

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

INTERNATIONAL UNION OF ELECTRONIC,
ELECTRICAL, SALARIED, MACHINE AND
FURNITURE WORKERS, COMMUNICATION
WORKERS OF AMERICA, AFL-CIO, CLC
(IUE-CWA, LOCAL 301)

and

Case 03-CB-146489

VON ROLL, U.S.A., INC.

John Grunert, Esq., for the General Counsel.

Serge Ambroise, Esq. (Kennedy, Jennik & Murray, PC), for the Respondent.

Glen P. Doherty, Esq. (McNamee, Lochner, Titus & Williams, PC), for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This case was heard in Albany, New York on January 19 and 20, 2016. The complaint alleged that the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Communication Workers of America, AFL-CIO, CLC, Local 301 (the Union or Respondent) violated Section 8(b)(3) of the National Labor Relations Act (the Act) by refusing to execute a collective-bargaining agreement.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the parties' briefs, I make the following:

FINDINGS OF FACT¹

I. JURISDICTION

Von Roll, U.S.A., Inc. (the Company), an international corporation with a Schenectady, New York facility (the plant), manufactures insulated materials. Annually, it purchases, and receives, at the plant goods exceeding \$50,000 directly from points outside of the State of New York. The Union, therefore, admits, and I find that the Company is an employer engaged in commerce, within the meaning of Section 2(2), (6) and (7) of the Act.

¹ Unless otherwise stated, factual findings arise from joint exhibits, stipulations and undisputed evidence.

The Union further admits, and I find that it is a labor organization, within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

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This case involves a dispute over whether the parties finalized a collective-bargaining agreement in late-2013,² and whether the Union’s related refusal to sign the resulting draft was improper. Specifically, the Union contends that it never agreed to implement a cross-training and certification pay program (the cross-training certification program), and that the Company’s inclusion of this program in the draft contract was improper.³ The Company avers that this issue was repeatedly raised during negotiations, and finalized at the last bargaining session.

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A. Bargaining History

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The parties have a longstanding bargaining relationship. Their most recent expired contract ran from October 1, 2010 to September 30 (the 2010-13 CBA). (GC Exh. 2). The Union represents the following production and maintenance unit at the plant (the unit):⁴

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All process handlers, maintenance technicians, material support operators, process operators, quality assurance operators, coordinator- materials & production employees, stockroomkeepers, waste processors, plant support operators, sr. chemical operators, sr. process operators, sr. quality assurance operators, truck drivers/material support operators, master chemical operators, master process operators, master waste processors, maintenance technicians, sr. maintenance technicians, EHS technicians, and master maintenance technicians employed at the employer’s Schenectady, New York plant, excluding all general administrative, office and confidential employees, professionals, foremen, guards and supervisors as defined by the Act, and all other employees.

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(GC Exhs. 1, 2 and 6).

B. Negotiations and Ratification of a New Contract

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1. Overview

In August, in anticipation of the expiration of the 2010-13 CBA, the parties began bargaining for a new agreement. The Company’s bargaining team consisted of: Head of Finance Matt Couture; Chief Operating Officer John Roberts; Human Resources Representative Kierston Dellert; and Production Manager Anthony Brown. The Union’s

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² All dates, unless otherwise stated, are in 2013.

³ Or put another way, the Union does not challenge whether a final agreement was reached at the last bargaining session; its sole contention is that the resulting final agreement did not encompass the cross-training certification program. There is no dispute regarding any other bargaining subject included in the parties’ final agreement.

⁴ There are approximately 90 employees in the unit.

bargaining team consisted of: Union Business Agent Brian Sullivan; Union President Carmine Pallotolo; and unit employee John Stewart. During bargaining, the parties successfully navigated these matters: contract duration; wage increases; job posting; personal leave; medical benefits; and pension coverage. (GC Exhs. 7-13, 18, 23, 28). It is undisputed that these subjects were amicably resolved, and properly included in the final agreement (the 2013-16 CBA), which was reached on October 31,⁵ and ratified by the unit on November 7. (R. Exhs. 18-19).

2. Cross-training Certification Program

Although it is undisputed that the Company repeatedly proposed amending the 2010-13 CBA to include a cross-training certification program, the parties differ over whether a consensus was struck. The cross-training certification program at issue provided additional hourly compensation to unit employees, who were trained in the operation of a new machine or a novel manufacturing process. (GC Exhs. 3-4). This program had 4 components. First, unit employees could obtain a single new certification per year.⁶ Second, new hires received a \$1.00-per-hour certification differential for the first 6 certifications achieved, and then received \$0.25 per hour for each certification attained thereafter. Third, incumbents received \$0.25 per hour for each certification completed. Finally, incumbents received wage and cost of living increases, in accordance with a preexisting step salary schedule, while new hires started at a rate of \$18.82 per hour, and then received pay increases in accordance with the cross-training certification program. The Company’s proposal regarding the cross-training certification program was explained throughout bargaining, and documented in several detailed emails. See, e.g., (GC Exhs. 3, 7-9 (bargaining documents), 10-11, 28 (October 24, 25 and 30 emails)).

The contested cross-training certification program appeared in the draft 2013-16 CBA, which was presented to Sullivan for signature after bargaining ended, and thereafter signed and initialed by him. It conspicuously appeared in the following section of the contract:

Article VIII – Wage Rates and Cost of Living Adjustments

3. Step Rates and Progression Schedules

The Union recognizes that starting rates, progression rates, and job rates for hourly rated will vary, depending on the job Employees hired after January 1, 2014 will follow the progression rates and job rates in effect as of January 1, 2014 and as defined in the Cross Training Certification Program. Employees hired before December 31, 2013 will follow the progression rates and job rates presently in effect.

(GC Exh. 21) (contested language has been underlined).

a. General Counsel’s and Company’s Positions

Roberts, the Company’s chief spokesperson, attended all negotiating sessions. He

⁵ No additional bargaining sessions were scheduled or held after October 31.

⁶ Under the program, training, testing and certification ranged from 3 to 8 months.

testified that, the Company repeatedly proposed amending the contract to add a cross-training certification program, and that the Union ultimately relented.⁷ He vehemently denied that the Company ever withdrew this proposal, or tabled it until after negotiations concluded. He contended that the parties' cross-training certification program discussions primarily centered upon certification amounts, as opposed to the threshold question of whether implementation would occur. He related that the parties finalized the cross-training certification program proposal on October 31, and the Union ratified the final agreement reached at this session on November 7. He stated that, thereafter, he proffered a draft final agreement (the 2013-16 CBA) to Sullivan for his review and signature, which conspicuously included the cross-training certification program in Article VIII. (GC Exh. 18). He stated that Sullivan reviewed the draft 2013-16 CBA, initialed all modified articles, and signed it at the end. (Id.). He noted that Sullivan made some ministerial corrections to the draft 2013-16 CBA, which the Company fully endorsed and initialed to demonstrate acceptance. He said that he personally initialed the Union's de minimis changes and signed the draft 2013-16 CBA on behalf of the Company in mid-December. He staunchly denied trying to conceal the cross-training certification program in the draft 2013-16 CBA, or otherwise attempting to deceive the Union. He recalled sending an email on December 11 to Sullivan, which indicated that the Company had accepted his minor handwritten changes, signed off on the draft 2013-16 CBA, and would expeditiously begin providing retroactive pay to the unit.⁸ (GC Exh. 19). He stated that the 2013-16 CBA (GC Exh. 21), which contained the cross-training certification program, was distributed to the unit by the Union, and has been fully implemented.

Couture, Head of Finance, testified that, during negotiations, the Company consistently proposed a cross-training certification program. He stated that, on October 31, the Company made a final offer that included the cross-training certification program, and that the Union agreed to present this offer to the unit for ratification. He stated that there were no unresolved issues remaining at that time. He stated that the draft 2013-16 CBA accurately reflected all negotiated changes, including the certification program. (GC Exh. 18). Brown corroborated Roberts and Couture.

b. Union's Position

Sullivan, the Union's chief spokesperson, attended all bargaining sessions. He acknowledged that the cross-training certification program was repeatedly raised by the Company (tr. 398-99), but, contended that it was never finalized. He stated that the Union invited the Company to further discuss creating a cross-training certification program after negotiations concluded. He stated that he initialed and signed the draft 2013-16 CBA, which included a clause on the cross-training certification program, but, was unaware that this provision was present. He said that, because it was never negotiated, he did not look for it,

⁷ See, e.g., (GC Exh. 13 (November 1, 2013 email from Roberts to Sullivan describing the parties' agreement on the cross-training and certification program and implementation); GC Exh. 28 (October 30, 2013 email to Sullivan forwarding information about the cross-training and certification program); GC Exh. 10 (October 24, 2013 email); GC Exh. 9 (October 17 email); GC Exh. 8 (October 4, 2014 bargaining proposal describing the cross-training and certification program); GC Exh. 7 (October 1, 2013 bargaining proposal)); see also (R. Exh. 17 (Union bargaining describing Company's cross-training and certification proposal)).

⁸ On December 12, Roberts told his supervisors to inform shop stewards that their pay increases under the 2013-16 CBA would appear in their next paychecks, which should also include retroactive pay. (GC Exh. 20).

and that the Company improperly inserted this clause in the draft. See also (R. Exh. 20). He stated that the Union’s membership ratified the 2013-16 CBA on November 7, but, was not told about the cross-training certification program because it had never been agreed upon. See (R. Exh. 19). Union President Pallotolo corroborated Sullivan’s testimony on these points.

C. Post-Negotiation Actions

In February 2014, the Company prepared copies of the 2013-16 CBA for distribution. See (GC Exh. 21). The 2013-16 CBA was implemented by the Company in late-2013. Following the execution of the draft 2013-16 CBA, the Company prepared *2013–2016 Wage Agreement* spreadsheets for employees, which described unit wages for each contract year, and described the cross-training certification program payments. (GC Exhs. 22(a)-(c)) The *2013–2016 Wage Agreement* described the certification differential, in the same manner presented by the Company during bargaining sessions, and via emails. See (GC Exhs. 10, 11, 22, 28).

1. Grievances

On November 17, 2014, the Union filed a grievance, “unjust pay,” which requested that, “the Cross Training Certification Program be struck.” (GC Exh. 24). On November 24, 2014, the Company denied this grievance and explained that this program was negotiated and ratified. (GC Exh. 24; R. Exh 24). On January 1, 2015, the Sullivan emailed Roberts and accused him of fraudulently inserting the cross-training certification program in the draft 2013-16 CBA that he signed. (R. Exh. 27). On January 23, 2015, the Union filed another grievance. (GC Exh. 25).

2. Development of the Certification Program

The Company developed and implemented the cross-training certification program shortly after the unit’s November 7 ratification vote. Although the Union was asked to assist with the development of the program in early 2014, it neglected to respond. Thereafter, unit employees began training, and received certifications and raises in late-2014. (GC Exh. 27).

3. Company’s Request to the Union to Sign a “Clean” Draft of the 2013-16 CBA

On April 8, 2015, in the interest of labor relations stability, the Company asked the Union to sign a clean draft of 2013-16 CBA, which did not contain initials, handwritten changes or other markings. (R. Exh. 13). The Union has refused to sign this agreement. (R. Exh. 26).

D. Credibility Analysis

Given that the Company’s witnesses testified that, on October 31, a complete contract was reached that included the cross-training certification program, and the Union’s witnesses testified that this program was not included in their final deal, a credibility determination must be made. For several reasons, the Company’s witnesses have been credited. First, Sullivan initialed and executed a draft 2013-16 CBA, which contained the disputed cross-training

certification program. It is wholly implausible that Sullivan, a seasoned negotiator and labor relations professional, who initialed the same page where the disputed language appeared a **full 3 times**, would have negligently missed this provision, or initialed a page of an important contract without reading it.⁹ It is, therefore, highly likely that he read and understood this language, and that his initials signified knowing acceptance of the cross-training certification program. Second, given that the Union was repeatedly advised during bargaining and via several emails that the Company sought to add a cross-training certification, and there is no evidence that this proposal was ever withdrawn, it would have been completely unreasonable for the Union to surmise that this matter was not encompassed in its October 31 deal. Third, the Union’s suggestion that the Company that it has shared a longstanding and peaceful working relationship with would have fraudulently insert language that was never agreed upon into the draft 2013-16 CBA is incredible. Fourth, the Union’s decision to challenge the validity of the cross-training certification program on November 17, 2014, via a grievance, **after** a full year had elapsed since the final bargaining session, **after** it had already distributed 2013-16 CBA booklets to the unit that described the program, **after** the program had been implemented, **after** it was invited, and declined, to participate in its development, and **after** several unit employees had already completed training, is disingenuous. Finally, Roberts, Couture and Brown were highly credible witnesses; they each possessed strong and believable demeanors, were consistent, precise and universally cooperative, and had detailed recollections. Sullivan and Pallotolo were, on the other hand, the opposite in all important regards. In sum, I fully credit the Company’s witnesses, and find that: a complete agreement was reached on October 31, which was ratified by the unit on November 7; all parties were keenly aware that the cross-training certification program was a part of this agreement; and the Union’s denials regarding its assent to the cross-training certification program are disingenuous.

III. ANALYSIS

The Union violated Section 8(b)(3) by refusing to sign a clean copy of the 2013-16 CBA, which was reached on October 31. On that date, the parties reached a “meeting of the minds” on all substantive issues and material terms, which were raised during bargaining.¹⁰

Section 8(d) requires a collective-bargaining partner to sign a contract at the request of the other party, once an agreement has been reached. Under Section 8(b)(3), it is an unfair labor practice for a union to refuse an employer’s request to sign such a negotiated agreement. See *Graphic Communications Union District 2 (Riverwood International USA)*, 318 NLRB 983, 990 (1995). The union’s obligation to execute an employer’s proffered agreement is only triggered, however, when the parties reached a “meeting of the minds” on all substantive issues and material terms of the agreement. See *Sunrise Nursing Home*, 325 NLRB 380, 389 (1998). A contract need not be reduced to writing, when a “meeting of the minds” transpires.

⁹ The Union’s “I don’t read what I sign” defense might hold more weight, if Sullivan were an inexperienced, rank and file, unit member, who was new to collective-bargaining. The fact, however, that he is someone, who routinely drafts, reviews and analyzes contracts, and repeatedly initialed the disputed page eviscerates this argument.

¹⁰ Although the complaint alleges that the parties reached a “meeting of the minds” on November 7, the ratification date, I find that an agreement was actually reached on October 31, at the last session, and that the November 7 ratification represented a condition subsequent to the contract, which had been fulfilled by the unit’s favorable vote.

Carpenters Local 405, 328 NLRB 788, 793 (1999). The General Counsel retains the burden of proving that an agreement was reached. *Crittenton Hospital*, 343 NLRB 717 (2004). Moreover, whether the parties have reached a “meeting of the minds” is determined “not by the parties’ subjective inclinations, but by their intent as objectively manifested in what they said to each other.” *MK-Ferguson Co.*, 296 NLRB 776 fn. 2 (1988).

In the instant case, the parties reached a “meeting of the minds” on a full agreement on October 31. This agreement was ratified by the unit on November 7, and thereafter reviewed, initialed and executed by the Union. The draft 2013-16 CBA that the Union signed accurately described the parties’ full agreement, including the cross-training certification program, which the Union knowingly assented to during bargaining. As noted, the Union’s claim that the cross-training certification program was fraudulently inserted into the draft 2013-16 CBA is disingenuous. On April 8, 2015, the Company asked the Union to sign a clean draft of the 2013-16 CBA, which accurately reflected the parties’ agreement. Since that time, the Union has unlawfully refused to sign this document. See *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941) (violation of Section 8(b)(3) for a labor organization to refuse to sign a collective-bargaining agreement accurately reflecting the parties’ agreement). Respondent, accordingly, violated the Act.¹¹

Conclusions of Law

1. The Charging Party, Von Roll, U.S.A., Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Communication Workers of America, AFL-CIO, CLC, Local 301, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent is, and at all times material times was, the exclusive representative of the employees for collective bargaining within the meaning of Section 9(a) of the Act in the following appropriate bargaining unit:

All process handlers, maintenance technicians, material support operators, process operators, quality assurance operators, coordinator– materials & production employees, stockroomkeepers, waste processors, plant support operators, sr. chemical operators, sr. process operators, sr. quality assurance operators, truck drivers/material support operators, master chemical operators, master process operators, master waste processors, maintenance technicians, sr. maintenance technicians, EHS technicians, and master maintenance technicians employed by Von Roll, USA, Inc. at its Schenectady, New York plant, excluding all general administrative, office and confidential employees, professionals, foremen, guards and supervisors as defined by the Act, and all

¹¹ Even assuming arguendo, that the Union failed to tell its membership about the cross-training certification program during the ratification process, which is unclear, this circumstance would, at best, constitute a unilateral mistake that would not rescind the parties’ agreement. See, e.g., *North Hills Office Supplies*, 344 NLRB 523, 525 (2005) (“[A] party to a contract cannot avoid it on the grounds that he made a mistake where the other [party] has no notice of the mistake and acts in perfect good faith.”); *Hospital Employees Local 1199 (Lenox Hill Hospital)*, 296 NLRB 322 (1989).

other employees.

4. Respondent violated Section 8(b)(3) by failing and refusing to execute a collective-bargaining agreement reached with the employer, Von Roll, USA, Inc. on October 31, 2013, and, thereby, repudiated that agreement.

5. The unfair labor practice set forth above affects commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that Respondent violated the Act, it is ordered to cease and desist and to take certain affirmative action. Specifically, it shall, upon request by Von Roll, USA, Inc., sign the collective-bargaining agreement at issue.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹²

ORDER

Respondent, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Communication Workers of America, AFL-CIO, CLC, Local 301, Schenectady, New York, its officers, agents, and representatives, shall

1. Cease and desist from

a. Failing and refusing to bargain collectively and in good faith with the employer, Von Roll, USA, Inc., by refusing to execute a collective-bargaining agreement reached with it on October 31, 2013, and, thereby, repudiating that agreement.

b. In any like or related manner 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. Upon request, sign the collective-bargaining agreement reached with Von Roll, USA, Inc. on October 31, 2013 for all employees in this appropriate bargaining unit:

All process handlers, maintenance technicians, material support operators, process operators, quality assurance operators, coordinator- materials & production employees, stockroomkeepers, waste processors, plant support operators, sr. chemical operators, sr. process operators, sr. quality assurance

¹² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

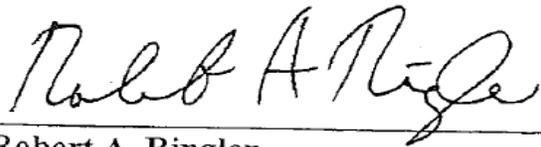
5 operators, truck drivers/material support operators, master chemical operators, master process operators, master waste processors, maintenance technicians, sr. maintenance technicians, EHS technicians, and master maintenance technicians employed by Von Roll, USA, Inc. at its Schenectady, New York plant, excluding all general administrative, office and confidential employees, professionals, foremen, guards and supervisors as defined by the Act, and all other employees.

10 b. Within 14 days after service by the Region, post at its office and Union hall in Schenectady, New York facility copies of the attached notice marked "Appendix."¹³ Copies of the notice, on forms provided by the Regional Director for Region 3, 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 and members are customarily posted. In addition to physical posting of paper
15 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 and members 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.

20 c. Within 14 days after service by the Region, deliver to the Regional Director for Region 3 signed copies of the notice in sufficient numbers for posting by the Company at its Schenectady, New York facility, if it wishes, in all places where notices to employees are customarily posted.

25 d. Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

30 Dated Washington, D.C. April 22, 2016


Robert A. Ringler
Administrative Law Judge

¹³ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

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 fail and refuse to bargain collectively and in good faith the employer, Von Roll, USA, Inc., by refusing to sign the collective-bargaining agreement that we reached with it on October 31, 2013, or otherwise repudiate that agreement.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL, upon request by Von Roll, USA, Inc., promptly sign the collective-bargaining agreement, which it submitted to us on or about April 8, 2015.

**INTERNATIONAL UNION OF ELECTRONIC,
ELECTRICAL, SALARIED, MACHINE AND
FURNITURE WORKERS, COMMUNICATION
WORKERS OF AMERICA, AFL-CIO, CLC, LOCAL
301**

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

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

Leo W. O'Brien Federal Building, Clinton Ave and N Pearl Street, Room 342,
Albany, NY 12207-2350, (518) 431-4155, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/03-CB-146489 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., 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, (716) 551-4931.