out union insignia; by threatening employees with unspecified reprisals for wearing union insignia; by removing union stickers from company owned vehicles, lockers, and computers; and allowing only nonunion stickers to remain in place.

The complaint alleges that Respondents Pacific Bell and Nevada Bell violated Section 8(a)(3) and (1) of the Act by prohibiting employees from wearing union insignia and refusing to allow them to work unless they removed the union insignia.

The complaint alleges that Respondent Pacific Bell violated Section 8(a)(5) and (1) of the Act by implementing a rule prohibiting employees from posting union stickers on company equipment and by implementing a rule prohibiting employees from wearing union insignia without notice to or bargaining with the Union.

Respondents filed a timely answer to the complaint stating it had committed no wrongdoing.

FINDINGS OF FACT

Upon the entire record herein, including the briefs from counsel for the General Counsel, the Charging Party,[2] and Respondents, I make the following findings of fact.

I. JURISDICTION

Respondents Pacific Bell and Nevada Bell admitted they are corporations with offices and places of business located in San Francisco, California, and Reno, Nevada, respectively where they are engaged in the business of providing telecommunications services. Annually, Respondents Pacific Bell and Nevada Bell in the course of their business operations each derived gross revenues in excess of $100,000 and purchased and received in their California and Nevada facilities goods valued in excess of $5000 directly from points located outside the States of California and Nevada. Respondents admit in their answer and I find that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondents admit and I find that Communications Workers of America, AFL–CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

Respondent s and the Union have had a collective-bargaining relationship for many years that covers employees, including

[1] On September 6, 2013, the Regional Director for Region 20 issued an amendment to amended consolidated complaint alleging that Melba Muscarolas was a supervisor and agent of Respondent within the meaning of National Labor Relations Act (the Act). On September 19, 2013, Respondent filed its answer admitting this allegation.

[2] In its brief, the Charging Party attached "exhibit A" consisting of a roadside sign for Dairy Queen, napkins, a T-shirt ad, an ad for a comedy show, and a Google search showing the results for the meaning of WTF. The Charging Party requests that I take judicial notice of this evidence. None of this evidence was offered at the hearing and Respondents object to its receipt into the record posthearing. I agree with Respondents this evidence does not meet the requirements of Fed.R.Evid. 201(b). There is no way to test its authenticity at this point in the trial and no attempt was made to establish the source or reliability of this evidence. It will be rejected. *ITT Federal Services Corp.*, 335 NLRB 998, 998 fn. 1 (2001).

premises technicians, of Respondents Pacific Bell and Nevada Bell located in both California and Nevada. This case arises in the context of negotiations for a successor collective-bargaining agreement to the April 5, 2009 to April 7, 2012 contract[3] and is centered upon union produced pins and stickers that Respondents' employees wore on their work clothes and attached to company property that contained messages related to issues arising during collective-bargaining negotiations between the Union and Respondents.

The parties herein entered into a stipulation[4] concerning many of the relevant facts in this case. The relevant facts will be discussed below.

1. Bargaining history concerning the premises technicians and branded apparel program

Respondents and the Union have had a long history of collective bargaining in a single unit[5] of employees in the job titles covered in appendices A, B, D, and E to their contract. The employees known as premises technicians (prem techs) have been covered in appendix E to the parties' collective-bargaining agreement since about May 31, 2006.[6] Prem techs install Respondents' U-Verse internet services that are typically bundled as internet, phone, and TV cable. This agreement contains a provision at paragraph N regarding branded apparel (BAP) that prem techs were mandated to wear that states:

> N. Branded Apparel
>
> In order to provide employees with a consistent, recognizable appearance to customers which differentiates the Company from its competitors, the Company may, at its discretion, implement a mandatory branded apparel program. Employees will be required to wear the branded apparel while working on Company time. The Company may change the program at its discretion. However, in no circumstances will employees be required to pay for the branded apparel provided by the Company under the program. Once implemented, the Company can cancel the program within thirty (30) days notice.

In addition, the parties agreed on paragraph O to the collective-bargaining agreement that provides a dress code that states:

> O. Appearance Standards/Dress Code
>
> The Company may, implement appearance standards and/or a dress code which requires employees to have a professional appearance appropriate for the business environment, consistent with State and Federal laws. The standard and code will be uniformly applied to all employees. The Company may change the standards and code upon notice to the Union.

These same provisions were contained in both parties 2009–2012[7] and 2012–2016[8] collective-bargaining agreements. The record reflects that during the course of bargaining the parties discussed and agreed that there would be a dual logo on the branded apparel shirts. The two logos would be a "CWA" logo and a separate "AT&T" logo worn on the shoulders of the shirt. No evidence was adduced that the parties at any time in bargaining discussed the issue of whether the branded apparel program rules prohibited prem techs from wearing union pins, buttons, or stickers on mandated branded apparel.

Contrary to Respondents' assertion, after it reissued its *Premises Technician Guidelines (Guidelines)*[9] on January 22, 2009, Respondents' executive director of labor relations, Douglas Flores, admitted that the Union objected to the Guidelines and that Respondents' labor relations vice president, Corey Anthony, told Union Representative Tom Runnion it had no obligation to bargain over the Guidelines.[10] For the first time at paragraph 13.3 of these Guidelines Respondents limited the wearing of other items including stickers, buttons, and pins. Specifically, the limits on wearing nonbranded apparel is explained:

> PERSONAL APPEARANCE
>
> 13.2 U-verse BAP is mandatory for all Premises Technicians. No other shirt, hat or jacket will be worn without management approval. Shirts must be tucked into the employees pants at all times. Technicians must wear a belt, threaded through the pant belt loops. Pants must be worn around the waist with no undergarments showing.
>
> 13.3 The branded apparel may not be altered in any way which includes adding buttons, pins, stickers, writing etc.
>
> 13.13 Technicians must be ready for work at the start of the day. This includes wearing the proper BAP attire. If the clothing is deemed inappropriate, the employee will be sent home unpaid. This will be considered an unexcused absence until the employee returns to work in the proper attire.

The 2009–2012 collective-bargaining agreement was terminated on April 4, 2012. A new collective-bargaining agreement was ratified on May 1, 2013.

2. Nature of the work of prem techs

The position of prem tech was created by Respondents sometime in 2006 for the purpose of installing its new residential U-Verse services, including bundled phone, cable, and internet. Prem techs spend considerable time in a customer's house installing the U-Verse system. They may be in a residence from 2 to 4 hours or until they have completed their assignment. While they have greater customer contact than Respondents' employees listed in appendixes A, B, and D, the appendixes A, B, and D employees also have regular face-to-face contact with Respondents' customers.

Maintenance splicing technicians (splicing techs) are covered by appendix A in the collective-bargaining agreement.[11] These splicing techs install Respondents' services and repair its

[3] Jt. Exh. 2.
[4] Jt. Exh. 1.
[5] Jt. Exh. 2, p. 240.
[6] R. Exh. 11.
[7] Jt. Exh. 2 pp. 195–196.
[8] Jt. Exh. 3, p.187.
[9] Jt. Exh. 6.
[10] Tr. 1257, LL.14–18 and Tr. 1260, LL. 17–21.
[11] Jt. Exh. 2, pp. 95–112.

equipment. Their work is performed both outside and inside a customer's house or business. Splicing techs have contact with customers about 75–80 percent of the time.

Splicing techs have no formal appearance standards. Before April 7, 2012, Respondents had never applied the *Premises Technician Guidelines* to the employees holding the position of splicing tech.

3. History of BAP enforcement

Despite the language contained in paragraph 13.3 of the *Premises Technician Guidelines*, from 2006 to April 2012 prem techs have worn various items of nonBAP apparel while working at customers' homes and in the presence of their supervisors.

From 2009 to 2012, Angel Arroyo (Arroyo) and Roger Weavil (Weavil), prem techs at Respondents' San Jose, California, Foxworthy yard have worn and seen other prem techs wear union pins and stickers on their BAP apparel in the presence of customers and supervisors. Arroyo and other premises technicians wore a pin, visible to both supervisors and customers that read, "I Won't Scab."[12] While Arroyo and Weavil may have been inconsistent about when they wore particular buttons, it is clear that they wore them prior to April 2012.

Dean Brown (Brown) and Joshua Alvarado (Alvarado) were prem techs at Respondents' West Sacramento, California, Juliese yard, prior to April 2012. Brown wore a nonBAP raincoat and observed other prem techs wear nonBAP ball caps and coats in the presence of supervisors and customers. Alvarado and other prem techs wore CWA lanyards, ball caps, sweat shirts, rain gear, and CWA bracelets in the presence of supervisors and customers before April 2012. I do not find Brown's statement that prem techs were not supposed to wear nonBAP apparel inconsistent with his testimony that they in fact wore items that were not branded apparel. Nor is Alvarado's statement that there were no stickers inside trucks inconsistent with his testimony that there were stickers on the outside Respondentss trucks.

From 2009 to April 2012, Bryan Brentwood, a prem tech who worked for Respondents in its Santa Rosa, San Rafael, and Clovis, California facilities, has worn nonBAP clothing, including union T-shirts that said, "Powered by Prem Tech," "CWA," "CWA 9400," "Respect, We Earned it, We Deserve It," and "I am Union," as well as non BAP ball caps. All of these items were visible to both supervisors and customers.

Jesse Abril (Abril), a splicing technician at Respondents' Oceanside facility, saw premises technicians wearing other than branded apparel visible to both supervisors and customers since January 2012, including union lanyards, wrist bands, the "I fight,"[13] and a red CWA T-shirt. Abril's testimony that such items were worn in 2009 is not inconsistent with testimony that they were worn from 2009 to 2012.

Before April 2012, Jamal Cook (Cook), a prem tech at Respondents' Mira Este, San Diego, California facility, wore a lanyard saying, "Jesus Rules," and a button "Union Steward CWA 9509" that supervisors and customers could see. Before April 2012, other premises technicians wore non BAP baseball caps and CWA buttons, including one that said, "One Union, One Fight, One Future"[14] visible to supervisors and customers.

From 2008 to 2010, Leanna Perry (Perry), a prem tech at Respondents' Mira Este, San Diego, California facility, wore non BAP ball caps, raingear, and union buttons, including ones that said, "No overtime" and "CWA." Before April 2012 she also saw other premises technicians wear non BAP hoodies, hats, and buttons that could be seen by her supervisors and customers.

From 2009 to 2011, Jesse Castillo (Castillo), a prem tech at Respondents' Century City, Los Angeles, California facility, wore non BAP pins and stickers[15] as did other prem techs in front of supervisors and customers. Castillo's testimony that prem techs wore buttons shown in Charging Party's Exhibit 1 in 2009 is not inconsistent.

Since 2009, Christopher Golden (Golden), a prem tech in Respondents' Bakersfield, California facility, and other prem techs in Bakersfield have worn buttons on their BAP apparel in the presence of supervisors and customers.

In addition, prior to April 2012, at Respondents' Juanita Street facility in Los Angeles, prem techs wore a pin that showed an American flag and a CWA flag crisscrossed, buttons that read, "We Want Careers, Not Jobs, at AT&T," "We Care," "We earned it. We deserve it. Where is it? CWA Respect," and "Forced Overtime" with a diagonal line drawn across it.

4. History of pins and stickers worn by splicing techs

As noted above, since 2009, splicing tech Abril, together with other splicing techs at Respondents' Oceanside facility, have worn various union buttons[16] including "We'll strike if provoked," "Union, yes," "No overtime," and "Rank and yank" in the presence of supervisors and customers.

5. Respondents' actions regarding pins and stickers in 2012

The collective-bargaining agreement between the parties expired on April 7, 2012. Bargaining for a new agreement began in February 2012. Shortly after the 2009–2012 collective-bargaining agreement expired, the Union began distributing various buttons and stickers to help inform both its members and the public of the issues involved in bargaining. The Union had engaged in this practice during bargaining for the prior contract and bargaining unit employees wore various buttons during bargaining before the contract expired in April 2012.

a. Foxworthy

On about April 7, 2012, Respondents' employees including prem techs and employees listed in appendixes A, B, and D began wearing the "WTF, Where's the Fairness" (WTF) button.[17] At the San Jose, California, Foxworthy yard prem techs wore the WTF button from April 7 until 20, 2012. On April 20, 2012, Respondents' prem tech employees at the Berryessa yard in San Jose were sent home for wearing the WTF button. Over the next few days, prem tech employees at the Foxworthy yard

[12] Jt. Exh. 8(h).
[13] GC Exh. 12.
[14] GC Exh.12.
[15] CP Exh. 1.
[16] CP Exh. 1.
[17] Jt. Exh. 8(a)(i).

were sent home for refusing to remove the WTF button. Around April 20, 2012, because the afternoon shift prem techs were not allowed to work wearing the stickers, all of the prem techs at the Foxworthy facility engaged in a picket line outside of the yard. However, splicing techs were allowed to work with the WTF buttons.

When the prem techs returned from picketing about 2 days later, Supervisors Ray Koop (Koop), Bobby Parrish, and Bob O'Neal (O'Neal) welcomed them back, shaking every employee's hand as they entered. Prem tech Weavil came into work wearing an "I Won't Scab" button[18] that he had worn every day since at least 2009. As Weavil was coming into work, O'Neal shook Weavil's hand and would not let go. While still holding onto Weavil's hand, O'Neal pulled Weavil closer and told Weavil to remove the button. This was the first time Respondents' supervisors had told Weavil to take off the button.

On April 25, 2012, at the Foxworthy yard, Supervisor Koop told prem tech Arroyo that he could wear other buttons including the "SAFE JOBS SAVE LIVES- keep the promise alive" sticker[19] on his BAP. On April 25, Arroyo received the "MOURN for the dead, FIGHT for the living" sticker[20] and distributed it to fellow prem techs. On April 28, 2012, Arroyo and other prem techs were told by their supervisor to remove this sticker.

In June 2012, Arroyo and other prem techs wore the "Union Proud and Union Strong" sticker[21] on flag day but were told by Supervisor Koop to remove this sticker or they would not be dispatched to work. About 2 weeks later, First-Level Manager Raymond Koop informed Union Steward Arroyo that the "Union Proud and Strong" sticker was now a "company approved" sticker.

In mid-July 2012, Arroyo and other prem techs began wearing the "TAKING A STAND FOR JOBS & HEALTH CARE" sticker. [22] Supervisor Parrish told Arroyo they could not wear this sticker in the presence of customers or they would be sent home without pay.

b. West Sacramento

At Respondents' West Sacramento, California yard prem techs wore the WTF button in mid to late April 2012. At some point in April, Respondents' supervisors, Katherine Nelson (Nelson) and Pasual Perez (Perez) told prem tech Dean Brown (Brown) that employees could not wear the WTF button and if they continued to do so they could not work. When the prem techs declined to remove the WTF button they were removed from the yard without pay. Several premises technicians asked whether the day would be counted as an occurrence. Perez replied that it would be an occurrence, it would be reflected in their record, and if there were any other occurrences, it could be grounds for termination.

The parties stipulated that an "absence occurrence" is an unexcused absence[23]and that Respondents' attendance policy[24] provides that:

> [A]ny other type of absence, [other than an absence allowed by the collective bargaining agreement, the time off policy for management or an approved leave of absence], including tardiness is considered "unexcused" and can result in disciplinary action, including termination of employment.

Later that same day, Nelson told about six to eight afternoon shift prem techs to remove their WTF buttons. Nelson again told them that they would not be allowed to work because they were not physically prepared and they were out of their proper uniform and that if they continued to wear the buttons, they would not be allowed to work. The employees did not remove the buttons, were not allowed to work, left the premises, and were not paid for that day.

In early to mid-May 2012, Brown and other prem techs wore the "KEEP AT&T OFF THE HEALTHCARE LOW ROAD" sticker[25] but were told by Supervisors Perez and Nelson that if they continued wearing the button they could not work. Supervisor Perez told the employees that if they did not report to work it would be counted as an occurrence against them and newer employees would be in danger of losing their jobs. Prem tech Joshua Alvarado approached Perez and asked about the affect of an occurrence for not working as a second offense. Perez replied that if the employees did not work because they refused to remove the buttons it would be documented as an occurrence and could lead to termination.

c. Martin and Berryessa facilities

On about April 20, 2012, prem tech Arroyo was advised that prem techs at the Berryessa yard in California were sent home without pay for refusing to take off the WTF sticker. Union Agent Laura Reynolds was told that at Respondents' Martin yard, prem techs who were initially dispatched wearing the WTF button, were later told by supervisors that if they were wearing the WTF button, they would be suspended.

d. Santa Rosa

In April 2012, at Respondents' Santa Rosa, California facility, prem tech Bryan Brentwood and other premises technicians wore the WTF button for 2 days. Toward the end of April the prem techs were told by Supervisors Sasha Carger and Michael Goff to remove their WTF buttons or they would not be allowed to work. When they refused to remove the buttons, the employees were off work for 3 days. When they returned to work they wore the "KEEP AT&T OFF THE HEALTHCARE LOW ROAD" sticker and were again told by their supervisors to remove them. They picketed at the facility for 4 to 5 days.

e. Clear Lake

Shawn Heape, a lineman in Respondents' Clear Lake, California facility, works with customers on a daily basis. In April 2012, the WTF buttons were distributed among 20 of Respondents' Clear Lake employees. Employees wore this buttons in the presence of both supervisors and customers for a week. No objections were made by supervisors. A week later. the same

[18] Jt. Exh. 8(h).
[19] GC Exh. 2.
[20] Jt. Exh. 8(c).
[21] GC Exh. 4.
[22] Jt. Exh. 8(g).
[23] Jt. Exh. 1.
[24] Jt. Exh. 13.
[25] Jt. Exh. 8(b).

employees wore the "KEEP AT&T OFF THE HEALTHCARE LOW ROAD" sticker and in June wore the "CUT the CRAP! Not My Healthcare" button[26] (Cut the Crap) without objection.

f. El Centro

Arturo Franco (Franco) was a splicing tech at Respondents' El Centro, California facility. Employees at El Centro had placed union and other stickers on Respondents' trucks since about 2003 or 2004. In addition to the union stickers on Respondents' vehicles since 2003 there were also stickers for local radio stations.

In about 2011, Respondents assigned Franco a new truck and he placed a sticker on the back that read, "Proud to be a Union member" and one on the back bumper that read, "From the folks who brought you weekends, CWA." About five other employees had similar stickers on their company vehicles. Franco also had a cardboard sign inside the cab of his truck in the rear window with the letters CWA.

In about May 2012, Franco's supervisors, David Rogers and Charles Lechner, told him that he could not place any stickers on Respondents' property and that he had to remove a union sign from the back window of the truck. Both Franco and other employees removed the union signs and stickers from their trucks. In November 2012, when Franco was given a new vehicle by Respondents, Rogers told him he could not place any union stickers on the truck.

Splicing techs at Respondents' El Centro facility use laptops to perform their work. Since about 2004, splicing technicians have placed union and other stickers on their laptops without any objection from Respondents. However, after April 2012, Supervisors Lechner and Rogers told the splicing techs that it was against Respondents' policy to place any unauthorized decals or stickers on its property.

Since about 2005, Franco had put union stickers on his locker including the "Proud to be a Union member" sticker. Other stickers appeared on employee lockers including stickers for sports teams and repair shop ads. After the collective-bargaining agreement expired in April 2012, Franco observed that his union sticker was removed from his locker but the sports team magnet remained.

g. Otay

In May or June 2012 at Respondents' Otay facility in Chula Vista, California, splicing tech Rogelio Herrera(Herrera) and other splicing techs wore the WTF button in the presence of both supervisors and customers for a couple of weeks. During the same time period, Herrera and other splicers also wore "KEEP AT&T OFF THE HEALTHCARE LOW ROAD" and "TAKE THE HIGH ROAD FOR JOBS AND CUSTOMERS" stickers[27] and they placed the stickers on trucks and lockers. For many years, splicing techs at Respondents' Otay facility have put various stickers in plain view on Respondents' trucks without Respondents' objection. The stickers included sports, commercial, political, and religious messages.[28]

In May or June 2012, Herrera's supervisor, Ken Sitz (Sitz), directed the splicing techs to remove the stickers from Respondents' trucks. However, other stickers for sports teams, radio stations, an American flag, music bands, sports equipment, plants, political views, clothing brands, and restaurants, were allowed to remain on the trucks.[29]

Since about 2006 or 2007, Herrera had put about three or four union stickers on his locker. The Respondents have never objected to these stickers. Other employees had stickers on their lockers and laptops as well. In June 2012, at Sitz' direction, union stickers were removed from lockers and laptops.

h. Oceanside

In April 2012, at Respondents' Oceanside, California facility, splicing tech Jesse Abril (Abril) and other splicers wore the WTF button in the presence of supervisors and customers for a few months without objection. In June 2012, Abril and other splicing techs wore both the "FTW Fight To Win"[30] and "CUT the CRAP! Not My Healthcare" buttons for 2 weeks without objection and in the presence of supervisors and customers. Indeed on May 31, 2012, Respondents' vice president of network operations, California, Betsey Farrell, visited the Oceanside facility where about nine of Respondents' employees wore the "Cut the Crap" button in Farrell's presence[31] and she made no objection to the button.

On June 6, 2012, Adam Williams, a splicing tech in Respondents' Oceanside facility wore the "Cut the Crap" button at work. Williams' supervisor, Paul Jepsen told Williams and the other splicing techs that they could not work while wearing this button. Later that morning, Respondents' supervisor, Justin Clark, told the splicing techs that they had to take these buttons off or go home. However, the following day Williams and about half the other splicing techs wore the "Cut the Crap" button and were dispatched to work.

Also, in early June 2012, about half of the splicing techs at the Oceanside yard wore a button that read, "FTW, Fight to Win," for about 2 weeks. The employees were dispatched to work wearing this button without any objection from their supervisors.

From June to November 2012, Abril wore the "NO on prop 32" button[32] in the presence of both supervisors and customers without objection. This button reflected opposition to Proposition 32 on the November 2012 California State ballot. The parties have stipulated[33] that that the following proposition was on the November 6, 2012, General Election ballot:

> Proposition 32 (titled "Political contributions by payroll deduction. Contributions to candidates. Initiative statute"), which the California Secretary of State summarized as follows:
>
> Prohibits unions from using payroll-deducted funds for political purposes. Applies same use prohibition to payroll deductions, if any, by corporations or government contractors. Prohibits union and corporate contributions to candidates and

[26] Jt. Exh. 8(e).
[27] Jt. Exh. 8(d).
[28] GC Exh. 7(a)–(k).
[29] Ibid.
[30] Jt. Exh. 8(f).
[31] GC Exh. 10.
[32] Jt. Exh. 11
[33] Jt. Exh. 1.

> their committees. Prohibits government contractor contributions to elected officers or their committees. Fiscal Impact: Increased costs to state and local government, potentially exceeding $1 million annually, to implement and enforce the measure's requirements. http://voterguide.sos.ca.gov/propositions/32

The parties stipulated further that if passed, Proposition 32 would have included the following language, which is excerpted from the text of the proposed law:

> 85151. (a) Notwithstanding any other provision of law and this title, no corporation, labor union, public employee labor union, government contractor, or government employer shall deduct from an employee's wages, earnings, or compensation any amount of money to be used for political purposes.

i. Escondido 13th Street facility

In May 2012, Union Local 9511 Vice President Jesse Abril visited Respondents' 13th Street yard in Escondido, where the prem techs wore the WTF button for about 2 weeks. Abril discussed the button with Respondents' manager, Dave Wingrove, who said the employees could wear the WTF button in the yard, but not past the gate. Abril showed Wingrove a sticker that read, "Take the High Road for Jobs and Customers," and Wingrove said he had no problem with the prem techs wearing that sticker outside the yard. The prem techs wore this sticker for about 2 weeks before they were instructed to take them off.

j. Escondido Quince yard

Luis Arsiniega (Arsiniega) is a splicing tech at Respondents' Escondido Quince yard. In early May 2012, Arsiniega was passing out the WTF buttons to splicing techs at the Quince yard before their morning meeting. When Supervisor Rob Osteen saw him pass out the buttons he said, "I'm going to report you to management. What's your name?" After Arsiniega gave Osteen his name, Osteen told Arsiniega not to pass out these buttons as this is not the time or place. Arsiniega called his Supervisor Dan Hawthorne and explained what had happened with Osteen. Hawthorne told Arsiniega he had him covered. Arsiniega continued to wear the WTF button and was dispatched. Arsiniega continued to wear this button until August 2012. On June 6, 2012, Arsiniega began wearing the "Cut the Crap" button at work in the presence of supervisors. He and other splicing techs continued wearing this button until September 2012 without objection.

k. Escondido Washington Street yard

At the end of April 2012, at Respondents' Washington Street, Escondido, California facility, construction splicer Brendan McCarthy and other splicing techs, began wearing the WTF button. On about May 21, 2012, McCarthy's supervisor, Michelle Morechel, told him he could not wear this button and McCarthy removed it.

At the end of May 2012, McCarthy and other splicing techs, started wearing the "Cut the Crap" button until about June 5 when Morechel told him to remove it. The following day, McCarthy continued wearing the "Cut the Crap" button and was told by Supervisor Jess Gonzales that he could not wear this button. Gonzales read an e mail from Respondents' vice president of construction and engineering, Kieran Nolan, to the splicing techs that said employees could not wear the "Cut the Crap" button in the field or in front of customers and employees who continued to wear the button would be considered not ready to work.

When Supervisor Octavio Rivera arrived at the Washington Street yard with the early morning crew, he told them that they were not ready to work because they were wearing the "Cut the Crap" buttons. Rivera also read Nolan's email to the gathered employees. Later, both McCarthy's and the morning crew met with Rivera in the office. Rivera repeated that they could not wear the "Cut the Crap" buttons. Thereafter, about 19 employees from the two crews went outside of the yard to picket. On their way out of the yard, the construction splicers met splicing technicians and some joined the picket line. The splicing technicians who wore the "Cut the Crap" button did not work that day and were not paid.

The next day, construction splicers, including Union Steward Brendan McCarthy and other construction splicers were allowed to work while wearing the "Cut the Crap" button.

l. Mira Este

Leanna Parry and Jamal Cook are prem techs at Respondents' Mira Este facility in San Diego, California. In late April 2012, Cook and other prem techs at Mira Este wore the WTF buttons to work. At the morning meeting, Respondents' supervisor, Sandy Lou, told the prem techs they could not wear the WTF buttons outside the yard. The prem techs removed the button.

On about May 5, 2012, Cook distributed the "KEEP AT&T OFF THE HEALTHCARE LOW ROAD" button to the Mira Este prem techs. Supervisor Sandy Lou told the prem techs at the morning meeting that they could not wear this button outside the yard. Lou said if the employees wore the button there would be no work for them. The prem techs then left the yard and began to picket outside the yard until about 4 p.m. Around 10 a.m., Parry, who had been outside of the yard picketing, went into the facility to use the restroom, still wearing the button. As she was leaving the restroom, she passed Supervisor Michelle Esqueda who said, "Ms. Parry, what are you doing on company property?" When Parry replied that she was there to work, Esqueda said, "You know you can't wear that sticker on company property." Parry left the yard to go back outside.[34]

In about mid-June 2012, around Flag Day, prem techs wore a sticker[35] containing an American flag that read, "Union Proud, Union Strong." Prem techs wore the sticker to the morning tailgate and were dispatched wearing the sticker without any comment or objection from the managers who saw them wearing the sticker. However, on about July 2, 2012, Parry's supervisor, Josh Ayala, told her to remove this sticker.

m. Bakersfield

Christopher Golden is a premises technician at Respondents' Bakersfield, California facility. On or about April 23, 2012,

[34] Tr. 922.

[35] GC Exh. 4.

Respondents prohibited prem techs from wearing the WTF sticker.

n. Ramona

Also in mid-May 2012, splicing techs at Respondents' Ramona facility wore the WTF buttons without objection from supervisors.

o. Beverly Hills

Kenneth Slothour is a splicing tech at Respondents' Beverly Hills, California facility. From about April 23 to the end of August 2012, Slothour wore the WTF button at work together with 15–20 other splicing techs in the presence of supervisors and customers. From the end of April or early May 2012 until August 2012 Slothour also wore the "Cut the Crap" button in the presence of supervisors and customers. Other splicers wore this button for a week in May.

p. Reno

The parties stipulated that around April 23, 2012, Respondent Nevada Bell, by its supervisors and agents, at its facility in Reno, Nevada, refused to allow premises technicians to be dispatched to the field unless they removed the WTF buttons and stickers. They further stipulated that those prem techs who refused to remove the buttons and stickers were sent home, and received "absence occurrences." It was also stipulated that the prem techs Respondent Nevada Bell refused to dispatch were sent home and did not receive pay for time not worked.[36]

6. Supervisor's denials and credibility

a. Mira Este

Josh Ayala (Ayala) was prem tech Leanna Parry's U-Verse supervisor at Respondents' Mire Este garage in San Diego from March 2011 to November 2012. Ayala denied seeing Parry wear a red CWA button or any button or ball cap. Ayala also supervised prem tech Jamal Cook and claims he never saw Cook wear any union buttons before April 2012. Ayala denied ever seeing any prem techs wear union buttons before April 2012. Ayala maintained the he strictly enforced Respondents' BAP policy at Mira Este.

b. Century City

Emmanuel Nwbodo (Nwbodo) was prem tech Jesse Castillo's supervisor at Respondents' Century City, Los Angeles facility. Nwbodo denies that Castillo or any other prem tech at Century City or Juanita wore any union pins or buttons through January 2011.

c. Rancho Bernardo

David Wingrove (Wingrove) was Respondents' prem tech supervisor at its facilities in Rancho Bernardo, California, from April 2002 to December 2009, in Oceanside, California, from December 2009 to February 2012, and in Escondido, California, from February 2012 to December 2012. Wingrove denies that he ever saw prem techs wear union pins or buttons and denies telling prem tech Jesse Abril he approved wearing of a union button.

[36] Jt. Exh. 1, pars. 14 and 15.

Respondents' executive director of labor relations, Douglas Flores, claimed that during the 2009 negotiations, there were only a few instances of prem techs wearing buttons or pins on BAP and the buttons and pins were removed by the employees when told to do so. Flores was in no position to know how often prem techs wore union insignia during the 2009 bargaining as he was stationed at Respondents' headquarters and was occupied with bargaining at this time.

7. Credibility findings

As noted above, I have found that there are no material inconsistencies in the General Counsel's witness testimony. While the witnesses may have been unsure of the specific dates certain buttons and pins were worn by Respondents' employees, there was no confusion that pins were worn by both prem techs and other technicians throughout Respondents' facilities well prior to April 7, 2012. I will credit the testimony of General Counsel's employee witnesses. The denials by Respondents' supervisors that prem techs wore nonBAP apparel, including clothing, pins, and buttons in Mira Este, Century City, Juanita garage, Rancho Bernardo, Oceanside, or Escondido, California, is not credible particularly in view of unrebutted testimony from employees at other facilities, including San Jose, West Sacramento, Santa Rosa, San Rafael, Clovis, and Bakersfield, California, that prem techs and nonprem techs wore nonBAP apparel including pins and clothing in the presence of supervisors and customers.

8. Stipulated facts

In addition to the above-found facts, the parties stipulated[37] that on various dates between April 7 and June 7, 2012, Respondent Pacific Bell refused to allow prem techs to be dispatched to the field, unless they remove the following union buttons and stickers:

1. "WTF, Where's The Fairness" button.[38]
2. "WTF, Where's The Fairness" sticker.[39]
3. "KEEP AT&T OFF THE HEALTHCARE LOW ROAD" sticker.[40]
4. "MOURN for the dead, FIGHT for the living" sticker.[41]
5. "TAKE THE HIGH ROAD FOR JOBS AND CUSTOMERS" sticker.[42]
6. "CUT the CRAP! Not My Healthcare" button.[43]
7. "FTW Fight To Win" button.[44]
8. "TAKING A STAND FOR JOBS & HEALTH CARE" sticker.[45]
9. "I WON'T SCAB" button.[46]

The parties further stipulated that over 1500 prem techs were sent home for wearing the above buttons, resulting in 1500

[37] Jt. Exh. 1, par. 9.
[38] Jt. Exh. 8(a)(i).
[39] Jt. Exh. 8(a)(ii).
[40] Jt. Exh. 8(b).
[41] Jt. Exh. 8(c).
[42] Jt. Exh. 8(d).
[43] Jt. Exh. 8(e).
[44] Jt. Exh. 8(f).
[45] Jt. Exh. 8(g).
[46] Jt. Exh. 8(h).

absence occurrences. Those prem techs who were not dispatched for wearing the above buttons and stickers did not receive pay for time not worked. The facilities at which this occurred is listed in Joint Exhibit 9.

The parties stipulated that on various dates between April 7 and June 7, 2012, Respondent Pacific Bell told prem techs that if they did not remove the buttons and stickers mentioned above would not be dispatched to the field.

The parties stipulated that on various dates between April 7 and August 7, 2012, Respondent Pacific Bell told employees that if they did not remove the buttons listed below they would not be dispatched to the field.

1. WTF Where's The Fairness" button. [47]
2. "WTF Where's The Fairness" sticker.[48]
3. "CUT the CRAP! Not My Healthcare" button.[49]
4. "FTW Fight To Win" button.[50]

The parties also stipulated that on various dates between October 26 and 29, 2012, Respondent Pacific Bell refused to allow prem techs to be dispatched to the field unless they removed the sticker or button set forth below and those who refused to remove this button were sent home resulting in 5 absence occurrences.

"NO on prop 32" button.[51]

9. Marcarela and Weitkamp's communications regarding union buttons

Melba Muscarolas (Muscarolas) is Respondents' vice president for labor relations. In this capacity, Muscarolas deals with the Union's district 9 which encompasses both California and Nevada. Jim Weitkamp (Weitkamp) is the vice president for the Union's district 9.

Muscarolas first heard about prem techs wearing WTF buttons on about April 20, 2012. Respondents' supervisors were ordered to tell prem techs that they could not wear the WTF burron outside the yard or they would be considered not ready to work. Muscarolas claims a deal was worked out with Weitkamp that core techs other than prem techs could wear the WTF button outside the yard. Because Muscarolas thought WTF stood for "What the Fuck" she felt that this button should not be worn in public since it was harmful to Respondents' image. When Muscarolas discussed the WTF buttons with Mark Payne, Respondents' senior vice president for labor relations and Betsy Farrell, vice president SIM between April 20 and 23, they all agreed that the WTF button should not be worn in front of customers.

Fortunately, much of the discussion over the buttons between Muscarolas and Weitkamp was reduced to writing in the form of email. On Sunday April 22, 2012, Muscarolas sent Weitkamp an email[52] and on April 23 she spoke to him by phone. In the email of April 22, Muscarolas states that prem techs were sent home without pay for wearing the WTF button on BAP. In his April 22 email,[53] Weitkamp responded that the BAP agreement did not preclude prem techs from wearing stickers as part of concerted activity.

Muscarolas said she had a phone conversation with Weitkamp on April 23, 2012, in which Weitkamp disagreed that WTF meant "What the Fuck."

In an email[54] dated April 23, 2012, Muscorolas gives a summary of her understanding of her agreement with Weitkamp made that evening. Muscarolas states that Weitkamp would communicate to have prem techs remove WTF and replace it with a generic nonoffensive CWA button. Muscarolas reiterated that if prem techs continued to wear WTF buttons they would be sent home without pay and unexcused. Muscarolas states that Weitkamp agreed to get rid of the WTF buttons in the CIM/C+E organization over the next couple of days. Muscarolas states further that the Union would share with her any new generic non offensive button before it was printed. The quid pro quo was that the Respondents would not impose discipline for absences related to the WTF stickers. On April 24, 2012, Weitkamp sent Muscarolas a sample of the new sticker the Union was creating.[55]

On April 24, 2012, Weitkamp sent an email[56] to Muscarolas stating his understanding of their April 23 agreement concerning the WTF stickers. Weitkamp states that the Union did not agree to mutual approval of design or content of the stickers. Weitkamp states that the Union contends that appendix E prem techs have a right to wear stickers and that he is not waiving this position and that he does not agree that the WFT button is offensive or inappropriate.

On April 26, 2012, Muscarolas replied[57] to Weitkamp's April 24 email. Muscarolas states her understanding that the Union was working to eliminate all WTF stickers as soon as possible. Muscarolas cites contract appendix E, section E1.03(O) regarding branded apparel and section 13.3 of the Premises Technicians Guidelines which prohibits the alteration of BAP by adding buttons, pins or stickers. Muscarolas further stated that Respondents would allow prem techs to wear the "FIGHTING FOR THE AMERICAN DREAM-CWA at AT&T" sticker during 2012 bargaining but not any other sticker.

Later on April 26, 2012, Muscarolas sent Weitkamp a sample of a sticker[58] prem techs were wearing in Reno, Nevada, "W.A.R. WE ARE READY" indicating it was not appropriate. On April 27, 2012, Muscarolas sent Weitkamp another button[59] prem techs were wearing all over California, "FTW, Fight To Win." This was followed up later that day with an email[60] to Weitkamp stating these new stickers violated their agreement. Muscarolas stated that the "FTW" was another innuendo that was inappropriate. Muscarolas stated that by Monday, April 30, all prem techs should wear only the agreed upon sticker and

[47] Jt. Exh. 8(a)(i).
[48] Jt. Exh. 8(a)(ii).
[49] Jt. Exh. 8(e).
[50] Jt. Exh. 8(f).
[51] Jt. Exh. 11
[52] Jt. Exh. 12, pp.1–2.
[53] Ibid.
[54] Id. at 3.
[55] Id. at 4–5.
[56] Id. at 8.
[57] Id. at 2.
[58] Id. at 16.
[59] Id. at 18–19.
[60] Id. at 21

if they wore any other sticker they would be sent home and further action would be taken regarding attendance policy for absences.

On April 29, 2012, Weitkamp replied[61] that he got the word out on the "FTW" buttons. However, he did not agree that either the "FTW" or WTF buttons were offensive simply because texting had created a new lexicon of abbreviations.

On April 30, 2012, Weitkamp emailed Muscarolas that he did not agree that "FIGHTING FOR THE AMERICAN DREAM-CWA at AT&T" sticker was the only sticker prem techs could wear and that this issue was before the NLRB.

On June 4, 2012, Muscarolas sent Weitkamp a photo[62] of a sticker prem techs were wearing, "Cut the CRAP! Not My Healthcare, CWA. The word "CRAP!" was etched in an orange/yellow color. [63] In a phone conversation that day Muscarolas told Weitkamp that this button was offensive and not in keeping with their agreement. Weitkamp agreed to look into it. In a conversation with management about this button it was agreed that other core techs could wear the button but Royce did not want it in front of customers.

In its brief, Respondents stated that it does not contend that, by entering into the "agreement," Mr. Weitkamp waived the Union's position that premises technicians and other employees had a legal right to wear what they pleased, including WTF or that its legal right to prohibit the stickers and buttons derives from the April 23 "agreement." Rather, Respondents argue that its right to prohibit union insignia derives from its legitimate interest in its public image, as reinforced by a collectively bargained dress code for prem techs.

I find further that there was no agreement by Weitkamp to limit the types of buttons and stickers union members could wear nor was there any agreement to grant Respondents veto authority over the content of any union buttons.

B. The Analysis

For ease of analysis I will discuss the issues in the order they are raised in the complaint.

1. Complaint paragraphs 8(a) and 9(a) allege since October 24, 2011, Respondents have maintained an overly broad rule that prohibits employees from wearing union insignia in violation of Section 8(a)(1) of the Act

The rules in issue here are contained in the parties' collective-bargaining agreement[64] at paragraph N:

N. Branded Apparel

> In order to provide employees with a consistent, recognizable appearance to customers which differentiates the Company from its competitors, the Company may, at its discretion, implement a mandatory branded apparel program. Employees will be required to wear the branded apparel while working on Company time. The Company may change the program at its discretion. However, in no circumstances will employees be required to pay for the branded apparel provided by the Company under the program. Once implemented, the Company can cancel the program within thirty (30) days notice.

In addition Respondents' *Premises Technician Guidelines*[65] implemented on January 22, 2009, provides at paragraph 13.3, "The branded apparel may not be altered in any way which includes adding buttons, pins, stickers, writing etc."

a. Has Respondent established special circumstances that defeat its employees' right to wear union insignia

It is virtually undisputed that Respondents prohibited employees from wearing certain union buttons during the period April 7 to August 7, 2012. It is further undisputed that Respondents refused to permit certain employees to work unless they removed the union buttons from their clothing. The first issue that must be resolved is whether Respondents have been able to establish special circumstances justifying their refusal to permit employees to wear union insignia and thus were privileged to refuse to permit employees to work without removing the union insignia. Next I must decide whether the union insignia worn by employees lost the protection of the Act because they were offensive and finally whether the Union waived its right to bargain over the right of employees to wear union insignia on their branded apparel and if the *Premises Technicians Guidelines* became a term and condition of employment protected from change by Section 8(a)(5) and (b)(3) of the Act.

As a starting point, both the Board and Supreme Court have held that employees have the right to wear insignia such as union buttons while at work. *Republic Aviation Corp. v. NLRB*, 324 US 793, 801–803 (1945). The Supreme Court recognized that this right was established through a test balancing employees' rights to exercise the protections of Section 7 of the Act against an employer's right to manage its business in an orderly fashion. In striking that balance the Board allows an employer to promulgate a rule prohibiting the wearing of union insignia only where the employer can establish the rule is necessary because of special circumstances, including maintaining production and discipline, ensuring safety, maintaining an image that does not alienate customers,[66] or where the message itself is offensive.[67]

An employer must present "substantial evidence of special circumstances" to justify a prohibition on the wearing of union insignia.[68] Moreover such a limitation must be narrowly drawn to limit the wearing of union insignia in areas that justify the rule.[69] Enforcement of a valid rule prohibiting the wearing of union insignia is unlawful if other breaches of the rule are allowed and there is no presumption of validity of a rule that is selectively enforced.[70]

The Board has found sufficient special circumstances when the union insignia would jeopardize employee safety, damage

[61] Id. at 22.
[62] Id. at 35
[63] Jt. Exh. 8(e).
[64] Jt. Exh. 2, pp. 195–196.
[65] Jt. Exh. 6.
[66] *Chinese Daily News*, 353 NLRB 613 (2008); *Pathmark Stores, Inc.*, 342 NLRB 378 (2004).
[67] *Komatsu American Corp.*, 342 NLRB 649 (2004).
[68] *Government Employees*, 278 NLRB 378, 385 (1986).
[69] *George J. London Memorial Hospital*, 238 NLRB 704 (1978).
[70] *St. John's Health Center*, 357 NLRB No. 170 (2011); *United Parcel Service*, 312 NLRB 596 (1993).

machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image the employer has established as part of its business plan. *P.S.K Supermarkets*, 349 NLRB 34, 35 (2007).

In *P.S.K Supermarkets*, 349 NLRB at 34–35, the Board held:

> Special circumstances include situations where display of union insignia might "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. 99 Fed. Appx. 233 (D.C. Cir. 2004), citing *Nordstrom, Inc.*, 264 NLRB at 700. The Board has consistently held that customer exposure to union insignia, standing alone, is not a special circumstance which permits an employer to prohibit display of such insignia. *Meijer, Inc.*, 318 NLRB 50 (1995), enfd. 130 F.3d 1209 (6th Cir. 1997); *Nordstrom, Inc.*, 264 NLRB at 700. Nor is the requirement that employees wear a uniform a special circumstance justifying a button prohibition. *United Parcel Service,* 312 NLRB 596, 596–598 (1993), enf. denied 41 F.3d 1068 (6th Cir. 1994). Finally, the fact that the prohibition applies to all buttons, not solely union buttons, is not a special circumstance. *Harrah's Club,* 143 NLRB 1356, 1356 (1963), enf. denied 337 F.2d 177 (9th Cir. 1964); *Floridan Hotel of Tampa,* 137 NLRB 1484 (1962), enfd. as modified 318 F.2d 545 (5th Cir. 1963).

In *Meijer, Inc.*, 318 NLRB 50 (1995), enfd. 130 F.3d 1209, 1217 (6th Cir. 1997), the Board found that the employer violated Section 8(a)(1) of the Act because the employer did not satisfy its burden of proof that union pins employees wore interfered with the company's public image and because the employer discriminatorily enforced its policy.

In *AT&T Connecticut*, 356 NLRB No. 118, slip op. at 1 (2011), involving employees with identical duties as prem techs, the Board held that the employer could not bar employees from wearing "prisoner" T-shirts in support of the union's collective-bargaining efforts because such activity would not cause fear or alarm among the employer's customers or interfere with the employer's public image.

In *Stabilus, Inc.*, 355 NLRB 836 (2010), the Board held that where a respondent did not uniformly enforce its dress code, it was unable to justify its dress code and prohibit union messaging under the special circumstances test.

In *United Parcel Service*, 312 NLRB 596 (1993), the employer had established through collective bargaining the right to establish and maintain reasonable standards concerning personal grooming and appearance and the wearing of uniforms and accessories to ensure a public image of neat, clean, uniformed drivers. However, the respondent authorized its drivers to wear various pins, other than union pins, on their uniforms. The Board found in view of this inconsistent application of its rules that wearing a union pin did not reasonably interfere with the respondent's objective of ensuring a public image of neat, clean, uniformed drivers. The Board concluded that respondent had not demonstrated special circumstances sufficient to justify its prohibition of the unobtrusive union lapel pin.

Further, the mere fact that an employer's customers are exposed to union insignia that may cause an adverse reaction does not establish special circumstances since employees' rights do not depend on reactions of an employer's customers. *World Color (USA) Corp.*, 360 NLRB No. 37 fn. 3 (2014); *Howard Johnson Motor Lodge*, 261 NLRB 866, 868 fn. 6 (1982), enfd. 702 F.2d 1 (1st Cir. 1983); *Nordstrom, Inc.*, 264 NLRB 698, 701–702 (1982).

In support of its argument that it has established sufficient special circumstances in order to ban union insignia, including maintaining a professional public image with its customers, Respondents cites *W San Diego*, 348 NLRB 372 (2006). There the Board held that a hotel lawfully prohibited room service employees from wearing insignia on their uniforms in public areas that stated, "Justice Now! Justicia Ahora!" The respondent's attire policy prohibited all other uniform adornments, including sweatbands, scarves worn as belts, and professional association pins and the policy was uniformly enforced by respondent.

W San Diego is distinguishable from the facts of this case because, as reflected in the factual recitation above, Respondents herein have not uniformly enforced the BAP policy. As the facts above show, before April 2012 prem techs have been permitted to wear many items of nonBAP apparel including personal jackets, sweatshirts, shirts, ball caps, rain suits, stickers, wrist bands, lanyards, and buttons. Since the record reflects that Respondents have not strictly enforced its ban on buttons, pins, and stickers, any special circumstances defense must be rejected. *Saint John's Health Center*, 357 NLRB No. 170, slip op. at 1–3 (2011); *AT&T Connecticut*, 356 NLRB No. 118, slip op. at 13–14; (2011); *United Parcel Service*, 312 NLRB 597, (1993). Moreover, while the BAP policy applied only to prem techs, evidence that other core technicians, who like prem techs, had regular customer contact were allowed to wear various pins and a variety of clothing items, undermines Respondents' argument that ensuring a professional image among its customers was a special circumstance justifying no other insignia on prem tech BAP other than the twin "CWA" and "AT&T" logos.

b. The bargaining over BAP did not create special circumstances

The Respondents rely on *BellSouth Telecommunications*, 335 NLRB 1066 (2001), in support of its argument that the parties' bargained for BAP program for prem techs created special circumstances justifying its limitation on union insignia to the CWA patch on prem techs shirts.[71] For reasons more fully discussed in the section on waiver below, I conclude that

[71] Respondents also cite *Bell-Atlantic-Pennsylvania, Inc.*, 339 NLRB 1084 (2003), where the Board held CWA employees were not protected in wearing a "Road Kill" T-shirt in protest of layoffs. Respondent prohibited the wearing of this T-shirt by customer contact employees. As this case involved review of an arbitrator's decision it was decided under the less stringent clearly not repugnant to the Act standard of *Olin Corp.*, 268 NLRB 573 (1984), and is not controlling herein.

the Union never agreed to limit the wearing of union insignia to the "CWA" logo.

Moreover, I find *BellSouth* distinguishable. *BellSouth* does not implicate a limitation upon employees' Section 7 rights to wear union insignia but rather is limited to the narrow issue of the compelled wearing of a union logo by an employee as the result of collective bargaining. The Board noted in this context that a requirement that employees wear union insignia cannot be analyzed as if it presented precisely the same issues as a prohibition against wearing such insignia.

Here, there is no doubt that the parties bargained for a branded apparel program that included both an "AT&T" and "CWA" logo. In *BellSouth* the analysis turned on whether there was a special interest of the parties in the two logos. Bargaining history established the parties' special interests in having the logos, including the companies' interest to be able to project a professional image to its customers, to distinguish it from competitors and to demonstrate to customers that it had a collective-bargaining relationship with CWA. This interest outweighed the employees' Section 7 rights to refrain from union activity in wearing the CWA logo.

But the analysis here is not whether bargaining for a dress code created special circumstances that justify compelling an employee to wear agreed upon union logos but whether employees' Section 7 rights have been compromised by a prohibition on the wearing of any other union insignia. This is of particular importance here since the *Premises Technician Guidelines,* imposing the restriction on the wearing of union insignia, was never bargained for. While the Union agreed to a branded apparel program for prem techs[72] that included the dual logos, there is no evidence that it ever agreed to the limitations on union insignia contained in the *Premises Technician Guidelines.*[73] Indeed, the Union objected to the *Guidelines* in 2009 and was told by Respondents it did not have to bargain over the *Guidelines*. The fact that the parties bargained over and agreed that the Respondents could require prem techs to wear a uniform did not create sufficient special circumstances to justify curtailing its employees' statutory right to wear union insignia.

c. Does the content of the union buttons render employees' activities unprotected

Having found that the Respondents have not established other sufficient special circumstances that outweigh employees' Section 7 rights to wear union insignia, I must next determine if the content of the insignia worn was so vulgar and offensive to take it outside the protection of the Act.

I. THE "FTW, FIGHT TO WIN," "WTF, WHERE'S THE FAIRNESS," AND "CUT THE CRAP, NOT OUR HEALTHCARE" BUTTONS

The Respondents contend that the content of the union buttons and stickers, "FTW, Fight to Win," "WTF, Where's the Fairness," and "Cut the Crap, Not Our Healthcare" lost the protection of the Act because of their vulgarity.

The Respondents contend that in texting parlance, "FTW" stands for "fuck the world" and WTF corresponds with the phrase "what the fuck." Respondents argue that since the letters "FTW" and WTF were in larger font on the buttons and stickers than the letters in "Fight to Win" and "Where's the Fairness," the purpose of the buttons was to create a double entendre and convey the texting meaning rather than the message displayed on the button. Several witnesses, including General Counsel's witnesses, testified that it was their understanding that the letters FTW and WTF had the texting meanings urged by Respondents. Respondents also argue that the "Cut the Crap, Not Our Healthcare" button appeared to have feces smeared on the word "Crap." The General Counsel argues that the buttons' suggestion of profanity or vulgarity is insufficient to render the employees' activities unprotected or to establish special circumstances.

As noted above, the Board allows an employer to promulgate a rule prohibiting the wearing of union insignia where the employer can establish the rule is necessary because of special circumstances which include maintaining an image that does not alienate customers[74] and messages that are offensive in themselves.[75]

The Board has found the content of some union messages contained in union insignia so offensive that they create special circumstances warranting an employer to ban them

In *Komatsu Am. Corp.*, supra, the Board has found that an employer had established sufficient special circumstances that union insignia was offensive and was privileged to prohibit the union insignia, a T-shirt that read: "December 7, 1941" on the front and "History Repeats Negotiate Not Intimidate" on the back. The Board noted that the union's Pearl Harbor T-shirt directly invoked a highly charged and inflammatory comparison between the respondent's outsourcing plans and the Japanese "sneak attack" on the United States on December 7, 1941. The Board found that this comparison was especially inflammatory and offensive because the respondent is a Japanese owned company.

Likewise in *Pathmark Stores, Inc.*, 342 NLRB 378 (2004), the Board concluded that the employer had established sufficient special circumstances that its reputation was impugned by union T-shirts bearing the message "Local 342–50 says: Don't Cheat About the Meat!" and hats bearing the slogan "Don't Cheat About the Meat!" and that it was privileged to prohibit the wearing of this insignia. In striking a balance between the parties' competing interests, the Board found that the respondent's concerns were appropriately gauged on the basis of the more adverse, but reasonable, construction of the ambiguous slogan.

In *Southwestern Bell Telephone Co.*, 200 NLRB 667, 668, 670–671 (1972), the Board found that the use of the phrase "Ma Bell is a Cheap Mother" in view of the controversial nature of the language used and its admitted susceptibility to derisive and profane construction, permitted respondent to legitimately ban the use of this slogan as a reasonable precaution against discord and bitterness between employees and management, as well as to assure decorum and discipline in the plant.

[72] R. Exh. 11, secs. N and O.

[73] Jt. Exh. 6.

[74] *Chinese Daily News*, 353 NLRB 613 (2008); *Pathmark Stores, Inc.*, 342 NLRB 378 (2004).

[75] *Komatsu Am. Corp.*, 342 NLRB 649 (2004).

Similarly In *Honda of America Mfg., Inc.*, 334 NLRB 746 (2001), the Board found use of the language, "Quit hiding Lee, Come Out of the Closet" and "bone us" which was contained in a section of a newsletter criticizing the respondent's bonus program was offensive based upon the parties' stipulation that "bone us" was a vulgar term and not innocuous as the General Counsel contended.

Union stickers, including a sticker that depicted someone or something urinating on a rat designated "non-union" was found vulgar and obscene allowing the employer to prohibit the sticker. *Leiser Construction, LLC*, 349 NLRB 413, 414–415 & fn.17 (2007), enfd. 281 Fed. Appx 781 (10th Cir. 2008).

To the contrary, the Board found the following union messages not so offensive as to warrant their prohibition.

Escanaba Paper Co., 314 NLRB 732, 732–734, 737 (1994), enfd. 73 F.3d 74 (6th Cir. 1996), holds that T-shirts, hats and buttons stating "Hey Mead—Flex this" or "No Scab" were protected and the employer had not demonstrated special circumstances to outweigh employees' rights to engage in Section 7 activity.

In *Southern California Edison Co.*, 274 NLRB 1121, 1124 (1985), the Board found that buttons reading "Stick Your Retro" were protected despite the slogan's obscene and hostile undertones where the slogan did not clearly convey an obscene message. The Board, in affirming the administrative law judge, held that to lose the protection of the Act, the slogan must be offensive or severely disparage the employer.

Similarly in *Borman's, Inc.*, 254 NLRB 1023, 1023–1025 (1981), enf. denied 676 F.2d 1138 (6th Cir. 1982), union members who wore T-shirts bearing the slogan "I'm tired of bustin' my ass" along with the name of the employer and an image of a man with a pick standing above a donkey was found not so offensive as to lose the protection of the Act.

Finally in *Saint John's Health Center*, 357 NLRB No. 170, slip op. at 1–3 (2011), RN's who wore ribbons stating, "Saint John's RNs for Safe Patient Care" did not convey a message to patients that they should be concerned about the quality of their patient care and were privileged.

The FTW and WTF buttons and stickers on their face do not stand for a vulgarity but plainly on their face define WTF as "Where's the Fairness" and FTW as "Fight to Win" in letters clearly visible to any customer who might observe the buttons and stickers. Respondent contends that the buttons created a double entendre by using the texting messages for "what the fuck" and "fuck the world." Given the subtext on the buttons "Where's the Fairness" and "Fight to Win," which were clearly legible, such an interpretation is not reasonable. Any confusion as to the texting meaning is thus clarified on the face of the buttons. Likewise, while counsel for Respondents during the course of trial continued to refer to the "Cut the Crap! not my Healthcare" button as depicting feces on the word "Crap!" and asserting that the word "Crap!" on the button was brown like feces, I am unable to reach a similar conclusion as to the color or the scatological content of the button. The color used on the word "Crap!" is orange and I am unable to tell if the word "Crap" represents feces, cheese, or Cheetos. I find that these buttons did not lose the protection of the Act nor did Respondents establish sufficient special circumstances to justify a prohibition on employees wearing them as they are not profane or vulgar nor would they impugn Respondents' reputation with their customers.

II. NO ON PROP 32 BUTTON

The parties stipulated that on various dates between October 26 and 29, 2012, Respondent Pacific Bell at its facilities in California refused to allow prem techs to be dispatched to the field unless they removed the button or sticker reading "No on Prop 32."[76] Those who refused to remove the sticker were sent home. There were about five absence occurrences as a result of these events.

Counsel for the General Counsel contends that the "No on Prop 32" buttons worn by Respondents' employees were political advocacy protected by the Act, citing *Eastex, Inc. v. NLRB*, 437 US 556, 565 (1978). The Respondents also rely on *Eastex* for the proposition that the wearing of these buttons was purely political and unprotected.

The parties have stipulated[77] that that the following proposition was on the November 6, 2012 General Election ballot in California:

> Proposition 32 (titled "Political contributions by payroll deduction. Contributions to candidates. Initiative statute"), which the California Secretary of State summarized as follows:
>
> Prohibits unions from using payroll-deducted funds for political purposes. Applies same use prohibition to payroll deductions, if any, by corporations or government contractors. Prohibits union and corporate contributions to candidates and their committees. Prohibits government contractor contributions to elected officers or their committees. Fiscal Impact: Increased costs to state and local government, potentially exceeding $1 million annually, to implement and enforce the measure's requirements.
> http://voterguide.sos.ca.gov/propositions/32

The parties stipulated further that if passed, Proposition 32 would have included the following language, which is excerpted from the text of the proposed law:

> 85151. (a) Notwithstanding any other provision of law and this title, no corporation, labor union, public employee labor union, government contractor, or government employer shall deduct from an employee's wages, earnings, or compensation any amount of money to be used for political purposes.

In *Eastex*, the Supreme Court held that distribution of a union news letter urging employees to write their legislators opposing a State right-to-work law bore sufficient relation to employees' interests, and distribution of that portion of the newsletter was protected under the "mutual aid or protection" clause of the Act. It was held further that the portion of the newsletter criticizing a presidential veto of an increase in the Federal minimum wage and urging employees to register to vote to "defeat our enemies and elect our friends" bore a sufficient relation to employees' interests. Thus distribution of that

[76] Jt. Exh. 1, par. 16.

[77] Jt. Exh. 1.

portion of newsletter was protected under the "mutual aid or protection" clause of the Act.

Respondents cites *Firestone Steel Products Co.*, 244 NLRB 826 (1979), affd. 645 F.2d 1151 (D.C. Cir. 1981), in support of its argument that wearing the "No on Prop 32" button was purely political speech beyond the protection of the mutual aid or protection clause of the Act. In *Firestone* the Board found that an employer lawfully prohibited distribution of union literature endorsing political candidates since the literature amounted to purely political tracts that were sufficiently removed from the employees' interests as employees so as to remove such distribution from protection under the mutual aid or protection clause. The Board found that the leaflets did not relate to employee problems and concerns as employees.

Here, there is no dispute that Prop 30 to the California ballot would have severely limited unions' ability to use dues-checkoff provisions to advocate for political goals that benefit employees, including employees in the unit herein. Significantly, there is a dues-checkoff provision in the parties' collective-bargaining agreement. Unlike the facts in *Firestone,* here there is a nexus between the "No on Prop 32" button and employees' interests as employees in dues checkoff to be encompassed under the mutual aid or protection clause of the Act. Thus, wearing the "No on Prop 32 button" was a protected-concerted action, protected under Section 7 of the Act.

d. Did the Union waive the premises technicians' Section 7 right to wear union insignia?

The Respondents essentially argue that the Union waived its right to bargain over whether prem techs have the right to wear union insignia by agreeing to the branded apparel provisions in the 2006–2009 and the 2009–2012 collective-bargaining agreements. The Respondents further contend that its branded apparel program was a term and condition of employment that did not expire with the 2009–2012 collective-bargaining agreement on April 7, 2012. Respondents claim that the collective-bargaining agreement gave it the discretion to implement and change its branded apparel program, and to implement and change appearance standards and dress code. Respondents take the position, therefore, that it was privileged to unilaterally implement the *Premises Technician Guidelines* in 2009 prohibiting stickers or buttons on branded apparel. Respondent's' argument continues that while initially an exercise of management discretion pursuant to the collective-bargaining agreement then in effect, the branded apparel program and the *Guidelines* became a fixed term and condition of employment.

The General Counsel argues that the mandatory branded apparel provisions in the 2012 contract did not constitute a waiver of employees' statutory right to wear union insignia and moreover even if it did waive this right such a provision did not survive the expiration of the 2009–2012 collective-bargaining agreement.

It has been established that the right to wear union insignia is a statutorily protected right. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–803 (1945). In *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983), the Supreme Court held that the waiver of a statutory right must be "clear and unmistakable."

While a party may contractually waive its right to bargain about a subject, the test of whether a waiver has occurred is whether the waiver is in "clear and unmistakable" language. *Amoco Chemical Co.*, 328 NLRB 1220, 1221–1222 (1999). In *Amoco* the Board found that respondents were not privileged to unilaterally implement health care benefits changes despite language in the medical plan giving the employer the right to make changes to the plans where there was no clear evidence that there was bargaining over this language. Thus, the Board in *Amoco* stated at 1221–1222:

> Waivers of statutory rights are not to be "lightly inferred." *Georgia Power Co.*, 325 NLRB 420 (1998), enfd. mem. 176 F.3d 494 (11th Cir. 1999). They must be "clear and unmistakable.' *Metropolitan Edison Co. v. NLRB,* 460 U.S. 693, 708 (1983). "[E]ither the contract language relied on must be specific or the employer must show that the issue was fully discussed and consciously explored and that the union consciously yielded or clearly and unmistakably waived its interest in the matter." *Georgia Power,* supra at 420–421.

In *Hertz Rent-A-Car*, 297 NLRB 363, 368 (1989), remanded on other grounds 920 F.2d 933 (6th Cir. 1990), on remand 305 NLRB 487 (1991), the parties collective-bargaining agreement had a uniforms clause that required "All employees to wear said uniforms while on duty, and present a neat appearance at all times." The employer sought to discipline a union steward for wearing a steward's pin on her uniform in violation of its dress code prohibiting wearing of pins. It was argued that the contractual language cited above waived the employees' right to wear union insignia on their uniforms. The Board adopted the ALJs finding that evidence of waiver was lacking to waive the employees' right to wear union insignia where there was no evidence that the subject of union insignia or pins was even discussed during bargaining over the uniforms clause. The ALJ found:

> Before a union waives any rights in the collective-bargaining agreement, there must be clear and unmistakable evidence to support the waiver *American Telephone & Telegraph Co.,* 250 NLRB 47 fn 1 (1980). Such evidence is lacking here Not only is the collective-bargaining agreement silent on the subject, but the provisions in it regarding uniforms as recited above, and the wearing of union pins or insignia are not mutually exclusive. For example, the agreement might have prohibited all pins or jewelry not specifically authorized by the Respondent's dress code. This the bargaining agreement did not do. Moreover, there is no evidence the parties even discussed the subject of union pins or insignia.

This holding was affirmed in *Kingsbury, Inc.*, 355 NLRB 1195, 1205 (2010), where the Board concurred with the administrative law judge that:

> To meet the "clear and unmistakable" standard, the contract language must be specific, or it must be shown that the matter claimed to have been waived was fully discussed by the parties and that the party alleged to have waived its rights consciously yielded its interest in the matter. *Allison Corp.*, 330 NLRB 1363, 1365 (2000); *Georgia Power Co.*, 325 NLRB 420–421 (1998) ("either the contract language relied on must

be specific or the employer must show that the issue was fully discussed and consciously explored and that the union consciously yielded or clearly and unmistakably waived its interest in the matter"), enfd. 176 F.3d 494 (11th Cir. 1999);

There is no dispute that the parties bargained for a branded apparel program as long ago as 2006 or that the collective bargaining agreement has given Respondent the right to,

at its discretion, implement a mandatory branded apparel program. Employees will be required to wear the branded apparel while working on Company time. The Company may change the program at its discretion.

During bargaining for the branded apparel program the parties discussed and agreed to the content of two logos that would appear on the branded apparel shirts but there is no evidence in the record that discussions regarding the branded apparel program included a prohibition on employees' statutory right to wear other union insignia. I cannot agree that the language in the branded apparel program contained in the parties' collective-bargaining agreements constituted a waiver by the Union of the employees' statutory right to wear union insignia. As noted in *Kingsbury, Inc.*, supra, in order to meet the "clear and unmistakable" standard, the contract language must be specific, or it must be shown that the matter claimed to have been waived was fully discussed by the parties and that the party alleged to have waived its rights consciously yielded its interest in the matter. Here, there is no evidence that the Union discussed waiving employees' right to wear union insignia on the branded apparel or that the contract language is specific as to this waiver. All the branded apparel language provides is that Respondents may mandate that employees wear branded apparel. As judge Stevenson noted in *Hertz Rent-A-Car*, supra, the provisions in the branded apparel program of the collective-bargaining agreement and the wearing of union pins or insignia are not mutually exclusive. Here too, if the parties wanted to ban all pins or stickers the agreement could have so specified. They did not. Under these circumstances, there can be no waiver by the Union of the employees' statutory right to wear union insignia.

e. The Union did not waive the statutory right of employees to wear union insignia when the Guidelines were implemented on January 22, 2009

There is no dispute that Respondents implemented the *Premises Technician Guidelines* in 2009 which provided that "its branded apparel may not be altered in any way which includes adding buttons, pins, stickers, writing etc." Respondents' executive director of labor relations, Douglas Flores, admitted that the Union objected to the Guidelines and that Respondents told the Union it had no obligation to bargain over the Guidelines.

The record reflects that the Union objected to all of the *Guidelines* when they were implemented but were presented with a fait accompli and were told Respondents had no obligation to bargain over the *Guidelines*. A waiver by inaction of the Union will not be found where the union is presented with a fait accompli or where the union receives notice of the action contemporary with the action itself. *National Steel & Shipbuilding Co.*, 348 NLRB 320, 324 (2006). Likewise, the Union's failure to continue to object to the *Guidelines* may be attributed to Respondents' failure to enforce them during the period January 2009–April 2012. The record reflects that prem tech employees wore union insignia on BAP during bargaining in 2009 and thereafter yet there is not a single example of discipline for violation of the *Guidelines* from January 2009 to April 2012.

The Respondents' argument that the *Guidelines* had become terms and conditions of employment and survived the contract expiration, citing *E.I. DuPont De Nemours*, 355 NLRB 1084, 1086 fn. 9 (2010), presumes there was a valid waiver by the union of its members' statutory right to wear union insignia. I find no such waiver occurred in this case.

Thus I find that since October 24, 2011, Respondents, in the *Premises Technicians Guidelines*, have maintained an overly broad rule that prohibits employees from wearing union insignia in violation of Section 8(a)(1) of the Act.

2. Complaint paragraph 8(b) alleges on various dates between April 20 and May 6, 2012, Respondents refused to allow employees to work unless they removed their union insignia in violation of Section 8(a)(1) and (3) of the Act.

Respondents stipulated[78] and admitted that the supervisors listed in complaint paragraph 8(b):

9. On various dates between April 7, 2012, and June 7, 2012, Respondent Pacific Bell, by its supervisors and agents, refused to allow Premises Technicians to be dispatched to the field unless they removed the Union buttons and stickers depicted in Joint Exhibit 8(a)-8(h). Of those Premises Technicians, over 1,500 Premises Technicians refused to remove the buttons and stickers prior to being dispatched and were sent home. The total number of "absence occurrences" that resulted from these events was over 1,500.

10. On various dates between April 7, 2012, and June 7, 2012, those Premises Technicians whom Respondent Pacific Bell refused to allow to be dispatch when they did not remove the buttons or stickers depicted in Joint Exhibit 8(a)-8(h), were sent home and did not receive pay for time not worked. A list of the facilities in California at which that occurred is attached here as Joint Exhibit 9.

11. On various dates between April 7, 2012, and June 7, 2012, Respondent Pacific Bell, by its supervisors and agents, at facilities in California told Premises Technicians that if they did not remove the Union buttons and stickers depicted in Joint Exhibit 8(a)-8(h), they would not be allowed to be dispatched to the field.

12. On various dates between April 7, 2012, and August 7, 2012, Respondent Pacific Bell, by its supervisors and agents, at facilities in California told employees that if they did not remove the Union buttons and stickers depicted in Joint Exhibit 8(a), (e), and (t), they would not be allowed to be dispatched to the field.

To establish a violation of Section 8(a)(3) of the Act, the General Counsel must prove, by a preponderance of the evi-

[78] Jt. Exh. 1

dence, that an individual's protected activity was a motivating factor in the employer's action. *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Where discipline is "intertwined with the union and the protected concerted activity," a violation may be found based on this casual link alone. *Felix Industries*, 331 NLRB 144, 146 (2000); *Nor-Cal Beverage Co.*, 330 NLRB 610, 611–612 (2000). An analysis under *Wright Line* is not necessary.

Here, Respondents refused to allow its employees to work, assessed discipline in the form of absence occurrences and denied them pay because they engaged in activity protected by Section 7 of the Act, their right to wear union insignia in the form of buttons and stickers. Having failed to establish that special circumstances or a waiver by the Union privileged the prohibition, Respondents' actions discriminated against employees because of their union activity and violated Section 8(a)(3) and (1) of the Act.

3. Complaint paragraph 8(c) alleges that Respondent Pacific Bell between April 12 and August 6, 2012, told employees they could not wear union insignia in violation of Section 8(a)(1) of the Act.

Respondent stipulated and admitted that the supervisors listed in paragraph 8(c):

9. On various dates between April 7, 2012, and June 7, 2012, Respondent Pacific Bell, by its supervisors and agents, refused to allow Premises Technicians to be dispatched to the field unless they removed the Union buttons and stickers depicted in Joint Exhibit 8(a)-8(h). Of those Premises Technicians, over 1,500 Premises Technicians refused to remove the buttons and stickers prior to being dispatched and were sent home. The total number of "absence occurrences" that resulted from these events was over 1,500.

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11.On various dates between April 7, 2012, and June 7, 2012, Respondent Pacific Bell, by its supervisors and agents, at facilities in California told Premises Technicians that if they did not remove the Union buttons and stickers depicted in Joint Exhibit 8(a)-8(h), they would not be allowed to be dispatched to the field.

12. On various dates between April 7, 2012, and August 7, 2012, Respondent Pacific Bell, by its supervisors and agents, at facilities in California told employees that if they did not remove the Union buttons and stickers depicted in Joint Exhibit 8(a), (e), and (t), they would not be allowed to be dispatched to the field.

The Board has long recognized that wearing union insignia is protected under the Act. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803 (1945). Employers may not infringe upon this right absent a showing of "special circumstances." Absent a showing of special circumstances, an employer violates the Act by instructing employees not to wear union buttons, or to remove union buttons. *Wayneview Care Center*, 352 NLRB 1089, 1115 (2008).

Having previously found that Respondents failed to establish that special circumstances or that a waiver by the Union privileged its prohibition on employees wearing of union insignia, it follows that, as stipulated above, telling employees they could not wear union insignia violated Section 8(a)(1 of the Act.

4. Complaint paragraph 8(d) alleges that Respondent Pacific Bell by Katherine Nelson and Pascual Perez on May 3, 2012, at its West Sacramento facility threatened employees with absence occurrences and loss of jobs if they did not remove their union insignia in violation of Section 8(a)(1) of the Act.

It is unrebutted that at Respondents' West Sacramento, California yard prem techs wore the WTF button in mid to late April 2012. At some point in April, Respondents' supervisors Katherine Nelson (Nelson) and Pasual Perez (Perez) told prem tech Dean Brown (Brown) that employees could not wear the WTF button and if they continued to do so they could not work. When the prem techs declined to remove the WTF button they left the yard and were not paid. Several prem techs asked whether the day would be counted as an occurrence. Perez answered that it would be an occurrence, it would be reflected in their record, and if there were any other occurrences, it could be grounds for termination.

In early to mid-May 2012, Brown and other prem techs wore the "KEEP AT&T OFF THE HEALTHCARE LOW ROAD" sticker[79] but were told by supervisors Perez and Nelson that if they continued wearing the button they could not work. Supervisor Perez told the employees that if they did not report to work it would be counted as an occurrence against them and newer employees would be in danger of losing their jobs. Prem tech Joshua Alvarado approached Perez and asked about the affect of an occurrence for not working as a second offense. Perez replied that if the employees did not work because they refused to remove the buttons it would be documented as an occurrence and could lead to termination.

The parties stipulated that an "absence occurrence" is an unexcused absence[80]and that Respondents' attendance policy[81] provides that:

> [. .] any other type of absence, [other than an absence allowed by the collective bargaining agreement, the time off policy for management or an approved leave of absence], including tardiness is considered "unexcused" and can result in disciplinary action, including termination of employment.

It is well settled that the Board's test for a violation of Section 8(a)(1) of the Act is that:

> [I]nterference, restraint, and coercion under Section 8 (a) (1) of the Act does not turn on the employer's motive or on

[79] Jt. Exh. 8(b).
[80] Jt. Exh. 1.
[81] Jt. Exh. 13.

> 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).

In *Earthgrains Co.*, 336 NLRB 1119, 1127 (2001), the Board affirmed the administrative law judge who found a violation of Section 8(a)(1) of the Act in a supervisor informing his employee that wearing a union hat violated a rule regarding advertising and that if he did not remove the hat he could "suffer adverse consequences" and "risked employer retaliation."

Respondents argue that the occurrence did not count against employees. However, the importance of the threat is not what may have happened later but rather if the threats would reasonably tend to discourage the exercise of Section 7 rights. In this case the threats were clearly effective as the employees removed their union insignia. Nelson and Perez' statements violated Section 8(a)(1) of the Act. *PCC Structurals, Inc.*, 330 NLRB 868 (2000).

5. Complaint paragraph 8(e) alleges Respondent Pacific Bell by Robert O'Steen in early May 2012 at its Escondido (Quincy) facility threatened employees with reprisals for passing out union insignia in violation of Section 8(a)(1) of the Act.

Luis Arsiniega (Arsiniega) is a splicing tech at Respondent's Escondido, California Quince yard. In early May 2012, Arsiniega was passing out the WTF buttons to splicing techs in the Quince yard before their 7:30 a.m. morning meeting. Arsiniega also passed out the button in the meeting room. When Supervisor Rob Osteen saw him pass out the buttons, he said, "I'm going to report you to management. What's your name? Who is your manager?" After Arsiniega gave Osteen his and his supervisor's name, Osteen told Arsiniega not to pass out these buttons as this is not the time or place. Arsiniega called his Supervisor Dan Hawthorne and explained what had happened with Osteen. Hawthorne told Arsiniega he had him covered.

The parties' collective-bargaining agreement contains a no-solicitation provision that provides in part:

> Section 3.05 UNION ACTIVITIES ON COMPANIES' PREMISES[82]
>
> Union activities involving the solicitation of members on the Companies' premises shall be carried on in accordance with the following:
>
> * * *
>
> 2. Such solicitation shall only be made during periods when neither the Union members nor the employees being solicited are on Company time, excluding paid rest and meal periods.

The Board has drawn a distinction between solicitation and mere talking. *Fremont Medical Center*, 357 NLRB No. 158 fn. 9 (2011). In *Wal-Mart Stores*, 340 NLRB 637, 639 (2003), enfd. in relevant part 400 F.3d 1093 (8th Cir. 2005), the Board found that the wearing of union insignia was not solicitation and would not justify the application of a no solicitation rule. In *W. W. Grainger, Inc.*, 229 NLRB 161, 166 (1977), enfd. 582 F.2d 1118 (7th Cir. 1978), the Board noted that, "It should be clear that 'solicitation' for a union is not the same thing as talking about a union or a union meeting or whether a union is good or bad."

Osteen's interrogation of Arcineiga and his threat to report his distribution of union buttons to management was a threat that would have chilled Arciniega's Section 7 right to wear and hand out union buttons. *Mardi Gras Casino & Hollywood Concessions, Inc.*, 359 NLRB No. 100, slip op. at 9 (2013). Respondents' no-solicitation/no-distribution rules are of no avail since Arcineiga was not engaged in solicitation when he was passing out buttons and he was not distributing literature but buttons to be worn by employees and not disseminated on Respondents' property. I find that Osteen's interrogation and threat to report Arciniega to management was a threat of unspecified reprisals, in violation of Section 8(a)(1) of the Act.

6. Complaint paragraph 8(f) alleges Respondent Pacific Bell by Robert O'Neal about April 24, 2012, at its San Jose Foxworthy facility threatened an employee with unspecified reprisals for wearing union insignia in violation of Section 8(a)(1) of the Act.

On about April 22, 2012, when prem tech Weavil came into work wearing an "I Won't Scab" button,[83] Supervisor O'Neal shook Weavil's hand and would not let go. While still holding onto Weavil's hand, O'Neal pulled Weavil closer and told Weavil to remove the button.

The General Counsel contends a reasonable employee would have understand O'Neal's statement to be a threat of unspecified reprisals if he if returned to work still wearing the button. I do not agree. O'Neal's order to remove the button was a violation of Section 8(a)(1) of the Act but for the reasons already set forth above in paragraph 3 above. However, no threat of reprisal could reasonably be inferred from this statement. I will recommend that this allegation be dismissed.

7. Complaint paragraph 8(g) alleges that Respondent Pacific Bell by Ken Sitz in early May 2012 at its Otay facility in Chula Vista removed union stickers from company owned vehicles in violation of Section 8(a)(1) of the Act.

In May or June 2012 at Respondent's Otay facility in Chula Vista, California, splicing tech Rogelio Herrera (Herrera) and other splicing techs placed union stickers on Respondents' trucks. For many years, splicing techs at Respondents' Otay facility have put various stickers in plain view on Respondents' trucks without Respondents' objection. The stickers included union stickers, stickers for sports teams, as well as commercial, political, and religious stickers.

In May or June 2012, Herrera's supervisor, Ken Sitz (Sitz), directed the splicing techs to remove the newer union stickers that were part of the Union's mobilizing campaign in 2012 from Respondents' trucks. However, other stickers for sports teams, radio stations, an American flag, music bands, sports equipment, plants, political views, clothing brands, and restau-

[82] Jt. Exh. 2, p. 37.

[83] Jt. Exh. 8(h).

rants, as well as older generic CWA union stickers, were allowed to remain on the trucks.[84]

Respondents contend that it did not violate Section 8(a)(1) of the Act by removing union stickers and signs from lockers, laptops, and vehicles. It argues that there is no Section 7 right to affix stickers to an employer's property citing *Minette Mills, Inc.*, 305 NLRB 1032, 1035 (1991), and *Cashway Lumber, Inc.*, 202 NLRB 380, 382 (1973).

Minette Mills and *Cashway* are inapposite for two reasons. Unlike in those cases, here the stickers were placed primarily on trucks that had been issued to employees for their use and not plastered all over walls and bathrooms like in *Minette Mills* and *Cashway*. In addition, Respondents have long tolerated a policy of allowing employees to place stickers on its vehicles. Further, the Board has never stated that there is no Section 7 right to affix stickers to an employer's property. To the contrary, the Board disavowed such a rule in *Malta Construction Co.*, 276 NLRB 1494 (1985), holding that employees may lawfully display union stickers on employer issued hardhats.

The Respondents contend that the distinction between new union stickers and old generic union stickers was nondiscriminatory under *Register-Guard*, 351 NLRB 1110, 1117–1118 (2007), enfd. in part sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53, 387 U.S. App. D.C. 53 (D.C. Cir. 2009). However, *Register Guard* is distinguishable since here Respondents did discriminate on the basis of union considerations in deciding which among many union stickers would be removed.

The Respondents take the position that affixing stickers and/or union materials to Respondents' property is prohibited by the parties' collective-bargaining agreement and AT&T's longtime guidelines.

The parties' collective-bargaining agreement also contains a bulletin board provision that states in part:

> Section 3.06 BULLETIN BOARDS
> * * *
>
> B. Unless otherwise agreed upon in advance by the Companies, the Union agrees not to post or distribute Union material any place on the Companies' premises other than on Union bulletin boards

Respondents' WEST CORE NETWORK I&M OPERATIONS Job Performance Policies and Expectations Field Personnel manual which, applies to splicing technicians contains the following provision:

> * * *
>
> 1.27.20 Technicians shall not attach any stickers, license plate holders, or other such items to their vehicles unless approved by Management.

The Board has long recognized that wearing union insignia is protected under the Act. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803 (1945). Employers may not infringe upon this right absent a showing of "special circumstances." Absent a showing of special circumstances, an employer violates the Act by instructing employees not to wear union buttons, or to remove union buttons. *Wayneview Care Center*, 352 NLRB 1089, 1115 (2008).

Having previously found that Respondents failed to establish that special circumstances or that a waiver by the Union privileged its prohibition on employees wearing of union insignia, it follows that, as stipulated above, telling employees they could not wear union insignia violated Section 8(a)(1) of the Act.

Here, the record clearly establishes that employees had a practice of placing union stickers on their vehicles. The Respondents have for many years failed to enforce its rules cited above. By restricting the types of union insignia its employees could place on their trucks, Respondents violated Section 8(a)(1) of the Act.

8. Complaint paragraph 8(h) alleges that Respondent Pacific Bell by Bill George in March and April 2012 at its Othello garage in San Diego removed union and nonunion stickers from company owned lockers and computers and allowed only nonunion stickers to remain in violation of Section 8(a)(1) of the Act.

The only evidence adduced at the hearing concerning stickers at the Othello facility was contained in Joint Exhibit 18, a series of emails on or about June 26, 2012, between Trent Munoz, Respondents' director of network services, and Betsy Farrell, Respondents' vice president west core I &M. The subject matter of the emails was the status of stickers on technicians' lockers. The emails reflect "all clear" for facilities including Otay, El Centro, Othello, El Cajon, Ramona, Convoy, Oceanside, and Escondido. While the emails seem to indicate that stickers were removed from employee lockers in the listed facilities, this is insufficient to establish that in March and April 2012 there was a discriminatory removal of only union stickers while nonunion stickers were allowed to remain at Othello. I will recommend that this allegation be dismissed.

9. Complaint paragraph 8(i) alleges that Respondent Pacific Bell by bill George on about April 7, 2012, at its Othello facility removed union and nonunion stickers from company owned lockers and computers and allowed only nonunion stickers to remain in violation of Section 8(a)(1) of the Act.

As noted above, the only evidence regarding stickers was contained in Joint Exhibit 18. I find that this evidence is insufficient to sustain an allegation that there was a discriminatory removal of only union stickers while other stickers were allowed to remain in place. I will recommend that this allegation be dismissed.

10. Complaint paragraph 8(j) alleges that Respondent Pacific Bell in early July 2012 at its El Centro facility removed union stickers and nonunion stickers from company equipment including lockers, vehicles, and computers in violation of Section 8(a)(1) of the Act.

a. Trucks

Arturo Franco (Franco) was a splicing tech at Respondents' El Centro, California facility. Employees at El Centro had placed union and other stickers on Respondents' trucks since about 2003 or 2004. In addition to the union stickers, since

[84] GC Exhs. 7(a)–(k).

2003 employees had also affixed stickers for local radio stations on Respondents' vehicles.

In about 2011, Respondents assigned Franco a new truck and he placed a sticker on the back that read, "Proud to be a Union member" and one on the back bumper that read "From the folks who brought you weekends, CWA." About five other employees had similar stickers on their company vehicles. Franco also had a cardboard sign inside the cab of his truck in the rear window with the letters "CWA."

In about May 2012, Franco's supervisors, David Rogers and Charles Lechner, told Franco that he could not place any stickers on Respondents' property and that he had to remove a union sign from the back window of the truck. Both Franco and other employees removed the union signs and stickers from their trucks. In November 2012, when Franco was given a new vehicle by Respondents, Rogers told him he could not place any union stickers on the truck.

b. Laptops

Splicing techs at Respondents' El Centro facility use laptops to perform their work. Since about 2004, splicing technicians have placed union and other stickers on their laptops without any objection from Respondents. However, after April 2012, Supervisors Lechner and Rogers told the splicing techs that it was against Respondents' policy to place any unauthorized decals or stickers on its property.

c. Lockers

Since about 2005, Franco had union stickers on his locker including the "Proud to be a Union Member" sticker. Other stickers appeared on employee lockers including stickers for sports teams and repair shop ads. After the collective-bargaining agreement expired in April 2012, Franco observed that his union sticker was removed from his locker but the sports team magnet remained. Other than Joint Exhibit 18, there is no evidence that the union stickers were removed by Respondents. While Joint Exhibit 18 reflects that stickers on lockers in El Centro were "all clear," this is insufficient to find that they were removed by Respondents.

Respondents makes the same arguments regarding its El Centro facility as discussed above in paragraph 7 regarding its Otay facility. For the reasons stated in paragraph 7 above, I find that having previously found that Respondents failed to establish that special circumstances or that a waiver by the Union privileged its prohibition on employees wearing of union insignia, it follows that, as stipulated above, telling employees they could not wear union insignia violated Section 8(a)(1) of the Act.

Here, the record clearly establishes that employees had a practice of placing union stickers on their lockers, laptops, and vehicles. Respondents applied their rules in an inconsistent manner, allowing the posting of stickers on its property for a long period prior to April 2012. By prohibiting employees from placing union stickers on Respondents' trucks and laptops, Respondents violated Section 8(a)(1) of the Act.

11. Complaint paragraph 9(b) alleges that Respondent Nevada Bell by Kevin Schreiber about April 23, prohibited employees at its Reno, Nevada yard from wearing union insignia and refused to allow them to work unless they removed their union insignia in violation of Section 8(a)(3) and (1) of the Act.

Respondents stipulated that on a date on or around April 23, 2012, those prem techs whom Respondent Nevada Bell refused to dispatch when they did not remove the button or sticker depicted in Joint Exhibit 8(a) were sent home and did not receive pay for time not worked.[85]

To establish a violation of Section 8(a)(3) of the Act, the General Counsel must prove, by a preponderance of the evidence, that an individual's protected activity was a motivating factor in the employer's action. *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Where discipline is "intertwined with the union and the protected concerted activity," a violation may be found based on this casual link alone. *Felix Industries*, 331 NLRB 144, 146 (2000); *Nor-Cal Beverage Co.*, 330 NLRB 610, 611–112 (2000). An analysis under *Wright Line* is not necessary.

Here, Respondents refused to allow its employees to work, assessed discipline in the form of absence occurrences and denied them and pay because they engaged in activity protected by Section 7 of the Act, their right to wear union insignia in the form of buttons and stickers. Having failed to establish that special circumstances or a waiver by the Union privileged the prohibition, Respondents' actions discriminated against employees because of their union activity and violated Section 8(a)(3) and (1) of the Act.

C. The 8(a)(5) allegations

1. Complaint paragraph 10(a) alleges in March and April 7, 2012, Respondent Pacific Bell at its Othello facility implemented a rule prohibiting employees from posting union stickers on company equipment, including lockers, vehicles, and computers in violation of Section 8(a)(5) and (1) of the Act.

As noted above at paragraphs 8 and 9, while Joint Exhibit 18 indicates stickers were removed by Respondents from employees' lockers, this evidence is insufficient to establish that a rule was promulgated or implemented prohibiting employees from posting union stickers on lockers, vehicles, or computers. I will recommend that this allegation be dismissed.

2. Complaint paragraph 10(b) alleges that in early May 2012 Respondent Pacific Bell by Ken Sitz at its Otay facility implemented a rule prohibiting employees from posting union stickers on company equipment, including lockers, laptops, and vehicles in violation of Section 8(a)(5) and (1) of the Act.

The facts regarding Respondents' Otay facility are previously summarized in paragraph 7 above. In addition, in May or June 2012 at Respondents' Otay facility in Chula Vista, California, splicing tech Rogelio Herrera (Herrera) and other splicers also wore "KEEP AT&T OFF THE HEALTHCARE LOW ROAD" and "TAKE THE HIGH ROAD FOR JOBS AND CUSTOMERS" stickers[86] and they placed the stickers on trucks and lockers. For many years, splicing techs at Respondents' Otay facility have put various stickers in plain view on

[85] Jt. Exh. 1, par. 15.

[86] Jt. Exh. 8(d).

Respondents' trucks without Respondents' objection. The stickers included sports, commercial, political, and religious messages.[87]

The record reflects that after April 2012 numerous stickers were placed on lockers at the Otay facility and individual stickers were placed on doors[88]. Since about 2006 or 2007, Herrera had put about three or four union stickers on his locker. Respondents have never objected to these stickers. Other employees had stickers on their lockers and laptops as well.

Respondents contend it had never tolerated the number of stickers on lockers reflected in the photos in Respondent's Exhibits 5(a)–(k). However, it is unrebutted that Respondents permitted numerous stickers on employees' lockers at Otay since at least 2006 or 2007. In June 2012, at Sitz direction, union stickers were removed from lockers and laptops.

Respondents take the position that affixing stickers and/or union materials to Respondents' property is prohibited by the parties' collective-bargaining agreement and AT&T's longtime guidelines. The parties' collective-bargaining agreement also contains a bulletin board provision that states in part:

> Section 3.06 BULLETIN BOARDS
>
> * * *
>
> B. Unless otherwise agreed upon in advance by the Companies, the Union agrees not to post or distribute Union material any place on the Companies' premises other than on Union bulletin boards

Respondents' WEST CORE NETWORK I&M OPERATIONS Job Performance Policies and Expectations Field Personnel that applies to splicing technicians contains the following provision:

> * * *
>
> 1.27.20 Technicians shall not attach any stickers, license plate holders, or other such items to their vehicles unless approved by Management.

The Supreme Court has held that an employer is under an obligation to refrain from making unilateral changes to employees' existing terms and conditions of employment without first bargaining with their collective-bargaining representative. *NLRB v. Katz*, 369 U.S. 736 (1962).

The Board's decision in *First Student, Inc.*, 353 NLRB 512, 517 (2008), is instructive on the issue of unilaterally enforcing a dormant rule, finding such enforcement violates Section 8(a)(5) of the Act. The Board affirmed the ALJ who cited *Daily News of Los Angeles*, 315 NLRB 1236, 1237 (1994), enfd. 73 F.3d 406 (D.C. Cir. 1996), cert. denied 519 U.S. 1090 (1997), in finding that the employer had violated Section 8(a)(5) of the Act in terminating an employee for violation of its dormant DUI policy:

> [T]he vice involved in [a unilateral change] . . is that the employer has changed the existing conditions of employment. It is this change which is prohibited and which forms the basis of the unfair labor practice charge. *(Daily News of Los Angeles*, 315 NLRB 1236, 1237 (1994), enfd. 73 F.3d 406 (D.C. Cir. 1996), cert. denied 519 U.S. 1090 (1997) (quoting *NLRB v. Dothan Eagle*, 434 F.2d 93, 98 (5th Cir. 1970)). (Emphasis in the original.) This is true even when the policy is written because the enforcement of the policy constitutes the change. "Thus, despite the Respondent's written policy the Respondent ha[d] not previously enforced this requirement." *Flambeau Airmold Corp.*, 334 NLRB 165, 166 (2001). See also *Vanguard Fire & Security Systems*, 345 NLRB 1016, 1017 (2005).

Here, Respondents applied their rules in an inconsistent manner, allowing the posting of stickers on its property for a long period prior to April 2012. By permitting the posting of various stickers, including union stickers on trucks long before April 2012, Respondents established a past practice that became a term and condition of employment which it could not change without notice to and bargaining with the Union. By failing to bargain before announcing the new rule prohibiting stickers on its property, Respondents violated Section 8(a)(5) and (1) of the Act.

3. Complaint paragraph 10(c) alleges that in early July 2012 Respondent Pacific Bell by Charles Lechner and David Rogers at its El Centro facility implemented a rule prohibiting employees from posting union stickers on company equipment, including vehicles in violation of Section 8(a)(5) and (1) of the Act.

The facts regarding the El Centro facility are stated above in paragraph 10. Here, the record clearly establishes that employees had a practice of placing union stickers on their lockers, laptops, and vehicles. Respondents take the position that affixing stickers and/or union materials to Respondents' property is prohibited by the parties' collective-bargaining agreement and AT&T's longtime guidelines.

The parties' collective-bargaining agreement also contains a bulletin board provision that states in part:

> Section 3.06 BULLETIN BOARDS
>
> * * *
>
> B. Unless otherwise agreed upon in advance by the Companies, the Union agrees not to post or distribute Union material any place on the Companies' premises other than on Union bulletin boards

Respondents' WEST CORE NETWORK I&M OPERATIONS Job Performance Policies and Expectations Field Personnel that applies to splicing technicians contains the following provision:

> * * *
>
> 1.27.20 Technicians shall not attach any stickers, license plate holders, or other such items to their vehicles unless approved by Management.

The Supreme Court has held that an employer is under an obligation to refrain from making unilateral changes to employees' existing terms and conditions of employment without first bar

[87] GC Exhs. 7(a)–(k).

[88] R. Exhs. 5(a)–(k).

gaining with their collective-bargaining representative. *NLRB v. Katz,* 369 U.S. 736 (1962).

For the reasons already set forth above, I find the Respondents applied their rules in an inconsistent manner, allowing the posting of stickers on its property for a long period prior to April 2012. By permitting the posting of various stickers, Respondents established a past practice that became a term and condition of employment which it could not change without notice to and bargaining with the Union. By failing to bargain before announcing the new rule prohibiting stickers on its property, Respondents violated Section 8(a)(5) and (1) of the Act.

4. Complaint paragraph 10(d) alleges that on about May 21 and June 5, 2012, Respondent Pacific Bell by Michelle Morechel at its Escondido facility implemented a rule prohibiting employees from wearing union insignia in violation of Section 8(a)(1) and (5) of the Act.

At the end of April 2012 at Respondents' Washington Street, Escondido, California facility construction splicer Brendan McCarthy, and other splicing techs, began wearing the WTF button. On about May 21, 2012, McCarthy's supervisor, Michelle Morechel, told him he could not wear this button and McCarthy removed it.

At the end of May 2012, McCarthy and other splicing techs, started wearing the "Cut the Crap" button until about June 5 when Morechel told him to remove it. The following day McCarthy continued wearing the "Cut the Crap" button and was told by Supervisor Jess Gonzales that he could not wear this button. Gonzales read an email from Respondents' vice president of construction and engineering, Kieran Nolan, to the splicing techs that said employees could not wear the "Cut the Crap" button in the field or in front of customers and employees who continued to wear the button would be considered not ready to work.

When Supervisor Octavio Rivera arrived at the Washington Street yard with the early morning crew, he told them that they were not ready to work because they were wearing the "Cut the Crap" buttons. Rivera also read Nolan's email to the gathered employees. Later, both McCarthy and the morning crew met with Rivera in the office. Rivera repeated that they could not wear the "Cut the Crap" buttons. The splicing technicians who wore the "Cut the Crap" button did not work that day and were not paid While the following day, construction splicers, including Union Steward Brendan McCarthy and other construction splicers, were dispatched to work while wearing the "Cut the Crap" button, there is no evidence that the rule prohibiting the wearing of the button was rescinded.

For the reasons mentioned above, Respondents applied their rules in an inconsistent manner, allowing the posting of stickers on its property for a long period prior to April 2012. By permitting the posting of various stickers, Respondents established a past practice that became a term and condition of employment which it could not change without notice to and bargaining with the Union. By failing to bargain before announcing the new rule prohibiting stickers on its property, Respondents violated Section 8(a)(5) and (1) of the Act.

5. Complaint paragraph 10(e) alleges that that on about June 6, 2012, Respondent Pacific Bell by Justin Clark at its Oceanside facility implemented a rule prohibiting employees from wearing union insignia in violation of Section 8(a)(5) and (1) of the Act.

On June 6, 2012, Adam Williams, a splicing tech in Respondents' Oceanside facility wore the "Cut the Crap" button at work. Williams' supervisor, Paul Jepsen, told Williams and the other splicing techs that they could not work while wearing this button. Later that morning, Respondents' supervisor, Justin Clark, told the splicing techs that they had to take these buttons off or go home. While the following day Williams and about half the other splicing techs who wore the "Cut the Crap" button were dispatched to work, there is no evidence that the rule was rescinded.

For all of the reasons listed above, I find Respondents applied their rules in an inconsistent manner, allowing the posting of stickers on its property for a long period prior to April 2012. By permitting the posting of various stickers, Respondents established a past practice that became a term and condition of employment which it could not change without notice to and bargaining with the Union. By failing to bargain before announcing the new rule prohibiting stickers on its property, Respondents violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondents Pacific Bell Telephone Company d/b/a AT&T and Nevada Bell Telephone Company d/b/a AT&T are employers engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Communications Workers of America, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act and is the exclusive collective-bargaining representative of Respondents' employees in the following appropriate collective-bargaining unit:

> Employees, including but not limited to Premises Technicians and Splicing Technicians, covered by the most recent Collective-Bargaining Agreement between the Union and Respondents Pacific Bell, Nevada Bell, AT&T Services, Inc., and SBC Global Services, Inc.

3. By engaging in the following conduct, the Respondents committed unfair labor practices in violation of Section 8(a)(1) of the Act.

(a) Maintaining and enforcing the following rule in its *Premises Technician Guidelines*:

> 13.3 The branded apparel may not be altered in any way which includes adding buttons, pins, stickers, writing etc.

(b) Implementing rules prohibiting employees from wearing union insignia or placing stickers on company owned vehicles, laptops, and lockers.

(c) Threatening employees with absence occurrences, unspecified reprisals, and loss of jobs if they did not remove union insignia.

(d) Threatening employees with unspecified reprisals for passing out union insignia.

(e) By removing union stickers from company owned vehicles, laptops, and lockers.

4. By prohibiting the employees listed in appendix A to the complaint as well as other employees whose identity is to be determined in compliance from working unless they removed their union insignia, the Respondents committed unfair labor practices in violation of Section 8(a)(3) of the Act.

5. By unilaterally and without bargaining with the Union, implementing rules prohibiting employees from wearing union insignia and posting union stickers on company owned vehicles, laptops, and lockers, the Respondents committed unfair labor practices in violation of Section 8(a)(5) of the Act.

REMEDY

Having found that Respondents have violated Section 8(a)(1) of the Act by maintaining an overly-broad rule with respect to its premises technicians and by forbidding all bargaining unit employees from wearing certain union insignia, the recommended order requires that the Respondent revise or rescind *Premises Technician Guidelines Rule 13.3*, and all rules prohibiting the display of union insignia, at all of Respondents' facilities, and advise its employees in writing that the rules have been so revised or rescinded.

Having found that Respondents violated Section 8(a)(3) of the Act by denying employees work because they wore union insignia and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, my recommended Order further requires that back pay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), plus daily compound interest as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

The recommended Order also requires that Respondents shall remove from their files and records any and all references to the unlawful absence occurrences issued to the employees listed in appendix A to the complaint herein, and to any other employees identified in compliance proceedings and to notify them in writing that this has been done and that the unlawful discrimination will not be used against them in any way. *Sterling Sugars, Inc.*, 261 NLRB 472 (1982). Further, Respondents must not make any reference to the removed material in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker, or use the expunged material against them in any other way.

Further, as I found that Respondents made certain unlawful unilateral changes in the terms and conditions of employment of the unit employees, I shall recommend that Respondent be ordered to, at the request of the Union, rescind any and all of those changes. These include promulgating rules prohibiting splicing technicians from wearing buttons and stickers without offering the Union an opportunity to bargain;

Having found that Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondents shall be required to make whole bargaining unit employees for all losses they suffered as a result of the Respondents' unlawful unilateral changes, plus daily compound interest as prescribed in *Kentucky River Medical Center*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.[89]

ORDER

Respondents, Pacific Bell Telephone Company d/b/a AT&T and Nevada Bell Telephone Company d/b/a AT&T, San Francisco, California, and Reno, Nevada, their officers, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and enforcing the following rule in its *Premises Technician Guidelines* employee handbook:

> 13.3 The branded apparel may not be altered in any way which includes adding buttons, pins, stickers, writing etc.

(b) Implementing rules prohibiting employees from wearing union insignia or placing stickers on company owned vehicles, laptops, and lockers.

(c) Threatening employees with absence occurrences, unspecified reprisals, and loss of jobs if they do not remove union insignia.

(d) Threatening employees with unspecified reprisals for passing out union insignia.

(e) Removing union stickers from company owned vehicles, laptops, and lockers.

(f) Disciplining its employees for wearing union insignia by issuing absence occurrences and denying them pay.

(g) Refusing to bargain in good faith with Communications Workers of America, AFL–CIO as the exclusive collective-bargaining representative of its employees in the following collective-bargaining unit:

> Employees, including but not limited to Premises Technicians and Splicing Technicians, covered by the most recent Collective-Bargaining Agreement between the Union and Respondents Pacific Bell, Nevada Bell, AT&T Services, Inc., and SBC Global Services, Inc.

(h) Unilaterally and without bargaining with the Union, implementing rules prohibiting employees from wearing union insignia or placing stickers on company owned vehicles, laptops, and lockers.

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

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

(a) At the request of the Union, Respondents shall rescind the following rule in its *Premises Technician Guidelines* employee handbook:

> 13.3 The branded apparel may not be altered in any way which includes adding buttons, pins, stickers, writing etc.

(b) At the request of the Union, Respondents shall rescind the unilateral changes made in its employees' terms and conditions of employment including implementing rules prohibiting

[89] 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 shall be waived for all purposes.

employees from wearing union insignia or placing stickers on company owned vehicles, laptops, and lockers.

(c) Make whole its employees for any losses incurred as a result of its unilateral changes made in the terms and conditions of their employment, plus interest as provided for in the remedy section of this decision;

(d) Within 14 days of the Board's Order, rescind the absence occurrences issued to its employees for wearing union insignia.

(e) Within 14 days of the Board's Order, make its employees whole for lost pay as a result of wearing union insignia in the manner set forth in the remedy section of this decision.

(f) Within 14 days of the Board's Order, remove from its files any references to the absence occurrences issued to its employees for wearing union insignia and inform them in writing that this has been done, and that Respondents' unlawful discrimination against them will not be used against them as the basis of any future personnel actions, or referred to in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker, or otherwise used against them.

(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 and other earrings and benefits due under the terms of this Order;

(h) Within 14 days after service by the Region, post at all of its facilities in the States of California and Nevada, copies of the attached notice marked "Appendix."[90] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondents' authorized representative, shall be posted by the Respondents 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 Respondents customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondents 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 Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since April 20, 2012.

(l) 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 Respondents have 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. April 23, 2014

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.

Accordingly, we give our employees the following assurances:

WE WILL NOT maintain and enforce the following rule in our *Premises Technician Guidelines* employee handbook:

> 13.3 The branded apparel may not be altered in any way which includes adding buttons, pins, stickers, writing etc.

WE WILL NOT implement rules prohibiting employees from wearing union insignia or placing stickers on company owned vehicles, laptops, and lockers.

WE WILL NOT threaten employees with absence occurrences, unspecified reprisals, and loss of jobs if they do not remove union insignia.

WE WILL NOT threaten employees with unspecified reprisals for passing out union insignia.

WE WILL NOT remove union stickers from company owned vehicles, laptops, and lockers.

WE WILL NOT discipline ours employees for wearing union insignia by issuing absence occurrences and denying them pay.

WE WILL NOT refuse to bargain in good faith with Communications Workers of America, AFL–CIO as the exclusive collective-bargaining representative of its employees in the following collective-bargaining unit:

> Employees, including but not limited to Premises Technicians and Splicing Technicians, covered by the most recent Collective-Bargaining Agreement between the Union and Respondents Pacific Bell, Nevada Bell, AT&T Services, Inc., and SBC Global Services, Inc.

WE WILL NOT unilaterally and without bargaining with the Union, implement rules prohibiting employees from wearing union insignia or placing stickers on company owned vehicles, laptops, and lockers.

[90] 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."

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

WE WILL recognize and, on request, bargain collectively with the Union as the exclusive representative of our employees in the above-described unit with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

WE WILL recognize your right to engage in protected concerted and union activity by wearing union buttons.

WE WILL make those employees who were denied pay for wearing union insignia whole for any loss of earnings and benefits, including interest, they sustained as a result of our refusal to allow them to work wearing union insignia.

WE WILL within 14 days from the date of the Board's Order, remove from our files any and all records of the discrimination employees who were given absence occurrences or who were not allowed to work, and WE WILL, within 3 days thereafter, notify them in writing that we have taken this action, and that the material removed will not be used as a basis for any future personnel action against them or referred to in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker, or otherwise used against them.

WE WILL remove or revise rule 13.3 from our rule in its *Premises Technician Guidelines*:

> 13.3 The branded apparel may not be altered in any way which includes adding buttons, pins, stickers, writing etc.

WE WILL at the request of the Union, rescind the unilateral changes made in our employees' terms and conditions of employment including implementing rules prohibiting employees from wearing union insignia or placing stickers on company owned vehicles, laptops, and lockers.

WE WILL, within 14 days of the Board's Order, inform you in writing as to the manner in which we have revised, rescinded, removed, or modified the rule in our *Premises Technician Guideline*, which was found to be unlawful, to now comply with Federal Labor Law and your rights under the National Labor Relations Act.

The Board's decision can be found at www.nlrb.gov/case/20-CA-080400 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.

CERTIFICATE OF SERVICE

I am a citizen of the United States and employed in Los Angeles, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 515 South Flower Street, 25th Floor, Los Angeles, California 90071. On June 11, 2015, I served the foregoing documents described as: **PETITION FOR REVIEW OF A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD** and **RULE 26.1 STATEMENT** on the interested parties by placing certified copies thereof in a sealed envelope addressed as follows:

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street, NW, Suite 100
Washington, DC 20570

☒ **VIA OVERNIGHT MAIL, EARLY MORNING DELIVERY:**

VIA UPS: By delivering such documents to an overnight mail service or an authorized courier in a sealed envelope or package designated by the express service courier addressed to the person on whom it is to be served.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 11, 2015, at Los Angeles, California.

Christine Wilson

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
JUN 11 2015
RECEIVED

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
333 CONSTITUTION AVENUE, NW
WASHINGTON DC 2001-2866
PHONE: 202-216-7000 FACSIMILE: 202-912-219-8530

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED JUN 12 2015
CLERK

PACIFIC BELL TELEPHONE COMPANY
d/b/a AT&T

and

NEVADA BELL TELEPHONE COMPANY
d/b/a AT&T,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Case No. 15-1165

N.L.R.B.
APPELLATE COURT BRANCH
2015 JUN 12 PM 12:24
LITIGATION SERVICES
WASH., D.C.

RULE 26.1 STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioners Pacific Bell Telephone Company and Nevada Bell Telephone Company, by their counsel, Paul Hastings LLP, hereby identify the following parent corporations that own 10% or more of their stock:

The parent company and full stockholder of Pacific Bell Telephone Company and Nevada Bell Telephone Company is AT&T Teleholdings, Inc.

AT&T Teleholdings, Inc. is a wholly-owned subsidiary of AT&T Inc.

DATED: June 11, 2015

Attorneys for Petitioners, Pacific Bell Telephone Company and Nevada Bell Telephone Company:

PAUL HASTINGS LLP
Neal Mollen, Esq.
815 15th Street, N.W.
Washington D.C. 20005
(202) 551-1738
D.C. Bar No. 413842

CERTIFICATE OF SERVICE

I certify that I am a citizen of the United States and an employee in Washington, D.C. I am over the age of eighteen years old and not a party to the within action.

I hereby certify that I electronically filed Petitioner's RULE 26.1 STATEMENT with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit via hand delivery on June 11, 2015.

On June 11, 2015, I caused the foregoing document(s) described as: RULE 26.1 STATEMENT on the interested parties by electronic service as follows:

VIA E-MAIL
Carmen Leon
901 Market Street, Suite 400
San Francisco, CA 94103
carmen.leon@nlrb.gov

Counsel for General Counsel

VIA E-MAIL
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Counsel for Charging Party

VIA E-MAIL
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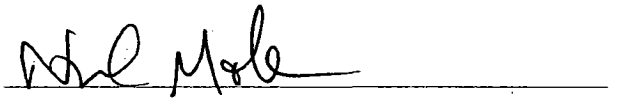
Alameda, CA 94501-1091
DRosenfeld@unioncounsel.net

Counsel for Charging Party

I declare that I am a member of the bar of this court at whose direction the service was made.

Executed on June 11, 2015, at Washington, D.C.