

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

**WAL-MART STORES, INC.
Respondent**

and

**Cases 16-CA-096240
16-CA-105873
16-CA-108394
16-CA-113087
16-CA-122578
16-CA-124099
21-CA-105401
26-CA-093558
13-CA-107343**

**THE ORGANIZATION UNITED FOR RESPECT
AT WALMART (OUR WALMART)
Charging Party**

**GENERAL COUNSEL'S BRIEF IN SUPPORT OF CROSS-EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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Counsel for the General Counsel, pursuant to Section 102.46 of the Board's Rules and Regulations, submits this Brief in Support of General Counsel's Cross-Exceptions to the Decision of Administrative Law Judge Geoffrey Carter (JD-03-16) dated January 21, 2016.¹

I. STATEMENT OF THE CASE

The Complaint,² as amended, alleges that Respondent committed numerous Section 8(a)(1) violations, including threats/coercive conduct and the discipline and/or discharge of 55 employees at 30 different stores across 12 different states for attendance resulting from strike

¹ Citations are as follows: "JD slip op. at __. __" for Judge's Decision and page:line numbers, "Tr. Vol. # at __" for Transcript Volume and page numbers, "CP Exh." for Charging Party Exhibits, "GC Exh." for General Counsel Exhibits, "JT Exh." for Joint Exhibits and "R Exh." for Respondent Exhibits.

² GC Exh. 1(bb)

related absences. The principal issue in the case is whether the at-issue strikes are protected or unprotected intermittent work stoppages.

In his Decision and Order, the Judge properly determined that the at-issue employee strikes are protected by the Act³ and Respondent committed serious and widespread Section 8(a)(1) violations by disciplining and/or discharging 54 employees⁴ on multiple dates in 2012 and 2013 at 29 different stores as a result of their strike absences. [JD slip op. at 2:6-9; 101:32-34; 102:2-103:39] The Judge found that Respondent further violated Section 8(a)(1) by “on or about November 19, 2012, threatening an employee at Store No. 949 in Wheatland [Dallas], Texas that employees who went on strike would be fired.” [JD slip op. at 45:41-43; 101:28-30] Finally, on various dates in February 2013, in eleven stores across the U.S., “by reading talking points to associates that could be reasonably construed as prohibiting protected strike activity, Respondent announced an unlawful work rule that violated Section 8(a)(1) of the Act.” [JD slip op. at 49:11-14; 101:36-38]

Having found that Respondent engaged in the above unfair labor practices, the Judge ordered Respondent to cease and desist its unlawful conduct and to take certain affirmative action designed to effectuate the Act. [JD slip op. at 103:45-105:3; 108:4-111:16] In particular, the Judge ordered traditional make-whole remedies requiring Respondent to remove from its files any and all references to the unlawful disciplines and discharges and notify the discriminatees in writing that this has been done and will not be used against them in any way; to offer immediate reinstatement to the 16 discharged discriminatees; to pay each of the 16 discharged discriminatees for any loss of earnings and other benefits suffered as a result of the discrimination against them plus interest compounded on a daily basis; to file a report with

³ National Labor Relations Act, 29 U.S.C. § § 151-169

⁴ Respondent refers to employees as associates.

Social Security Administration allocating backpay to appropriate calendar quarters; and to compensate discriminatees for adverse tax consequences, if any, for receiving one or more lump-sum backpay awards covering periods longer than 1 year. [JD slip op. at 104:2-105:3, 108:31-109:2] In addition to physical posting of paper notices, the Judge ordered notices to 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. [JD slip op. at 109:30-110:27] Finally, based on Respondent's serious and widespread misconduct, the Judge ordered the notices to be "read aloud to associates in English and Spanish by each store's manager or, at Respondent's option, by a Board agent in Respondent's store manager's presence" at each store [29 stores] where Respondent disciplined or discharged associates for incurring strike-related absences." [JD slip op. at 106:36-107:39; 110:30-111:16]

General Counsel submits the Judge's findings of facts and conclusions of law concerning the unfair labor practices and/or proposed remedy above are well supported by established Board law and the record in this matter.⁵ However, as elaborated in Cross-Exceptions 1 and 2, General Counsel takes exception and urges the Board to reverse the Judge's findings and dismissal of paragraphs 4(B)(1)-(2) of the Complaint. In addition, General Counsel takes exception and urges the Board to reverse and/or modify the Judge's proposed remedial order denying search-for-work and work-related expenses regardless of whether the discriminatee received interim earnings; denying nationwide notice postings and/or readings; denying notice readings at Stores 949 and 2110; and ordering store-specific remedial notices as elaborated in Cross-Exceptions 3 through 9.

⁵ The Judge dismissed paragraphs 4(A)(1)-(3) of the Complaint alleging that from November 17-19, 2012, at Store 471 in Lancaster, Texas, Respondent violated Section 8(a)(1) by threatening and coercing its employees that employees' striking and picketing activities were under review. [JD slip op. at 41:6-7] The Judge also dismissed paragraphs 53(A)-(B) of the Complaint regarding the discharge of Louis Callahan. [JD slip op. at 99:6-7] General Counsel does not take exception to these determinations.

II. GENERAL COUNSEL'S CROSS-EXCEPTIONS

General Counsel takes exception to the following:

1. The Judge's dismissal of paragraphs 4(B)(1)-(2) of the Complaint alleging that Respondent, by its Vice-President David Tovar, on November 19 and 20, 2012, via television, threatened its employees with unspecified reprisals if they engaged in concerted activities and/or engaged in activities for mutual aid and protection. [JD slip op. at 44:28-29]

2. The Judge's finding that when viewed from an objective standard, Tovar's complete remarks to NBC and CBS do not violate Section 8(a)(1) of the Act since Tovar's complete remarks make it clear that Walmart planned to evaluate any strike-related absences on a case-by-case basis based on the attendant circumstances, his complete remarks do not have a reasonable tendency to deter associates from engaging in protected activity. [JD slip op. at 44: fn. 52]

3. The Judge's proposed remedial order denying, as part of the make whole remedy, search-for-work and work-related expenses regardless of whether the discriminatee received interim earnings that exceed those expenses during any particular calendar quarter or during the overall backpay period. [JD slip op. at 104: fn. 118]

4. The Judge's finding that there is insufficient basis to order a nationwide notice posting. [JD slip op. at 106:8-9]

5. The Judge's finding that in seeking a nationwide notice posting, the General Counsel only invoked the theory that Respondent (through its labor relations department) implemented a national policy to treat all strike-related absences as unexcused absences, and that policy led to the unlawful disciplines and discharges that occurred in this case. [JD slip op. at 105:41-44]

6. The Judge's finding that General Counsel's request for nationwide notice posting falls short because " .although the parties presented extensive evidence about how Walmart communicates to associates, there is no evidence that Walmart communicated the February 2013 talking points to associates nationwide. We are therefore left with a record that establishes that Walmart's "policy" concerning OUR Walmart's strikes only affected 30 stores. " [JD slip op. at 106:4-7]

7. The Judge's finding that a nationwide notice reading is unwarranted. [JD slip op. at 106:25-27]

8. The Judge's finding that a standard notice posting without a reading is sufficient to address the violations at Stores 949 (Wheatland [Dallas], Texas) and 2110 (Paramount, California). [JD slip op. at 106:30-34]

9. The Judge's proposed store-specific remedial notices, Appendices A through I, which limit the notice language to the store-specific violations. [JD slip op. at 109:30-110:14; 112:-133 (Appendices)]

III. ARGUMENT IN SUPPORT OF CROSS-EXCEPTIONS

A. The Judge erred in not finding that on November 19 and 20, 2012, Respondent Vice-President Tovar, via nationally televised interviews on CBS and NBC, threatened employees with unspecified reprisals if they engaged in protected concerted activity during Black Friday 2012 in violation of Section 8(a)(1) of the Act—Cross-Exceptions 1 and 2

1. CBS and NBC Interviewed Vice-President Tovar in anticipation of the Black Friday Strikes

Paragraphs 4(B)(1) and 4(B)(2) of the Complaint allege that Respondent, by Vice-President Tovar, on November 19 and 20, 2012, via nationally televised interviews on CBS and NBC, threatened its employees with unspecified reprisals if they engaged in concerted activities and/or engaged in activities for mutual aid and protection. [GC Exh. 1(bb)]

The record established that, as part of its operations, Respondent maintains a media relations department that works proactively to tell stories about the company and responds to media inquiries to get certain key messages out. Upon receipt of media inquiries, the media relations department investigates the facts and gives a fuller picture to the story. Tr. Vol. 26 at 5103-5104. During 2011 to 2013, David Tovar served as Respondent's vice president of media relations and was responsible for media relations over all the U.S. stores. Tr. Vol. 26 at 5104. Tovar is an admitted statutory supervisor and agent of Respondent. [GC Exh. 1(ff) at 3]

The record further established that prior to the publicized Black Friday 2012 strikes, national news organizations CBS and NBC/CNBC conducted interviews with Tovar. During the interviews, Tovar discussed the publicized strikes and set forth Respondent's planned response to the strikes. [JD slip op. at 41:15-18; 42:13-16]

On November 19 and 20, CBS and NBC aired news broadcasts about OUR Walmart's planned Black Friday 2012 protests. The broadcasts showed videos of prior actions at Respondent stores and referred to an unfair labor practice charge filed by Respondent. The broadcasts then cut to portions of the interviews with Tovar discussing the publicized strikes and Respondent's response. On the November 19, 2012 CBS News broadcast, Tovar made the following remarks:

I think this is just another union publicity stunt and the numbers that they're talking about are grossly exaggerated.

If associates are scheduled to work on Black Friday, we expect them to do their job. And if they don't, depending on the circumstances, there could be consequences. [JD slip op. at 42:1-14; GC Exh. 43 (1:30 minute mark of video)]

On the November 20, 2012 NBC News broadcast, Tovar stated:

[W]e think our workers are getting some really bad advice from the unions because, while they do have rights and we respect those rights, you know,

there are some actions that we will take if people don't follow our company policies. [JD slip op. at 41:38-42:6; GC Exh. 44 (1:31 minute mark of video)]

Finally, the record is undisputed that various employees, including discriminatee Colby Harris and associate Dan Hindman, observed the CBS and NBC news broadcasts airing Tovar's comments about Respondent's response to the strikes. [JD slip op. at 42:6-8; 43:14-17; 42:5-6]

2. Section 8(a)(1) Legal Standards

Pursuant to well established Board precedent, an employer violates Section 8(a)(1) by statements reasonably tending to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. If an employee would reasonably interpret a remark as a threat at the time it is made, it violates Section 8(a)(1) regardless of the speaker's actual intent, its actual effect, or whether that is the only reasonable construction. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 589 (1969); *Saginaw Control & Engineering, Inc.*, 339 NLRB 541, 541 (2003); *Concepts & Designs*, 318 NLRB 948, 954 (1995) (regardless of speaker's actual intent); *Scripps Memorial Hospital Encinitas*, 347 NLRB 52, 52 (2006) ("motivation behind the remark or its actual effect"); *Double D Construction Group*, 339 NLRB 303, 303-04 (2003) (whether or not the only reasonable construction).

The Board considers the totality of relevant circumstances in making that determination, including the context in which the statement is made. *Mediplex of Danbury*, 314 NLRB 470, 471 (1994), quoting *NLRB v. Gissel Packing*, 395 U.S. at 617. See also *Harrison Steel Castings Co.*, 293 NLRB 1158, 1159 fn. 4 (1989) (background of other unlawful conduct or union animus represents significant context for evaluating lawfulness of employer's statements). Thus, even where words would otherwise be innocent, if they are "uttered in 'circumstances [where] employees could reasonably conclude that the employer was threatening them with economic

reprisal,” the statement violates the Act. *Concepts & Designs*, 318 NLRB at 954 (quoting *NLRB v. Sanders Leasing Systems*, 497 F.2d 453, 457 (8th Cir. 1974)). Relevant circumstances include whether the employer’s statement was accompanied by other coercive conduct, or in the contexts of other unlawful conduct. See *Amptech, Inc.*, 342 NLRB 1131, 1135 (2004) (supervisor’s comment that organizing drive was a ‘personal attack’ equated union support with disloyalty and, linked with an unlawful implicit threat of plant closure, violative). *Ebenezer Rail Car Services, Inc.*, 333 NLRB 167, 167, 172 (2001) (where the Board found that manager told an employee, immediately after union victory, that ‘you’re going to regret this all year,’ coercive particularly “ .given the context and timing. and in light of the employer’s other unlawful statements. .).).

Finally, any misleading ambiguities as to whether the statement could reasonably be understood as an unlawful threat are resolved against the employer. See *L.S.F. Transportation, Inc.*, 330 NLRB 1054, 1066 (2000), enforced 282 F.3d 972 (7th Cir. 2002). See also *ITT Federal Services Corp.*, 335 NLRB 998, 1002 (2001) (employer “ran the risk that his statement—or any ambiguity in his statement—could be construed by an employee as containing an unlawful threat”); *Blue Bird Body Co.*, 251 NLRB 1481, 1488 (1980) (“employer must bear responsibility for any misleading ambiguity on his part”), enforced 677 F.2d 112 (11th Cir. 1982).

3. Respondent, via Tovar, violated Section 8(a)(1) by unlawfully threatening employees with reprisal during the two national television news broadcasts

Contrary to the Judge’s findings and conclusions of law, the record established that Respondent violated Section 8(a)(1) by unlawfully threatening employees with reprisal during the two national television news broadcasts. Vice-President Tovar’s statements to CBS and NBC (that “if associates are scheduled to work on Black Friday, we expect them to do their job. And if they don’t, depending on the circumstances, there could be consequences;” and “there are

some actions that we will take if people don't follow our company policies") were coercive threats of unspecified reprisals if employees engaged in protected concerted activity because they were vague, first; as to whether the actions that could result in consequences included protected concerted activities, and second; as to what those consequences would be.

First, the statements were vague as to the nature of the specific activities that could result in "consequences" and the activities reasonably would have been interpreted to encompass activities protected by the Act. Tovar's broad statement to CBS that employees scheduled for work on Black Friday were expected to "do their job" reasonably would have been understood to mean that they were expected to forego protected work stoppages, including unfair labor practice strikes.

In dismissing this Complaint paragraph, the Judge reasoned that CBS and NBC omitted or did not air Tovar's complete statements to the effect that "associates **could** face consequences for missing work, but emphasized that Respondent would evaluate those issues on a case-by-case basis and based on the relevant circumstances" and that "Walmart does not tolerate retaliation against associates who engage in protected activity." He further concluded that "because the NBC and CBS news segments omitted those portions of Tovar's remarks, the news segments gave a potentially misleading impression of how Walmart planned to respond to the anticipated Black Friday strikes." [JD slip op. at 44:11-19] General Counsel acknowledges that CBS and NBC did not air the entirety of Tovar's interview. In the unaired CBS interview Tovar actually stated the following:

Yeah, I think this is just another union publicity stunt and the numbers that they're talking about are grossly exaggerated. We think that the supermajority of our 1.3 million associates in the United States are going to be working on Black Friday and they are excited to serve our customers. We don't expect any impact whatsoever from any of these union tactics.

We have strict policies that prohibit retaliation in any way and if any associates have any concerns about things like that, we want to hear about them so that we can look into them and take appropriate action. But look, if associates are scheduled to work on Black Friday, we expect them to show up and do their job. And if they don't, depending on the circumstances, there could be consequences.

It's going to depend on each individual circumstance like I said. We don't think anything is going to impact our Black Friday sales or anything like that. We're prepared to have the best Black Friday we've ever had. We think there may be a few stores where there may be some actions orchestrated by the unions and at those stores we'll take those on a case-by-case basis and handle them depending on the actions." [JD slip op at 42:32-44; JT Exh. 1319 (a)-(b)]

Similarly, in the unaired NBC interview Tovar actually stated the following:

[W]e think our workers are getting some really bad advice from the unions because, while they do have rights and we respect those rights, you know, there are some actions that we will take if people don't follow our company policies. Just like if you didn't show up for work one day, I think your bosses would want to have a conversation with you about why. Now, of course, if you have an excused absence, if you're sick or something like that, of course we understand that. But that's not what's going on here.

We want to listen to them and we want to hear whatever their concerns are, but, you know, not with a union representative there. They've been to our home offices. We want to sit down with them and listen to them but they don't want to do that. You know, every circumstance is going to be different on Black Friday and we're going to take those on a case-by-case basis. [JD slip op. at 41:20-35; JT Exh. 1318 (a)-(b)]

General Counsel contends that even if the full unaired statements were included, Tovar's vague comments (consequences would depend on the "circumstances") did nothing to narrow the scope or reassure employees that the "circumstances" did not include protected activities. Similarly, the statement "we have strict policies that prohibit retaliation in any way" is insufficient to cure the published statement's effect. Notably, in the NBC statement, Tovar stated, "We think our workers are getting some really bad advice from the unions because while they do have rights and we respect those rights, you know, there are some actions that we will take if people don't follow our company policies." [JD slip op. at 41:21-25] In either the CBS

or the NBC statement, Tovar does not elaborate and does not specify the policies he refers to. Thus, employees watching the news broadcast would not know whether the activities that would run afoul of Respondent's policies include protected protests. Additionally, the context in which the statements were made, directly following videos of demonstrating employees and Respondent statements linking those demonstrations to its filing of unfair labor practice charges against the Union, further strengthened the message that engaging in protected activities would result in repercussions.

Second, Tovar's warnings of "consequences" or "actions" if employees failed to do their jobs, or acted against Company policy, would reasonably be understood by employees as a threat of unspecified reprisal for engaging in protected activities because they provide no clarity as to what those "consequences" might be. *See Atlas Logistics Group Retail Services (Phoenix)*, 357 NLRB No. 37, slip op. at 1 fn. 2 (2011) (employer violated Section 8(a)(1) where it said "there would be problems" if an employee did not return to work because the employee would "reasonably believe that he was being threatened with unspecified reprisals if he did not cease engaging in union activity") citing *Belle of Sioux City, L.P.*, 333 NLRB 98, 106 (2001) (employer's statement must be viewed from employees' perspective in determining whether the statement was an unlawful threat). *See also J.P. Stevens & Co.*, 245 NLRB 198, 218 (1979) (supervisor's statement that engaging in union activities would have serious consequences constitutes an unlawful threat), enforced in relevant part 638 F.2d 676 (4th Cir. 1980). Given Respondent's attendance policy, which provides that "excessive absences" subject employees to "disciplinary action up to and including termination," such vague threats of consequences if employees failed to report to work had the natural tendency to coerce employees from engaging

in protected activities. Tovar's statements during the CBS and NBC TV news broadcasts would reasonably be interpreted by employees as unlawful threats of unspecified reprisal.

To be sure, an employer may lawfully inform employees that they will suffer adverse consequences for engaging in activities that are not protected by the Act. *See National Steel & Shipbuilding Co.*, 324 NLRB 499, 510 (1997) (employer free to discipline or threaten employees who engage in unprotected activities since those actions did not implicate Section 7 rights), enforced 156 F.3d 1268 (D.C. Cir. 1998); *Pacific Telephone & Telegraph Co.*, 107 NLRB 1547, 1549-50 (1954) (intermittent strikes are not protected by Section 7). However, to be lawful, those statements must be sufficiently clear and specific that employees may reasonably understand them to encompass only unprotected activities. In *Yale University*, 330 NLRB 246, 248-49 (1999), for instance, the Board held that because a teaching assistants' grade strike was unprotected, the employer's threat to poorly evaluate teaching assistants who failed to report grades on time did not violate the Act. However, the Board also found other of the employer's statements to be unlawful because they were "overbroad threats" that were not specifically targeted at the unprotected grade strike.⁶ Here, Tovar did not target his threats of discipline at unprotected activity; rather, they would have been understood to apply to *any* Black Friday activities, including such protected activities as unfair labor strikes. Moreover, it is of no import if Respondent did not intend the statements to apply to protected activity, since the test is an objective one of whether employees would reasonably conclude that the employer was threatening them with reprisal at the time the statements were made.

⁶ *Id.* at 249-50 ("By their very nature, [the statements] encompassed more than just the grade strike"). *See also, New Fairview Hall Convalescent Home*, 206 NLRB 688, 747 (1973), *enfd. sub. nom. Donovan v. NLRB*, 520 F.2d 1316 (2d Cir. 1975) (although the employer lawfully warned employees against participation in unprotected activity, it violated Section 8(a)(1) when it broadly prohibited employees from engaging in "any strike, work stoppage, slow down, or withholding or any good or services").

Contrary to the Judge's conclusion, had the CBS or NBC broadcasts retained or aired Tovar's complete statements, the additional comments would have done nothing to remove the unlawful ambiguities in the statement regarding whether protected concerted activities would be subject to discipline, and what consequences would result from those activities. In this respect, General Counsel does not seek to impose liability on Respondent for editorial decisions of NBC or CBS. Tovar's comments alone in the relevant portion of the interview that aired constitute the violation. The Board has long found that unlawful statements by Respondent agents to the news media may constitute unlawful threats under the Act.⁷

Respondent, via Tovar's statements during the CBS and NBC TV news broadcasts, (that "if associates are scheduled to work on Black Friday, we expect them to do their job. And if they don't, depending on the circumstances, there could be consequences;" and "there are some actions that we will take if people don't follow our company policies") constitute coercive threats of unspecified reprisals if employees engaged in protected concerted activity in violation of Section 8(a)(1) of the Act. General Counsel respectfully takes exception and urges the Board to overturn the Judge's dismissal of Complaint paragraphs 4(B)(1)-(2).

B. The Board should award search-for-work expenses and work-related expenses regardless of whether these amounts exceed interim earnings—Cross-Exception 3

In his Order, following current Board precedent as elaborated in *Webco Industries*, 340 NLRB 10, 10 fn. 4 (2003) and *Flannery Motors, Inc.*, 330 NLRB 994, 995 (2000), the Judge denied the General Counsel's request for a make-whole remedy that includes reimbursement to

⁷ See, e.g., *Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC*, 250 NLRB 850, 857-858 (1980), overruled in part on other grounds, (finding statements made by Respondents' agents to the news media constituted threats to fine former members for conduct occurring after their effective resignation from Respondent Locals in violation of the Act); *TRW-United Greenfield Div.*, 245 NLRB 1135, 1135, 1145 (1979) (finding manager's statement, during a televised interview the night before the election, that employer closed two of its plants where the employees had been represented by the union to be coercive and objectionable because it gave the false impression that the union was responsible for the plant closings).

discriminatees for search-for-work and work-related expense regardless of whether these amounts exceed interim earnings. [JD slip op. at 104, fn. 118] General Counsel herein takes exception to the Judge's denial and urges the Board reconsider its position on search-for-work and work-related expenses.

Discriminatees are entitled to reimbursement of expenses incurred while seeking interim employment, where such expenses would not have been necessary had the employee been able to maintain working for respondent. *Deena Artware, Inc.*, 112 NLRB 371, 374 (1955); *Crossett Lumber Co.*, 8 NLRB 440, 498 (1938). These expenses might include: increased transportation costs in seeking or commuting to interim employment (*D.L. Baker, Inc.*, 351 NLRB 515, 537 (2007)); the cost of tools or uniforms required by an interim employer (*Cibao Meat Products & Local 169, Union of Needle Trades, Indus. & Textile Employees*, 348 NLRB 47, 50 (2006)); *Rice Lake Creamery Co.*, 151 NLRB 1113, 1114 (1965)); room and board when seeking employment and/or working away from home (*Aircraft & Helicopter Leasing*, 227 NLRB 644, 650 (1976)); contractually required union dues and/or initiation fees, if not previously required while working for respondent (*Rainbow Coaches*, 280 NLRB 166, 190 (1986)); and/or the cost of moving if required to assume interim employment. (*Coronet Foods, Inc.*, 322 NLRB 837 (1997)).

Until now, however, the Board has considered these expenses as an offset to a discriminatee's interim earnings rather than calculating them separately. This has had the effect of limiting reimbursement for search-for-work and work-related expenses to an amount that cannot exceed the discriminatee's gross interim earnings. *See, W. Texas Utilities Co.*, 109 NLRB 936, 939 fn. 3 (1954) ("We find it unnecessary to consider the deductibility of [the discriminatee's] expenses over and above the amount of his gross interim earnings in any quarter, as such expenses are in no event charged to the Respondent."); *See also, N. Slope Mech.*,

286 NLRB 633, 641 fn. 19 (1987). Thus, under current Board law, a discriminatee, who incurs expenses while searching for interim employment, but is ultimately unsuccessful in securing such employment, is not entitled to any reimbursement for expenses. Similarly, under current law, an employee who expends funds searching for work and ultimately obtains a job, but at a wage rate or for a period of time such that his/her interim earnings fail to exceed search-for-work or work-related expenses for that quarter, is left uncompensated for his/her full expenses. The practical effect of this rule is to punish discriminatees, who meet their statutory obligations to seek interim work, but who, through no fault of their own, are unable to secure employment, or who secure employment at a lower rate than interim expenses. *See, In Re Midwestern Pers. Servs., Inc.*, 346 NLRB 624. 625 (2006) (“To be entitled to backpay, a discriminatee must make reasonable efforts to secure interim employment.”).

Aside from being inequitable, this current rule is contrary to general Board remedial principles. Under well-established Board law, when evaluating a backpay award the “primary focus clearly must be on making employees whole.” *Jackson Hosp. Corp.*, 356 NLRB No. 8 at *3 (Oct. 22, 2010). This means the remedy should be calculated to restore “the situation, as nearly as possible, to that which would have [occurred] but for the illegal discrimination.” *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 194 (1941); *See also, Pressroom Cleaners & Serv. Employees Intl Union, Local 32bj*, 361 NLRB No. 57 at *2 (Sept. 30, 2014) (quoting *Phelps Dodge*). The current Board law dealing with search-for-work and work-related expenses fails to make discriminatees whole, inasmuch as it excludes from the backpay monies spent by the discriminatee that would not have been expended but for the employer’s unlawful conduct. Worse still, the rule applies this truncated remedial structure only to those discriminatees who

are affected most by an employer's unlawful actions—i.e., those employees who, despite searching for employment following the employer's violations, are unable to secure work.

It also runs counter to the approach taken by the Equal Employment Opportunity Commission and the United States Department of Labor. *See* Enforcement Guidance: Compensatory and Punitive Damages Available under § 102 of the Civil Rights Act of 1991, Decision No. 915.002, at *5, *available at* 1992 WL 189089 (July 14, 1992); *Hobby v. Georgia Power Co.*, 2001 WL 168898 at *29 (Feb. 2001), *aff'd Georgia Power Co. v. US. Dep't of Labor*, No. 01-10916, 52 Fed.Appx. 490 (Table) (11th Cir. 2002).

In these circumstances, a change to the existing rule regarding search-for-work and work-related expenses is clearly warranted. In the past, where a remedial structure fails to achieve its objective, “the Board has revised and updated its remedial policies from time to time to ensure that victims of unlawful conduct are actually made whole. ” *Don Chavas, LLC*, 361 NLRB No. 10 at *3 (Aug. 8, 2014). In order for employees truly to be made whole for their losses, the Board should hold that search-for-work and work-related expenses will be charged to a respondent regardless of whether the discriminatee received interim earnings during the period.⁸ These expenses should be calculated separately from taxable net backpay and should be paid separately, in the payroll period when incurred, with daily compounded interest charged on these amounts. *See Jackson Hosp. Corp.*, 356 NLRB No. 8 at *1 (Oct. 22, 2010) (interest is to be compounded daily in backpay cases).

General Counsel herein takes exception to the Judge's denial of search-for-work and work-related expenses regardless of whether those amounts exceed interim earnings and urges the Board reconsider its position on search-for-work and work-related expenses.

⁸ Award of expenses regardless of interim earnings is already how the Board treats other non-employment related expenses incurred by discriminatees, such as medical expenses and fund contributions. *Knickerbocker Plastic Co., Inc.* 104 NLRB 514, 516 at *2(1953).

C. The Board should order nationwide notice postings and readings with consistent language addressing all Respondent violations—Cross-Exceptions 4 through 9

1. Nationwide notice posting is warranted—Cross-Exceptions 4 through 6

Although finding that Respondent engaged in serious and widespread unfair labor practices and ordering remedial notices (traditional and electronic) at facilities directly involved in the unfair labor practices, the Judge concluded that there is an insufficient basis to order a nationwide notice posting. [JD slip op. at 106:8-9] General Counsel takes exception to the Judge's findings and conclusions on this issue, and urges the Board to order nationwide notice postings with consistent notice language addressing all violations across all locations.

In his Decision and Order, the Judge concluded that in seeking a nationwide notice posting, the General Counsel only invoked the theory that Respondent (through its labor relations department) implemented a national policy to treat all strike-related absences as unexcused absences, and that policy led to the unlawful disciplines and discharges that occurred in this case. [JD slip op. at 105:41-44] The Judge also concluded that the request for nationwide notice posting falls short because “ .although the parties presented extensive evidence about how Walmart communicates to associates, there is no evidence that Walmart communicated the February 2013 talking points to associates nationwide. We are therefore left with a record that establishes that Walmart's “policy” concerning OUR Walmart's strikes only affected 30 stores. ” [JD slip op. at 106:4-7]

Contrary to the Judge's findings, the evidence established that Respondent communicated the February 2013 Talking Points (i.e., the unlawful policy to treat protected strike-related absences as unexcused) beyond the 30 stores identified in the Complaint. Karen Casey, Respondent's senior vice-president of labor relations, expressly testified that Respondent's corporate labor relations sent a directive to all stores to meet with any known striker and cover

the February 2013 Talking Points. Tr. Vol. 26 at 5244. Casey further testified that store management tried and did meet with all employees known to have gone on strikes in October and November 2012. Tr. Vol. 26 at 5247. In fact, Respondent identified employee strikers at numerous stores and locations beyond those identified by the Judge. See JT. Exh. 94(a)⁹ Respondent's policy concerning OUR Walmart's strikes affected all stores where Respondent identified employee strikers, which certainly encompasses many more stores beyond the 30 stores identified by the Judge.

As the Judge correctly notes, General Counsel contends that Respondent implemented a national policy to treat all strike-related absences as unexcused and that such a policy merits a nationwide posting. See *Target Co.*, 359 NLRB No. 103, slip op. 3 (2013), citing *Mastec Advanced Technologies*, 357 NLRB No. 17, slip op. at 7 (2011) and *Guardsmark, LLC*, 344 NLRB 809, 812 (2005) (“[W]e have consistently held that, where an employer’s overbroad rule is maintained as a companywide policy, we will generally order the employer to post an appropriate notice at all of its facilities where the unlawful policy has been or is in effect.”) and *Guardsmark, LLC v. NLRB*, 475 F.3d 369, 381 (D.C. Cir. 2007) (“only a company-wide remedy extending as far as the company-wide violation can remedy the damage.”).

⁹ Summary of Walkoff/Walkback Letters (October-November 2012), prepared by Respondent, identifying additional strikers at the following non-Complaint locations: Store 3522 Baldwin Park, California; Store 2482 Corona, California; Store 2401 Duarte, California; Store 1805 La Quinta, California; Store 2960 Los Angeles, California; Store 2568 Panorama City, California; Store 2028 Riverside, California; Store 5154 Rosemead, California; Store 5072 Torrance, California; Store 1996 Hallandale, California; Store 886 Fort Dodge, Iowa; Store 3625 Lauderdale Lakes, Florida; Store 3311 Miami Gardens, Florida; Store 5036 Tampa, Florida; Store 1206 Baton Rouge, Louisiana; Store 2642 Apple Valley, Minnesota; Store 1950 Ahoskie, North Carolina; Store 821 Clovis, New Mexico; Store 73 Sapulpa, Oklahoma; Store 2059 Greensburg, Pennsylvania; Store 3285 Cedar Hill, Texas; Store 5312 Fort Worth, Texas; Store 590 Fort Worth, Texas; Store 284 Mansfield, Texas; Store 2976 Mesquite, Texas; Store 475 Round Rock, Texas; Store 5129 Landover Hills, Maryland; Store 1875 Severn, Maryland; Store 3794 Federal Way, Washington; Store 2516 Renton, Washington; Store 4835 Renton, Washington).

However, contrary to the Judge's findings, General Counsel's request for a nationwide notice posting is not limited to the premise that Respondent implemented a national policy to treat all strike-related absences as unexcused absences. In this respect, Board precedent provides that in cases where a respondent has a record of committing unfair labor practices in multiple facilities (not necessarily all of its facilities), the Board may invoke its authority to issue a broad, corporate-wide order that would include a notice posting requirement beyond the facilities directly involved in the unfair labor practices. *See, e.g., Albertson's, Inc.*, 351 NLRB 254, 384 (2007) (collecting cases). Here, as noted in General Counsel's post-trial brief at 122-123 and in Cross-Exception 3, *supra*, Respondent, via Vice-President Tovar, threatened employees on national television at stores throughout the country. At the same time, Respondent store managers threatened to discharge employees who participated in the strikes. [JD slip op. at 45:1-46:10] Thereafter, Respondent followed through on those threats by firing and disciplining employees who sought to exercise their rights under Section 7.¹⁰ Respondent's powerful and

¹⁰ Notably, Respondent is the subject of the pending decision in *Wal-Mart Stores, Inc.*, 2014 WL 6901654, JD-69-14 (December 9, 2014), which involves two stores at-issue in the instant matter [Store 2418 Placerville, California and Store 3455 Richmond, California] where the Administrative Law Judge concluded that Respondent violated Section 8(a)(1) by:

- implicitly threatening an associate by asking the associate if she was afraid Walmart might close its Placerville, California store if too many associates joined OUR Walmart;
- maintaining a July 2010 dress code for California associates that was facially overbroad because it unduly restricted associates' right to wear union insignia;
- maintaining a February 2013 dress code for California associates that was facially overbroad because it unduly restricted associates' right to wear union insignia;
- selectively and disparately applying its July 2010 dress code for California associates to Richmond, California store associate Raymond Bravo when he wore clothing with OUR Walmart or UFCW logos, but not when Bravo or other associates wore other clothing that did not comply with the dress code;
- threatening Richmond, California store associates that it would "shoot the union";
- threatening Richmond, California store associates that Walmart would never be union and thereby informing associates that it would be futile for them to select OUR Walmart as their collective-bargaining representative;
- threatening Richmond, California store associates by telling them that the associates returning from strike would be looking for new jobs;

widespread messages of discharge and discipline to employees who engage in protected activity warrant an equally powerful and nationwide remedy.

General Counsel urges the Board to order nationwide notice postings with consistent notice language addressing all violations across all locations.¹¹

2. Nationwide notice reading is warranted—Cross-Exception 7

Because of Respondent's serious and widespread misconduct, the Judge ordered the extraordinary remedy of a notice reading. [JD slip op. at 106:36-107:40] However, the Judge limited the notice readings to "each store [29] where Respondent disciplined or discharged associates for incurring strike-related absences." [JD slip op. at 106:25-27, 36-40] Similar to the cross-exception regarding the denial of a nationwide notice posting, General Counsel excepts to the Judge's conclusion and urges the Board to find that Respondent's unfair labor practices are sufficiently serious and widespread to merit a notice to be read by a high level official at all facilities nationwide.

The purpose of a notice reading is both to "ensure effective communication of the substance of the notice" and to effectively reassure employees where an employer's conduct has created a chilling atmosphere. *Teamsters Local 115 v. NLRB*, 640 F.2d 392, 401 (D.C. Cir. 1981); *J.P. Stevens & Co. v. NLRB*, 417 F.2d 533, 540 (5th Cir. 1969) ("reading requirement is an effective but moderate way to let in a warming wind of information and, more important,

-
- prohibiting Richmond, California store associates from speaking to associates returning from strike about the returning strikers' activities on behalf of OUR Walmart; and
 - unlawfully issuing two-level disciplinary coachings to associates Raymond Bravo, Semetra Lee, Demario Hammond, Misty Tanner, Markeith Washington and Timothy Whitney because those associates engaged in a protected work stoppage on November 2, and to discourage associates from engaging in those or other protected activities.

Respondent is also the subject of the pending decision in *Wal-Mart Stores, Inc.*, 2015 WL 3526139, JD-32-15 (June 4, 2015) where the Administrative Law Judge found that Respondent's dress code regarding logos violates Section 8(a)(1) of the Act because it is overly broad, is not justified by special circumstances, and places unlawful restrictions on associates' Section 7 right to wear union insignia.

¹¹ General Counsel's proposed Notice is attached as Appendix A.

reassurance”). The Board has required that a notice be read aloud to employees where an employer’s misconduct has been sufficiently serious and widespread that reading of the notice will be necessary to enable employees to exercise their Section 7 rights free of coercion. This remedial action is intended to ensure that employees will fully perceive that the respondent and its managers are bound by the requirements of the Act. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 21 (2014).

Here, Respondent threatened employees on national television and threatened to discharge employees who went on strike, and thereafter followed through on those threats by firing and disciplining employees who sought to exercise their rights under Section 7. As Respondent’s agents intended, those threats and resulting disciplines/terminations sent a message more “powerful” than words. The powerful message of discharge and discipline warrants an equally powerful remedy. A notice reading across all facilities nationwide is necessary to assure employees that they may exercise their Section 7 rights free of coercion.

General Counsel urges the Board to order a notice with consistent language addressing all violations be read by a high level official at all facilities nationwide.

3. Whether or not a nationwide remedy is ordered, a notice reading is warranted at Stores 949 and 2110 and the notice language should consistently address all Respondent violations across all locations—Cross-Exceptions 8 and 9

In his Decision, the Judge determined that a standard notice posting without a reading is sufficient to address the violations at Stores 949 (Wheatland [Dallas], Texas) and 2110 (Paramount, California) because no employees were disciplined or discharged at these stores. [JD slip op. at 106:30-34] In addition, the Judge ordered nine different remedial notices, Appendices A through I, which limit the notice language to the store-specific violations. [JD slip op. at 109:30-110:14; 112-133 (Appendices)] General Counsel takes exception to these

conclusions and urges the Board, whether or not it requires a nationwide notice remedy, to order a notice reading at Stores 949 and 2110 and to order consistent notices across all locations with language addressing all of Respondent's violations.

Respondent's serious and widespread conduct cannot be viewed in isolation by store. Around the same time that Vice-President Tovar threatened employees on national television, Respondent's management at Store 949 in Wheatland (Dallas), Texas threatened to discharge employees who participated in the strikes. [JD slip op. at 45:1-46:10] In February 2013, Respondent communicated its policy to treat strike absences as unexcused to all known employee strikers nationwide, including employees at Store 2110 in Paramount, California. Thereafter, Respondent followed through on those threats by firing and disciplining employees who participated in the Ride for Respect strike and sought to exercise their rights under Section 7. Respondent's misconduct has been sufficiently serious and widespread that reading of the notice is necessary to enable employees at Stores 949 and 2110 to exercise their Section 7 rights free of coercion. This remedial action is necessary to ensure that employees will fully perceive that Respondent and its managers are bound by the requirements of the Act. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 21.

General Counsel further contends Respondent's violations are so serious and widespread that the Judge's proposed remedial notices with store-specific language are inadequate to address and fully ensure employees of their rights. Significantly, the proposed notice posting for Store 949 Wheatland, (Dallas), Texas states:

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 threaten associates that they will be fired if they go on strike.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act. [JD slip op. at 112 (Appendix A)]

The proposed notice does not reference OUR Walmart, Respondent's unlawful policy to treat strike absences as unexcused or any of Respondent's unlawful disciplines/discharges in this matter. Similarly, the proposed notice for Store 2110 Paramount, California states the following:

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 read talking points to associates that associates reasonably could construe as announcing a work rule that prohibits them from engaging in protected strike activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act. [JD slip op. at 119 (Appendix D)]

As with the proposed notice for Store 949, this notice does not reference OUR Walmart or address Respondent's other misconduct such as threats to employees for going on strike or the unlawful policy to treat strike absences as unexcused or the unlawful discipline/discharge of employee strikers. General Counsel contends that Respondent's serious and widespread misconduct cannot be viewed in isolation. To effectively address and ensure employees of their rights, the notices must consistently address all of Respondent's violations across all locations.

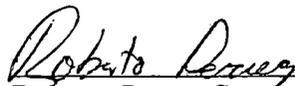
In sum, whether or not a nationwide remedy is ordered, General Counsel urges the Board to, at minimum, order a notice reading at Stores 949 in Wheatland (Dallas), Texas and 2110 in Paramount, California, and to order remedial notices with consistent language addressing all Respondent violations across all locations.¹²

¹² General Counsel's proposed notice is attached as Appendix A.

IV. CONCLUSION

In his Decision and Order, the Judge determined that Respondent committed serious and widespread violations of Section 8(a)(1) of the Act. General Counsel agrees with and urges the Board to adopt the vast majority of the Judge's findings and proposed remedy in these respects. However, for the reasons set forth above, General Counsel respectfully takes limited exception and urges the Board to reverse the Judge's dismissal of paragraphs 4(B)(1)-(2) of the Complaint as elaborated in Cross-Exceptions 1 through 3. General Counsel also takes exception and urges the Board to reverse and/or modify the Judge's proposed remedial order denying search-for-work and work-related expenses regardless of whether the discriminatee received interim earnings, denying nationwide notice postings and/or readings, denying notice readings at Stores 949 and 2110, and ordering store-specific remedial notices as set forth in Cross-Exceptions 3 through 9.

DATED at Fort Worth, Texas this 24th day of March 2016.



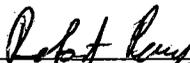
Roberto Perez, Counsel for the General Counsel
David Foley, Counsel for the General Counsel
National Labor Relations Board
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Room 8A24, Federal Office Bldg.
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing General Counsel's Brief in Support of Cross-Exceptions to the Decision of the Administrative Law Judge has been electronically filed and served this 24th day of March 2016 upon each of the following:

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APPENDIX A

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT threaten associates that they will be fired if they go on strike.

WE WILL NOT read talking points to associates that associates reasonably could construe as announcing a work rule that prohibits them from engaging in protected strike activity or that treats protected strike-related absences as unexcused.

WE WILL NOT issue disciplinary personal discussions to associates because they participate in labor activity on their own time.

WE WILL NOT discipline associates (e.g., by giving associates unexcused absences, personal discussions, and/or written coachings) because they miss work while participating in a strike that is protected by Section 7 of the Act.

WE WILL NOT discharge associates because they miss work while participating in a strike that is protected by Section 7 of the Act, and/or because they had coachings on their records that arose from protected concerted activity (i.e., unlawful coachings based on prior strike-related absences).

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

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful disciplines (including unexcused absences, disciplinary attendance statements, personal discussions and written coachings) issued to the following associates:

John (Juan) Juanitas (Fremont, CA – store 2989)
Evelin Cruz and Victoria Martinez (Pico Rivera, CA – store 2886)
Matthew Gauer, Margaret Hooten and Amy Stinnett (Placerville, CA – store 2418)

Andrea Carr and Cecelia Gurule (San Leandro, CA – store 5434)
Barbara Gertz (Aurora, CO – store 5334)
Anna Pritchett and Ronnie Vandell (Chicago, IL – store 5781)
Marie Kanger-Born (Crestwood, IL – store 3601)
Charmaine Givens-Thomas (Evergreen Park, IL – store 5485)
Linda Haluska (Glenwood, IL – store 5404)
Rose Campbell (Wheeling, IL – store 1735)
Trina Vetato (Paducah, KY – store 431)
Aaron Lawson (Stanford, KY – store 825)
Shawnadia Mixon and Mariah Williams (Baker, LA – store 1102)
Cynthia Murray (Laurel, MD – store 1985)
David Coulombe (Chelmsford, MA – store 2903)
Aubretia Edick (Chicopee, MA – store 5278)
Michael Ahles (Sauk Centre, MN – store 4253)
Cheryl Plowe (Elizabeth City, NC – store 1527)
Cody Shimmel (Ennis, TX – store 286)
Marc Bowers, Colby Harris and Vanzell Johnson (Lancaster, TX – store 471)
Jeanna Slate-Creach (Quinlan, TX – store 4215)
Shana Stonehouse (Bellevue, WA – store 3098)
Vivian Sherman (Bellingham, WA – store 2450)
Sara Gilbert, Patricia Locks, Michael McKeown, Liai Pefua, Patricia Scott and John Smith (Federal Way, WA – store 2571)
Betty Shove, Esmeralda (Mandy) Uvalle and Debra Williams (Mt. Vernon, WA – store 2596)
Lawrence Slowey (Port Angeles, WA – store 2196)

Within 3 days thereafter, WE WILL notify the unlawfully disciplined associates in writing that this has been done and that the disciplines will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, offer the following associates full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:

Jovani Gomez (Lakewood, CA – store 2609)
Yvette Brown, Barbara Collins and Norma Dobyns (Placerville, CA – store 2418)
Raymond Bravo and Pamela Davis (Richmond, CA – store 3455)
Dominic Ware (San Leandro, CA – store 5434)
Marie Roberty (Hialeah, FL – store 1590)
Pooshan Kapil (Wheeling, IL – store 1735)
Brandon Garrett and Tavarus Yates (Baker, LA – store 1102)
Javon Adams, Marc Bowers, Christopher Collins and Colby Harris (Lancaster, TX – store 471)
Jeanna Slate-Creach (Quinlan, TX – store 4215).

WE WILL make the unlawfully discharged associates whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of the associates listed above, and within 3 days thereafter notify those associates in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL file a report with the Social Security Administration allocating backpay to the appropriate quarters.

WE WILL compensate the unlawfully discharged associates for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

WE WILL compensate the unlawfully discharged associates for search-for-work and work-related expenses regardless of whether the discriminatee received interim earnings that exceed those expenses during any particular calendar quarter or during the overall backpay period.

WAL-MART STORES, INC. ✓

(Employer)

Dated _____ By _____
(Representative) (Title)

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

819 Taylor Street, Room 8A24, Fort Worth, TX 76102-6178
(817) 978-2921, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/16-CA-096240 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.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (817) 978-2925.