Minteq International, Inc., and Specialty Minerals Inc., Wholly Owned Subsidiaries of Mineral Technologies, Inc. *and* International Union of Operating Engineers, Local 150, AFL–CIO. Case 13–CA–139974

July 29, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND MCFERRAN

On December 23, 2015, Administrative Law Judge Arthur J. Amchan issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs, answering briefs, and reply briefs. The Charging Party filed an answering brief to the Respondent's exceptions.

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,[1] and conclusions only to the extent consistent with this Decision and Order.[2]

We find that Minteq International, Inc. (the Respondent) violated Section 8(a)(5) and (1) of the Act by requiring new employees to sign a Non-Compete and Confidentiality Agreement (NCCA) as a condition of employment without giving the Union notice and the opportunity to bargain about the NCCA.[3] We also find that the Respondent maintained two unlawfully overbroad rules in the NCCA in violation of Section 8(a)(1), specifically an "Interference with Relationships" rule and an "At-Will Employee" rule. Contrary to the judge, we find that the "Confidential Information" rule and the "Remedy" rule in the NCCA were not unlawfully overbroad.[4]

I. FACTS

The Respondent provides monolithic and pre-cast refractory products and related services to the steel industry. One of the services it provides is patching the inside of furnaces by spraying its monolithic (liquid state) product into the furnace. Employees who perform this task are called "gunners" and are represented by the Union. The Respondent and the Union were parties to a collective-bargaining agreement (CBA) in effect from January 1, 2011, to December 31, 2014.

Since 2012, the Respondent has required new employees to sign the NCCA. By its terms, the NCCA binds employees to most of its provisions from the date the NCCA is signed until at least 18 months after their employment ends with the Respondent.[5]

[1] We reject the Respondent's argument that Regional Director Peter Ohr was not validly appointed. See *NLRB v. Bluefield Hospital Co., LLC*, 821 F.3d 534, No. 15–1203, 2016 WL 2609605 (4th Cir. May 6, 2016); *Lifeway Foods*, 364 NLRB No. 11, slip op. at 2 (2016). On December 7, 2011, a Board comprised of a quorum of three validly appointed members appointed Peter Ohr as Regional Director for Region 13. Additionally, we find no merit in the Respondent's argument that the unfair labor practice complaint here is invalid. On November 4, 2013, General Counsel Richard F. Griffin Jr. took office after Senate confirmation. The unfair labor practice charge was filed on October 30, 2014. The charge allegations were thus investigated by the Region and the complaint issued by the Regional Director under the undisputed authority of General Counsel Griffin.

In its answering brief to the General Counsel's exceptions, the Respondent, for the first time, argues that enforceability of the Non-Compete and Confidentiality Agreement (NCCA) is a state law concern. We decline to address this argument because the Respondent did not raise the issue in a timely filed exception. See *Manno Electric*, 321 NLRB 278, 278 fn. 10 (1996), enfd. 127 F.3d 34 (5th Cir. 1997).

[2] It is undisputed that the Respondent and Specialty Minerals, Inc. are wholly-owned subsidiaries of Minerals Technology, Inc. The Respondent answered the complaint on behalf of all three companies, but later argued that it, alone, was the proper Respondent. We find it unnecessary to determine the precise identity of the Respondent, as we shall limit our Order to the Respondent's facility in Gary, Indiana. The evidence is insufficient to show that employees of either Specialty Minerals, Inc. or Minerals Technology, Inc. were required to sign or otherwise became subject to the NCCA.

[3] We find it unnecessary to pass on the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by dealing directly with new employees in requiring that they sign the NCCA because the remedy for that violation would not materially differ from the remedy for the 8(a)(5) unilateral change violation. See, e.g., *United Parcel Service*, 327 NLRB 317, 317 fn. 4 (1998), enfd. 228 F.3d 772 (6th Cir. 2000).

[4] We agree with the judge that the complaint is not barred by the 6-month statute of limitations in Sec. 10(b). It is well settled that the 6-month limitations period prescribed by Sec. 10(b) begins to run only when a party has clear and unequivocal notice, either actual or constructive, of the violation of the Act. *Art's Way Vessels, Inc.*, 355 NLRB 1142, 1147 (2010); *Salem Electric Co.*, 331 NLRB 1575, 1576 (2000). The burden of showing such clear and equivocal notice is on the party raising Sec. 10(b) as a defense. *Broadway Volkswagen*, 342 NLRB 1244, 1246 (2004), enfd. sub nom. 483 F.3d 628 (9th Cir. 2007). Although the Respondent started requiring new employees to sign the NCCA in 2012, it is undisputed that the Respondent never notified the Union of the requirement. Further, the credited testimony shows that the Union first learned of the NCCA in October 2014, after the Respondent invoked it against former employee Charles Spear. The Union thereafter promptly filed a charge with the Board. Although the Respondent argues that the Union would have known of the NCCA had it exercised reasonable diligence which, it claims, "requires inquiries about a company's hiring practices," it cites no precedent for this proposition. We find that the Respondent has not shown that the Union failed to exercise reasonable diligence. The Respondent therefore has failed to meet its burden of showing that the complaint is time-barred.

[5] The complete NCCA is appended as Appendix B to this decision. Although all employees at issue here were employed by Minteq International, Inc., some of the NCCAs signed by employees stated that the agreement was with Specialty Minerals, Inc., another subsidiary of Mineral Technologies, Inc.

Charles Spear began employment with the Respondent as a gunner on March 21, 2013. During 2 days of paid orientation, Spear filled out forms, including the NCCA, and underwent training. Spear was employed by the Respondent until the fall of 2014, when he left to work for one of the Respondent's competitors.

Soon after leaving the Respondent's employ, Spear received letters from the Respondent reminding him of his obligation, pursuant to the NCCA, to keep the Respondent's business information and proprietary technology confidential, and stating that Spear was prohibited from working for a competitor for 18 months after terminating his employment with the Respondent. After Spear received these letters, he met with Union Business Agent Michael Simms in October 2014. On October 30, 2014, the Union filed an unfair labor practice charge with the Board.

In November and December 2014, the Respondent and the Union negotiated a new CBA, effective from January 1, 2015, to December 31, 2019. The CBA contains a management-rights clause which gives the Respondent the right to, among other things, "hire employees, determine their qualifications . . . ," "issue, amend and revise work rules and Standards and of Conduct . . . and to take whatever action is either necessary or advisable to manage and fulfill the mission of the Company . . . ." The CBA also contains a zipper clause which states that each party had the unlimited right and opportunity to make demands and proposals with respect to any subject matter as to which the Act imposes an obligation to bargain.[6] Neither the Respondent nor the Union raised the NCCA or requested bargaining over its implementation during negotiations.

II. DISCUSSION

A. The Respondent's Unilateral Implementation of the NCCA

For the reasons that follow, we conclude that the judge erred in failing to determine whether the Respondent's unilateral implementation of the NCCA was unlawful. There is no due process obstacle to addressing that allegation. Accordingly, as explained below, we find that: (1) the NCCA was a mandatory subject of bargaining; (2) the Respondent failed to give the Union notice and the opportunity to bargain prior to implementing the requirement that new employees sign the NCCA; and (3) the Union did not waive its right to bargain over implementation of the NCCA.

[6] The 2011–2014 CBA between the parties contained identical management rights and zipper clauses.

1. The unilateral-implementation issue is properly before the board

The judge analyzed whether four provisions in the NCCA were overbroad rules maintained by the Respondent in violation of Section 8(a)(1). The General Counsel excepts, arguing that the judge erred in failing to additionally address the allegation that the NCCA itself is a mandatory subject of bargaining and that the Respondent violated Section 8(a)(5) and (1) by unilaterally implementing it. The General Counsel contends that this theory was alleged in the complaint and litigated at the hearing. We find merit in the General Counsel's exceptions.

The complaint alleged, among other things, that the NCCA was a mandatory subject of bargaining and that the Respondent had failed and refused to bargain with the Union by implementing, maintaining, and enforcing the NCCA without prior notice to the Union and without affording the Union an opportunity to bargain. Counsel for the General Counsel's opening statement at the hearing included this allegation[7] and Counsel thereafter did nothing to suggest she was abandoning the theory that the Respondent was required to bargain before implementing any and all provisions of the NCCA.[8] Finally, the General Counsel's posthearing brief to the judge argued that the Respondent violated 8(a)(5) and (1) by implementing the NCCA without giving the Union notice and the opportunity to bargain. See *Central States Southeast*, 362 NLRB No. 155, slip op. at 2 fn. 4 (2015).

In these circumstances, the Respondent received "a clear statement of the theory on which [the Board] will proceed with the case," and the General Counsel did not "change theories in midstream without giving [the Respondent] reasonable notice of the change." *Lamar Advertising of Hartford*, 343 NLRB 261, 265 (2004) (internal quotations and citations omitted). As a result, the Respondent's due process rights of notice and the opportunity to be heard have been respected. Thus, the judge should have made a finding on the allegation that the Respondent violated the Act by failing to bargain with the Union before implementing the NCCA. We turn to the merits of that allegation next.

[7] Indeed, counsel for the General Counsel specifically stated "we are here today . . . to talk about a five-page document [the NCCA] and whether the respondent has a duty to bargain over this document."

[8] Although, as the Respondent points out, counsel for the General Counsel stated that the General Counsel "does not argue that the noncompete language by itself violates the law," this statement is consistent with the complaint allegations; that is, the specific noncompete provision in the NCCA is not challenged under Sec. 8(a)(1) as an unlawful rule.

2. The NCCA is a mandatory subject of bargaining

Sections 8(a)(5) and 8(b)(3) of the Act, in conjunction with Section 8(d), require that employers and designated collective-bargaining representatives bargain in good faith with each other about wages, hours, and other terms and conditions of employment. A unilateral change to a mandatory subject violates the statutory duty to bargain. *NLRB v. Katz*, 369 U.S. 736, 743 (1962). Mandatory subjects of bargaining include "issues that settle an aspect of the relationship between the employer and the employees." *First Nat. Maintenance Corp. v. NLRB*, 452 U.S. 666, 676 (1981), citing *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 178 (1971). "[M]anagement decisions, such as . . . production quotas, and work rules, are almost exclusively 'an aspect of the relationship' between the employer and employee." Id. (citations omitted). See also *Ford Motor Co. v. NLRB*, 441 U.S. 488, 498 (1979) (holding that mandatory subjects of bargaining are matters "plainly germane to the working environment" and not among those "managerial decisions, which lie at the core of entrepreneurial control") (internal quotes and citations omitted).

We find that the NCCA here is a mandatory subject of bargaining.

First, we find that the NCCA settles an aspect of the relationship between the Respondent and its employees. The NCCA applies to individuals both while they are employed by the Respondent and after their employment with the Respondent has ended. As to the former, the NCCA includes rules governing employees' conduct that have the potential to affect the employees' continued employment.[9] It is well established that employee work rules are mandatory subjects of bargaining. *First Nat. Maintenance Corp.,* supra*,* 452 U.S. at 676. See also, *King Soopers, Inc.*, 340 NLRB 628, 628 (2003).[10] In addition, the provisions of the NCCA clearly affect employees' terms and conditions of employment in ways that extend beyond work rules governing employees' conduct in the workplace. The provisions have a clear and direct economic impact on employees—and thus represent precisely the sort of matters suitable for collective bargaining. For example, the "Competitive Activities" provision of the "Covenant Not to Compete," Section 1.2 of the NCCA, prohibits an employee from working for another company that might have any connection to the Respondent's business both during his employment and for 18 months afterward, effectively imposing a cost in lost economic opportunities on employees as a consequence of working for the Respondent.[11] Likewise, the "Inventions" provision imposes economic opportunity costs on employees by broadly restricting their ability to benefit from their discoveries, inventions, and acquired knowledge related to working for the Respondent. It states, for example, that all "know-how" the employee obtained related to "designs . . . manufacturing techniques [and] improvements and ideas" must be reported to the Company and any rights the employee may have to such ideas must be assigned to the Employer. Because employment is conditioned on the employees' acceptance of these provisions, they clearly affect employees' terms and conditions of employment and thus "settle[]an aspect of the relationship between the employer and the employees" about which the Respondent is required to bargain. *First Nat. Maintenance v. NLRB*, supra, 452 U.S. at 676.[12]

[9] The Respondent argues that the NCCA is not a mandatory subject of bargaining and its provisions are not work rules because no provision of the NCCA expresses or implies a threat of discipline for its breach. The judge rejected this argument with respect to the provision that he found unlawful. He explained that because that provision forbids certain conduct by employees during their employment, an employee could be disciplined or fired for violating that provision. We agree with the judge's rationale, and we find it extends to all of the NCCA provisions that apply while an individual is employed by the Respondent. Because agreeing to comply with the requirements of the NCCA is a term of employment, implicit in the NCCA is the threat of discipline or discharge for failing to comply with its provisions.

[10] As discussed below, among the work rules in the NCCA that employees are required to follow is an unlawfully overbroad rule that restricts employees' right to engage in Sec. 7 activity, namely employees' ability to communicate with customers about matters affecting their terms and conditions of employment. Any binding agreement that precludes individual employees from pursuing protected concerted activity amounts to an unlawful prospective waiver of Section 7 rights. See, e.g., *On Assignment Staffing Services*, 362 NLRB No. 189, slip op. at 6–8 (2015) (finding mandatory arbitration agreements that required employees to waive the right to engage in concerted legal activity unlawful); *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001) (finding settlement agreement overbroad where it conditioned employee's receipt of separation payments on employee refraining from protected concerted activities for one year), enfd. 354 F.3d 534 (6th Cir. 2004); *Mandel Security Bureau*, 202 NLRB 117, 119 (1973) (finding employee's agreement to "forbearance from future charges and concerted activities" unlawful because the "future rights of employees as well as the rights of the public may not be traded away in this manner").

[11] It is easy to recognize the serious impact on employees of the "Covenant Not to Compete" if, for example, employees were assigned fewer hours of work due to a reduction in business or were locked out by the Respondent during a labor dispute. In such circumstances, employees would be prohibited by the NCCA from replacing their lost income by pursuing the type of work that they had been performing for the Respondent.

[12] We reject the Respondent's argument that it had no obligation to bargain over the NCCA because the requirement that individuals sign the NCCA applies to "applicants" and is a "hiring practice" excluded from the bargaining obligations imposed by the Act. The provisions of the NCCA do not become effective until, at the earliest, individuals become employees. As a result, the NCCA is not the equivalent of a drug test, a qualifications requirement, or a "method of processing

The decision to implement the NCCA is not among that class of managerial decisions at the core of entrepreneurial control that the Respondent is not required to bargain over. That is, it is not a "management decision" that has "only an indirect and attenuated impact on the employment relationship" or that involves "a change in the scope and direction of the enterprise." Id. at 677. The Respondent's decision to require employees to sign the NCCA does not involve the commitment of investment capital and cannot be characterized as a decision reflecting a change in the scope or nature of the Respondent's enterprise. Rather, it affects important facets of employees' terms and conditions of employment by limiting employees' use of information gained at work and restricting their ability to work elsewhere, as well as imposing rules (some of them unlawful) that govern employees' conduct while they are employed by the Respondent.

Having determined that the NCCA was a mandatory subject of bargaining,[13] we must now consider whether the Union waived the right to bargain over its implementation.

3. The Union did not waive its right to bargain over implementation of the NCCA

The Respondent argues that the Union waived its right to bargain over implementation of the NCCA under either the "clear and unmistakable" waiver standard or the "contract coverage" approach.[14] In support, the Respondent primarily points to the CBA's management-rights clause, which gives it the right to take action it deems necessary to fulfill the mission of the Company, and asserts that implementing the NCCA was such an action.

Contrary to the Respondent's arguments, we find that the Union did not clearly and unmistakably waive its right to bargain about the implementation of the NCCA.

The management-rights clause in the 2011–2014 CBA,[15] which the Respondent relies on, is not sufficiently specific to show that the Union "clearly and unmistakably" waived its right to bargain over implementation of the NCCA. It is well established that the Board will not infer the waiver of a statutory right from general contractual provisions, including generally worded management-rights clauses. See, e.g., *California Offset Printers*, 349 NLRB 732, 734 (2007). The management-rights clause at issue makes no reference to non-compete/non-disclosure agreements and thus does not constitute an "express, clear, unequivocal, and unmistakable waiver by the Union of its statutory right to bargain about the Respondent's implementation of the [NCCA] requirement." *Johnson-Bateman Co.*, 295 NLRB 180, 185 (1989) (finding management-rights clause that gave the employer the right to issue, enforce and change company rules was too general to constitute waiver of union's right to bargain about drug/alcohol testing requirement). Compare *Allison Corp.*, 330 NLRB 1363, 1365 (2000) (finding clear and unmistakable waiver over subcontracting decision where management-rights clause specifically granted respondent the right "to subcontract" without restriction).[16] Although the management-rights clause states that the Respondent retains the right to "amend and

applications" that affects prospective employees as "applicants" without having any impact on terms and conditions once the applicants become employees. See *Postal Service*, 308 NLRB 1305 (1992), enf. denied 18 F.3d 1089 (3d Cir. 1994); *Star Tribune*, 295 NLRB 543 (1989). While individuals must agree to sign the NCCA in order to become and remain employees, agreement to the NCCA is the equivalent of agreement to all of the other terms and conditions of employment offered by the employer, all of which are mandatory subjects of bargaining. Because the NCCA applies to active bargaining-unit employees, the "vitally affects" test of *Allied Chemical & Alkali Workers Local I v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971) (held that as retirees' benefits do not vitally affect terms and conditions of current employees, they are not mandatory subjects of bargaining), is inapplicable.

[13] Our conclusion is consistent with prior Board precedent. See *Government Employees (IBPO)*, 327 NLRB 676, 684 fn. 8 (1999) (affirming judge's finding that employer violated 8(a)(5) and (1) by requiring employees to sign an "Employment Agreement" that contained non-compete clause), enfd. 205 F.3d 1324 (2d Cir. 2000); *Bolton-Emerson, Inc.*, 293 NLRB 1124, 1127, 1130–1131 (1989) (affirming judge's finding that employer violated 8(a)(5) and (1) by withdrawing recognition from the union and unilaterally imposing a requirement that employees sign a non-compete agreement), enfd. 899 F.2d 104 (1st Cir. 1990).

[14] The Board has declined to adopt the contract-coverage standard and instead has consistently applied the "clear and unmistakable" waiver standard. See *Provena St. Joseph Medical Center,* 350 NLRB 808 (2007); see also *Columbia College Chicago*, 360 NLRB No. 122, slip op. at 2 fn. 8 (2014). Cf. *Chicago Tribune Co. v. NLRB*, 974 F.2d 933 (7th Cir. 1992); *NLRB v. Postal Service*, 8 F.3d 832 (D.C. Cir. 1993). Even under the "contract coverage" analysis adopted by the Seventh Circuit and the District of Columbia Circuit, the Respondent's argument would fail. The language of the management-rights clause, considered in light of the complete absence of relevant bargaining history, cannot fairly be read to cover the NCCA and the specific, significant restrictions it unilaterally imposes on employees.

[15] Because the Respondent began requiring employees to sign the NCCA in 2012, we examine the language of the 2011–2014 CBA. We note, however, that the 2015–2019 CBA contained an identical management rights clause and zipper clause, and for the reasons we explain are likewise insufficient to establish a clear and unmistakable waiver.

[16] The zipper clause is also not sufficient to show a clear and unmistakable waiver of the Union's right to bargain over implementation of the NCCA. Again, there is no mention of the right to implement a non-compete/non-disclosure agreement in the zipper clause, and the clause alone does not waive the Union's specific right to bargain over a change to the Respondent's practice. See *Michigan Bell Telephone Co.*, 306 NLRB 281, 282 (1992) ("[t]he clear and unmistakable waiver test applies equally to alleged waivers contained in zipper clauses as it does to those contained in other contractual provisions").

revise work rules," we find this reference too vague to constitute a waiver of the Union's statutory right to bargain over imposition of the requirement that employees sign and agree to the NCCA. See *Murtis Taylor Human Services Systems*, 360 NLRB No. 66, slip op. at 4 (2014) (reference to "rules and regulations" in management-rights clause does not clearly cover new signature policy implemented by the respondent). Accordingly, as the language in the managements-rights clause makes no reference to the NCCA, rules affecting the right of employees to communicate with customers over their terms and conditions of employment, or rules restricting the employees' use of knowledge obtained while working for the Respondent, the clause does not establish a clear and unmistakable waiver of the Union's right to negotiate over these matters.[17]

Additionally, there is nothing in the parties' bargaining history to support a finding that the management-rights clause was intended by the parties to encompass the implementation of the NCCA. See *Johnson-Bateman*, supra, 295 NLRB at 185 ("Waiver of a statutory right may be evidenced by bargaining history, but the Board requires the matter at issue to have been fully discussed and consciously explored during negotiations and the union to have consciously yielded or clearly and unmistakably waived its interest in the matter."). The NCCA was not raised by the Respondent in negotiations for the 2011–2014 contract that took place a year before it implemented the NCCA, nor was the NCCA discussed in negotiations for the 2015–2019 CBA.

Finally, we reject the Respondent's argument that the Union waived its right to bargain over implementation of the NCCA by failing to request bargaining during negotiations for the 2015–2019 CBA. The Respondent never gave the Union notice that it was requiring new employees to sign the NCCA. By the time the Union learned of the requirement from an employee in 2014, the NCCA had already been unlawfully implemented for more than 2 years. Thus a request to bargain would have been futile. See *Smith & Johnson Construction Co.*, 324 NLRB 970, 970 (1997) (no obligation to request bargaining where such a request would be futile). Nonetheless, when the Union learned of the NCCA, it promptly filed a charge with the Board,[18] undercutting any argument that it acquiesced in the implementation of the NCCA. See *Allen W. Bird II; Caravelle Boat Co.*, 227 NLRB 1355, 1358 (1977) (finding that union did not waive right to bargain or acquiesce in changes where union learned of unilateral changes during negotiations and union filed charges with the Board but did not request bargaining). By filing a charge asserting that the NCCA was unlawfully implemented and should be rescinded, the Union clearly did not lead "the Respondent to believe that the Union did not object" to its conduct. *American Diamond Tool*, 306 NLRB 570, 571 (1992).

For these reasons, we find that the Union did not clearly and unmistakably waive its right to bargain about the implementation of the NCCA, and therefore that the Respondent violated Section 8(a)(5) and (1) as alleged.

B. 8(a)(1) Allegations

The complaint alleges that the Respondent violated Section 8(a)(1) by maintaining four specific provisions of the NCCA that constituted facially overbroad rules. Because the Respondent imposed the four challenged NCCA provisions on new employees as a condition of employment, they are properly treated as the Board treats other unilaterally implemented workplace rules. See *D. R. Horton, Inc.*, 357 NLRB 2277, 2280 (2012), enf. denied in part, 737 F.3d 344 (5th Cir. 2013).

The Board has held that an employer violates Section 8(a)(1) of the Act if it maintains workplace rules that would reasonably tend to chill employees in the exercise of their Section 7 rights. See *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). The analytical framework for assessing whether maintenance of rules violates the Act is set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Under *Lutheran Heritage*, a work rule is unlawful if "the rule *explicitly* restricts activities protected by Section 7." Id. at 646 (emphasis in original). If the work rule does not explicitly restrict protected activities, it nonetheless will violate Section 8(a)(1) if "(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." Id. at 647.

The rules at issue here are not alleged to explicitly restrict protected activities or to have been promulgated in response to union activity or applied to restrict Section 7 activities. Thus, the relevant inquiry is whether employees would reasonably construe the challenged rules to

[17] The Respondent also points to testimony by Simms, one of the Union's negotiators, claiming that it shows the Union agreed that the Respondent had the contractual right to implement the NCCA. The Respondent relies on an exchange in which Simms acknowledged that the management-rights clause gave the Respondent the right to make work rules without bargaining. As discussed, the management-rights clause is not sufficient to show that the Respondent could implement the NCCA without bargaining with the Union. And, contrary to the Respondent's argument, Simms' testimony does not otherwise demonstrate a clear and unmistakable waiver of the Union's right to bargain.

[18] The Union filed the charge on October 20, 2014; negotiations for a successor CBA began in November 2014.

prohibit Section 7 activity, under the first prong of the *Lutheran Heritage* test.

We examine each of the allegedly unlawful provisions below.

1. "Confidential Information" rule

Section 2 of the NCCA, entitled "Confidential Information," states in relevant part:

> Confidential Information refers to any information not generally known in the relevant trade or industry which was obtained from the Company, or which was learned, discovered, developed, conceived, originated, or prepared by me in the scope of my employment. Such Confidential Information includes, but is not limited to, software, technical, and business information relating to the Company inventions or products, research and development, production processes, manufacturing and engineering processes, machines and equipment, finances, customers, marketing, and production and future business plans and *any other information which is identified as confidential by the Company*. . . . (emphasis added)

Applying *Lutheran Heritage*, the judge found that employees would reasonably interpret Section 2 as prohibiting protected activity because the phrase "any other information which is identified as confidential by the Company" is so ambiguous that it could reasonably be read to include wages and benefits.

Viewed in isolation, a prohibition on releasing "any . . . information which is identified as confidential by the Company" would clearly be overbroad, since it would allow the Respondent to designate any information—including information about employees' wages, benefits, or other terms and conditions of employment—as confidential and thus restrict employees' exercise of their Section 7 rights. See, e.g., *Cintas Corp.*, 344 NLRB 943, 943 (2005) (finding rule's unqualified prohibition of the release of "any information" regarding employees unlawful), enfd. 482 F.3d 463 (D.C. Cir. 2007).

However, the phrase containing this prohibition does not stand alone and must be read in context. See *Lutheran Heritage*, supra, 343 NLRB at 646 ("In determining whether a challenged rule is unlawful, the Board must . . . refrain from reading particular phrases in isolation . . . ."). Here, Section 2 defines "confidential information" as "any proprietary or confidential information or know-how belonging to the company," that is "not generally known in the relevant trade or industry," and which the employee "obtained from the Company . . . in the scope of [his or her] employment." This definition is followed by examples of confidential information which illustrate its scope and meaning: "software, technical and business information relating to the Company inventions or products, research and development, production processes, manufacturing and engineering processes, machines and equipment, finances, customers, marketing, and production and future business plans. . . ." Considered in this context, we find that employees reading the concluding phrase, "any other information which is identified as confidential by the Company," would reasonably understand it to refer to the preceding examples of proprietary information and trade secrets, not information related to employees' wages or working conditions. See *Lafayette Park*, supra, 326 NLRB at 826 (employer rule prohibiting "divulging Hotel-private information to employees or other individuals or entities that are not authorized to receive that information" found lawful).

Accordingly, we reverse the judge and dismiss this allegation of the complaint.

2. "Remedy" rule

Section 13 of the NCCA, entitled "Remedy," states that, in the event of a breach or violation of the NCCA, "employee agrees the Company shall be entitled to proceed directly to court to obtain the remedies of specific performance and injunctive relief without the necessity of posting a bond or other undertakings therewith."

The judge found that the "Remedy" rule would restrain employees in the exercise of their Section 7 rights because it "threatens employees with punishment for anything Minteq decides is confidential."

Contrary to the judge, we find that the "Remedy" provision is not unlawful on its face. This rule makes no reference to terms and conditions of employment or employees' exercise of their Section 7 rights, and employees therefore would not read the "Remedy" rule as an independent restriction on their Section 7 rights.[19] Accordingly, we reverse the judge and dismiss this allegation of the complaint.

3. "Interference with Relationships" rule

Section 4 of the NCCA, entitled "Interference with Relationships," states:

> During the Restricted Period [starting the date the NCCA is signed and ending eighteen months following termination of Employee's employment with the Company for whatever reason], Employee shall not, directly or indirectly, as employee, agent, consultant, stock-

[19] We find it unnecessary to reach whether the "Remedy" rule is nevertheless unlawful to the extent that it may be invoked in response to violations of other provisions of the NCCA that we find unlawful below. As our remedy for these unlawful rules requires that those provisions be rescinded, the "Remedy" rule could not be invoked in response to alleged violations of those provisions.

> holder, director, partner or in any other individual or representative capacity intentionally solicit or encourage any present or future customer or supplier of the Company to terminate or otherwise alter his, her, or its relationship with the Company in an adverse manner . . . .

The judge found that employees would not construe the "Interference with Relationships" rule to prohibit Section 7 activity. The General Counsel excepts, arguing that the "Interference with Relationships" rule *would* reasonably be read by employees to prohibit lawful Section 7 conduct such as, for example, asking customers to boycott the Respondent's products in support of a labor dispute with the Respondent. We agree.

The ability of employees to communicate with customers about terms and conditions of employment for mutual aid or protection is a right protected by Section 7 of the Act. See generally *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565–566 (1978); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. Trades Council*, 485 U.S. 568, 578–579 (1988); *Allied Aviation Service Co. of New Jersey*, 248 NLRB 229, 230–231 (1980), enfd. 636 F.2d 1210 (3d Cir. 1980); *Richboro Community Mental Health Council*, 242 NLRB 1267, 1268 (1979). The "Interference with Relationships" rule clearly places restrictions on employees' ability to communicate with the Respondent's customers and restricts employee efforts to "improve terms and conditions of employment or otherwise improve their lot as employees through channels outside the immediate employee-employer relationship." *Eastex*, supra, 437 U.S. at 565. These efforts could include asking customers to boycott the Respondent's products or services, as the General Counsel argues, but they could also encompass other forms of appeals to the Respondent's customers. A prohibition on this type of conduct is an unlawful restriction of employees' Section 7 rights. See, e.g., *Battle's Transportation*, 362 NLRB No. 17, slip op. at 3 (2015) (finding prohibition against discussion of "any [] company business" with clients unlawful).

For these reasons, we find that the "Interference with Relationships" rule violates Section 8(a)(1).

4. "At-Will Employee" rule

The CBA provides that employees are probationary for their first 6 months of employment and that the Respondent's discipline, layoff or discharge of a probationary employee "shall not be a violation of this Agreement." After 6 months, the CBA imposes on the Respondent a "just cause" standard (as defined in the CBA) for any discipline, suspension, and discharge. The CBA further provides that disciplinary action that is not for "just cause" can be challenged under the grievance and arbitration procedure.

Section 12 of the NCCA is entitled "At-Will Employee" and states, "Employee acknowledges that this Agreement does not affect Employee's status as an employee-at-will and that no additional right is provided herein which changes such status." The judge found that employees would not construe this provision to prohibit Section 7 activity since it merely advises new hires that they are at-will employees and that nothing in the NCCA affects that status.

Contrary to the judge, we find that the "At-Will Employee" rule is unlawfully broad. Initially, we note that there is nothing in Section 12, or the NCCA more broadly, that suggests that the rule applies only to new, probationary employees. Indeed, the NCCA explicitly states that its provisions are effective from the date the NCCA is signed until 18 months after the end of the employee's employment with the Respondent. As a result, the "At-Will Employee" rule purports to give all employees at-will status, contrary to the parties' agreement in the CBA.

We find that employees thus would reasonably doubt whether the CBA's "just cause" provision remains in effect. Thus, the "At-Will" rule has a reasonable tendency to discourage employees from engaging in conduct that would be protected by the CBA's "just cause" provision and by Section 7 of the Act, including the exercise of rights under the collective-bargaining agreement and other protected, concerted activity (such as, for example, communicating among themselves or with the Respondent's customers concerning their terms and conditions of employment), for fear that they could be discharged without the contractual "just cause" protection. Similarly, the conflict between the "At-Will" provision and the "just cause" provision would reasonably discourage employees from engaging in the Section 7 activity of utilizing the contractual grievance and arbitration procedures to challenge disciplinary actions they believe were not for "just cause". Because the rule has a reasonable tendency to chill employees' exercise of their Section 7 rights, we find that it is unlawful as written.

In sum, we find that the Respondent violated Section 8(a)(5) and (1) by implementing a requirement that employees sign the NCCA without giving the Union notice and the opportunity to bargain and that the Respondent violated Section 8(a)(1) by maintaining the "Interference with Relationships" and "At-Will Employee" rules in the NCCA.

ORDER

The National Labor Relations Board orders that the Respondent, Minteq International, Inc., Gary, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Requiring employees in the bargaining unit represented by the Union to sign a Non-Compete and Confidentiality Agreement (NCCA) without first notifying the Union and giving it an opportunity to bargain.

(b) Maintaining an "Interference with Relationships" rule that prohibits or would reasonably be read to prohibit conduct protected by Section 7 of the Act.

(c) Maintaining an "At-Will Employee" rule that prohibits or would reasonably be read to prohibit conduct protected by Section 7 of the Act.

(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 NCCA that was unilaterally implemented in 2012.

(b) Notify all current and former employees who were required to sign the NCCA that it has been rescinded.

(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:

> All full-time and regular part-time SMS gunners who are engaged in the application of refractory materials, including the repair and servicing of application equipment, employed by the Company at USX Gary #2, USX Gary #1 Caster, and Mittal Indiana Harbor East and West, in the mill areas specifically defined in Article 1 of the contract, excluding all other craft employees, all office clerical employees and supervisors as defined by the National Labor Relations Act.

(d) Rescind the overly broad "Interference with Relationships" and "At-Will Employee" work rules and notify employees in writing that it has done so.

(e) Within 14 days after service by the Region, post at its Gary, Indiana facility, copies of the attached notice marked "Appendix."[20] Copies of the notice, on forms provided by the Regional Director for Region 13, 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 April 30, 2014.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 13 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. July 29, 2016

_____

Mark Gaston Pearce, Chairman

_____

Kent Y. Hirozawa, Member

_____

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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

[20] If this Order is enforced by a judgment of the 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."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain an "Interference with Relationships" rule in our NCCA that prohibits or would reasonably be read to prohibit conduct protected by Section 7 of the Act.

WE WILL NOT maintain an "At-Will Employee" rule in our NCCA that prohibits or would reasonably be read to prohibit conduct protected by Section 7 of the Act.

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 NCCA that was unilaterally implemented in 2012.

WE WILL notify all current and former employees who were required to sign the NCCA that it has been rescinded.

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

> All full-time and regular part-time SMS gunners who are engaged in the application of refractory materials, including the repair and servicing of application equipment, employed by the Company at USX Gary #2, USX Gary #1 Caster, and Mittal Indiana Harbor East and West, in the mill areas specifically defined in Article 1 of the contract, excluding all other craft employees, all office clerical employees and supervisors as defined by the National Labor Relations Act.

WE WILL rescind the overly broad "Interference with Relationships" and "At-Will Employee" work rules and notify employees in writing that we have done so.

MINTEQ INTERNATIONAL, INC.

The Board's decision can be found at www.nlrb.gov/case/13-CA-139974 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.

APPENDIX B

NON-COMPETE AND CONFIDENTIALITY AGREEMENT

1. Covenant Not to Compete.

1.1 Employee's Acknowledgement. Employee agrees and acknowledges that in order to assure the Company that it will retain its value as a going concern, it is necessary that Employee undertake not to utilize Employee's special knowledge of the Business (as defined below) and Employee's relationships with customers and suppliers to compete with the Company. Employee further acknowledges that:

(a) the Company is and will be engaged in the business of developing, producing and marketing performance-enhancing minerals, mineral-based and synthetic mineral products for the paper, polymer, healthcare and other manufacturing industries on a worldwide basis (the "Business");

(b) the agreements and covenants contained in this Section 1 are essential to protect the Company and the goodwill of the Business; and

(c) Employee's employment with the Company has special, unique and extraordinary value to the Company and the Company would be irreparably damaged if Employee were to provide services to any person or entity in violation of the provisions of this Agreement.

1.2 Competitive Activities. Employee hereby agrees that for a period commencing on the date hereof and ending eighteen months following termination of Employee's employment with the Company for whatever reason, (the "Restricted Period"), Employee will not, directly or indirectly, as employee, agent, consultant, stockholder, director, co-partner or in any other individual or representative capacity, own, operate, manage, control, engage in, invest in or participate in any manner in, act as a consultant or advisor to, render services for (alone or in association with any person, firm, corporation or entity), or otherwise assist any person or entity (other than the Company) that engages in or owns, invests in, operates, manages or controls any venture or en-

terprise that directly or indirectly engages or proposes to engage in the business of the manufacturing, distribution or sale of (i) products or services manufactured, distributed, sold or licensed by the Company at the time of termination or (ii) products or services proposed at the time of such termination to be manufactured, distributed, sold or licensed by the Company, in any country where the Company is conducting business, or can demonstrate it is actively planning to conduct business, at the time of Employee's termination of employment with the Company (the "Territory"), without the Company's prior written consent given wholly in its own discretion; provided, however, that nothing contained herein shall be construed to prevent Employee from investing in the stock of any competing corporation listed on a national securities exchange or traded in the over-the-counter market, but only if Employee is not involved in the business of said corporation and if Employee and Employee's "associates" (as such term is defined in Regulation 14(A) promulgated under the Securities Exchange Act of 1934, as in effect on the date hereof), collectively, do not own more than an aggregate of two percent of the stock of such corporation ("Permitted Investments"). With respect to the Territory, Employee specifically acknowledges that the Company has conducted the Business throughout those areas comprising the Territory and the Company intends to continue to expand the Business throughout the Territory. The foregoing notwithstanding, after termination but during the Restricted Period, Employee may accept employment in the Territory with an otherwise restricted potential new employer whose business is diversified and, which as to the part of such employer's business in which Employee is proposed to be engaged, is not in competition with the Company, provided that the Company, prior to Employee accepting such employment, shall have received separate written representations satisfactory to the Company from such potential new employer and from Employee, representing that Employee will not render services, directly or indirectly, in connection with any product or service of such potential new employer that is competitive with any product or service of the Company and that Employee will not and will not be asked to breach any of the provisions of this Agreement.

1.3 Solicitation of Employees. Employee hereby agrees that during the Restricted Period Employee will not (except on behalf of the Company or otherwise as permitted in Section 1.2), directly or indirectly, solicit or participate as employee, agent, consultant, stockholder, director, partner or in any other individual or representative capacity in any business which solicits business from any person, firm, corporation or other entity which is or was a customer or supplier of the Company during the two-year period preceding the date of this Agreement and/or during the term of this Agreement, or from any successor in interest to any such person, firm, corporation or other entity for the purpose of securing business or contracts related to the Business.

2. Confidential Information. Employee will maintain in confidence and will not disclose or use, either during or after the term of his or her employment, any proprietary or confidential information or know-how belonging to the Company "Confidential Information"), whether or not in written form, except to the extent required to perform duties on behalf of the Company. Confidential Information refers to any information not generally known in the relevant trade or industry which was obtained from the Company, or which was learned, discovered, developed, conceived, originated or prepared by me in the scope of my employment. Such Confidential Information includes, but is not limited to, software, technical and business information relating to the Company inventions or products, research and development, production processes, manufacturing and engineering processes, machines and equipment, finances, customers, marketing, and production and future business plans and any other information which is identified as confidential by the Company. Upon termination of Employee's employment, or at the request of the Employee's supervisor before termination, Employee will deliver to the Company all written and tangible material in Employee's possession incorporating Confidential Information or otherwise relating to the company's business. These obligations with respect to Confidential Information extend to information belonging to customers and suppliers of the Company which may have been disclosed to the Company or to Employee as the result of his or her status as an employee of the Company.

3. Inventions

3.1 Definition of Inventions. As used in this Agreement, the term "Inventions" means any new or useful art, discovery, contribution, finding or improvement, whether or not patentable, and all related know-how. Inventions include, but are not limited to, all designs, discoveries, formulae, processes, manufacturing techniques, computer software, inventions, improvements and ideas.

3.2 Disclosure and Assignment of Inventions.

(a) Employee will promptly disclose and describe to the Company all Inventions which Employee may solely or jointly conceive, develop or reduce to practice during the period of my employment with the Company (i) which relate at the time of conception, development or reduction to practice of the

Invention to the Company's business or actual or demonstrably anticipated research or development, (ii) which were developed, in whole or in part, on the Company's time or with the use of any of the Company's equipment, supplies, facilities or trade secret information, or (iii) which resulted from any work Employee performed for the Company (all of (i), (ii), and (iii) are hereinafter referred to as "Company Inventions"). Employee assigns all his or her right, title and interest worldwide in Company Inventions and in all intellectual property rights based upon Company Inventions. This Agreement shall not apply to any inventions which Employee made prior to his or her employment by Company. A list of any prior inventions is attached hereto as Exhibit A.

(b) Employee agrees that (s)he will, upon termination of employment from Company, sign an affidavit, acknowledging that (s)he has disclosed all inventions relating to his/her activities while working for Company and conceived or made by Employee, alone or with others, prior to his/her termination.

3.3 Further Acts. Employee agrees to perform, during and after his or her employment, all acts deemed necessary or desirable by the Company to permit and assist it, at its expense, in perfecting and enforcing the full benefits, enjoyment, rights and title throughout the world in the Company Inventions. Such acts may include, but are not limited to, execution of documents and assistance or cooperation in the registration and enforcement of applicable patents and copyrights or other legal proceedings.

3.4 Appointment of Attorney-In-Fact. In the event that the Company is unable for any reason whatsoever to secure Employee's signature.to any lawful and necessary document required to apply for or execute any patent, copyright or other applications with respect to any Company Inventions (including improvements, renewals, extensions, continuations, divisions or continuous in part thereof), Employee hereby irrevocably appoints the Company and its duly authorized officers and agents as Employee's agents and attorneys-in-fact to execute and file any such application and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights or other rights thereon with the same legal force and effect as if executed by Employee.

4. Interference with Relationships. During the Restricted Period Employee shall not, directly or indirectly, as employee, agent, consultant, stockholder, director, partner or in any other individual or representative capacity intentionally solicit or encourage any present or future customer or supplier of the Company to terminate or otherwise alter his, her or its relationship with the Company in an adverse manner.

5. Return of Company Materials Upon Termination. Employee acknowledges that all price lists, sales manuals, catalogs, binders, customer lists and other customer information, supplier lists, financial information, and other records or documents containing Confidential Information prepared by Employee or coming into Employee's possession by virtue of Employee's employment by the Company are and shall remain the property of the Company and that upon termination of Employee's employment hereunder, Employee shall return immediately to the Company all such items in Employee's possession, together with all copies thereof.

6. Preamble: Preliminary Recitals. The Preliminary Recitals set forth in the Preamble hereto are hereby incorporated and made part of this Agreement.

7. Entire Agreement. Except as otherwise expressly set forth herein, this Agreement sets forth the entire understanding of the parties, and supersedes and preempts all prior oral or written understandings and agreements with respect to the subject matter hereof. No modification, termination or attempted waiver of this Agreement shall be valid unless in writing and signed by the party against whom the same is sought to be entered.

8. Waiver. Either party's failure to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions as to any future violations therefore, nor prevent that party thereafter from enforcing each and every other provision of this Agreement. The rights granted the parties herein are cumulative and the waiver by a party of any single remedy shall not constitute a waiver of such party's right to assert all other legal remedies available to him or it under the circumstances.

9. Additional Obligations. Both during and after the Restricted Period, Employee shall, upon reasonable notice, furnish the Company with such information as may be in Employee's possession, and cooperate with the Company, as may reasonably be requested by the Company (and, after the Restricted Period, with due consideration for Employee's obligations with respect to any new employment or business activity) in connection with any litigation in which the Company or any affiliate is or may become a party.

10. No Conflict. Employee's performance of the Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by Employee prior to employment with the Company. Employee will not disclose to the Company, or induce the Company to use, any confidential or proprietary information or material belonging to any previous employer or other person or entity. Employee is not a party to any other agreement which will interfere with Employee's full compliance with this Agreement. Employee will not enter into any agreement, whether written or oral, in conflict with the provisions of this Agreement.

11. Assignment. This Agreement may be assigned by the Company to any of its affiliates or to any successor to all or part of the Business of the Company. Employee may not assign or delegate Employee's duties under this Agreement. For all purposes of this Agreement, the term "Company" shall include the Company, its subsidiaries, affiliates, and assignees and any successors in interest of the company and its subsidiaries and/or affiliates. This Agreement shall be binding upon Employee's heirs, successors, and assignees.

12. At-Will-Employee. Employee acknowledges that this Agreement does not affect Employee's status as an employee-at-will and that no additional right is provided herein which changes such status.

13. Remedy. Any breach or violation by Employee of the Agreement will result in immediate and irreparable injury to the Company in amounts difficult to ascertain. Therefore in the event of such breach or violation, employee agrees the Company shall be entitled to proceed directly to court to obtain the remedies of specific performance and injunctive relief without the necessity of posting a bond or other undertakings therewith.

14. Employee Acknowledgement. Employee acknowledges that Employee has received a copy of this agreement, has read and understands its provisions, has been given an opportunity to have legal counsel review it, and has signed it on the date first shown above.

15. Governing Law. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Agreement shall be governed by the laws of the State of New York, without giving effect to provisions thereof regarding conflict of laws.

Christina B. Hill, Esq., for the General Counsel.
Jonathan O. Levine and *Adam-Paul Tuzzo, Esqs. (Littler Mendelson, LLC, Milwaukee, Wisconsin)*, for the Respondent.
Charles R. Kiser, Esq. (Local 150 Legal Department, Countryside, Illinois), for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Chicago, Illinois, on October 26, 2015. Operating Engineers Local 150 filed the charge on October 20, 2014. The General Counsel issued the complaint on July 31, 2015, and an amended complaint on October 9, 2015. The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act by directly dealing with represented employees by requiring them to sign a Non-Compete and Confidentiality Agreement (NCCA) as a condition of their continued employment and implementing, maintaining and enforcing the Agreement without prior notice to the Union and affording it the opportunity to bargain about this Agreement or its effects.

The General Counsel also alleges that Respondent is violating Section 8(a)(1) by maintaining Sections 2, 4, 12, and 13 of the NCCA.

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent,[2] a Delaware corporation, has an office and place of business in Gary, Indiana. It is engaged in the business of providing monolithic and pre-cast refractory products and related systems and services to the steel industry. Respondent annually purchases and receives goods valued in excess of $50,000 directly from places outside of Indiana. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, International Union of Operating Engineers, Local 150, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent works as a contractor at ArcelorMittal's Burns

[1] The list of exhibits at the beginning of the transcript and the bound exhibits themselves incorrectly indicate that GC Exh. 6, Jt. Exh. 5 and Jt. Exh. 6 were not received into evidence. These exhibits were received at Tr. 154–56.

The General Counsel's joint motion to correct the transcript is granted.

[2] Although Respondent answered the initial complaint on behalf of Minteq International, Inc., Specialty Minerals, Inc. and Minerals Technology, Inc., it later contended that only Minteq was the correct Respondent. I reject this contention. The Joint Exhibits showed that some unit employees signed the Non-Compete and Confidentiality Agreements with Minteq and others signed such an Agreement with Specialty Minerals.

Harbor, Indiana Steel Mill, as well as the USX mills in Gary, Indiana. One of the services it provides is patching the inside of the furnaces. Minteq does this by spraying its monolithic (liquid state) product into the furnace. The employees who perform this task are called "gunners." They spray Minteq's product into the mouth of the furnaces with a long galvanized pipe mounted on a forklift. "Gunners" must undergo several months of on-the-job training before they can perform their tasks on their own. Minteq's product is proprietary and confidential.

The "gunners" are represented by the Charging Party Union, Operating Engineers Local 150. Respondent and the Union had a collective bargaining agreement that ran from January 1, 2011, to December 31, 2014 (Jt. Exh. 3). In November and December 2014, they negotiated a new contract which runs from January 1, 2014, to December 31, 2019 (Jt. Exh. 1).

ArcelorMittal and perhaps prior owners of the mill have switched back and forth between a number of contractors doing this furnace patching work. Minteq had the subcontract to patch all three furnaces at Burns Harbor from about 1999 to 2009. Later a company named Nucon had the contract for the three furnaces. Then Minteq recaptured the work for one furnace and then for all 3. In the fall of 2014 ArcelorMittal gave the work on one furnace to a company named Magnesita, on a trial basis. Several of Minteq's "gunners," Charles Spear, Dennis and Dustin Sharp and Nicholas Carrillo, went to work for Magnesita.[3]

On or about September 29, 2014, Spear received a letter from Minteq.[4] It said in pertinent part that Minteq, Minerals Technologies and its subsidiaries possess a great deal of confidential business information and proprietary technology. It gave as examples: data, formulas, know-how and processes. The letter states that during Spear's employment he had been provided, or had access to, such information.

The letter stated further:

> Both the law and any agreement you signed when you came to work for the Company prohibit any use or disclosure of such information after you leave. If you take employment with a competitor of the company, it is especially important that you take care not to violate your obligations to keep any information confidential.

Minteq stated that it considers the material described in the letter as its intellectual property and that it would not hesitate to take legal action to protect it.

The letter did not specifically state that Spear was prohibited from working for a competitor and was very unspecific as to what he must not do to avoid being sued by Minteq.

However, Minteq sent Spear another letter on October 23, 2013 in which it stated:

> By this letter we remind both you and MAGNESITA of your obligation to refrain from working for a competitor of MINTEQ for a period of eighteen months following the termination of your employment with MINTEQ. A copy of the Non-Compete and Confidentiality Agreement you signed in that regard is attached for your reference.
>
> . . . This obligation means that you cannot work for MAGNESTIA in any capacity in the areas of refractory or metallurgical products or services until April 1, 2016.[5]

Spear applied for work with Minteq and Specialty Minerals on January 24, 2013. Respondent offered Spear employment on March 19, 2013, subject to drug screening, a physical and a background check. He accepted the offer on Thursday, March 21 and reported to Minteq's Portage, Indiana office for orientation the same day. During the two days of orientation, Spear filled out forms, such as his W-4 and I-9 and underwent training on such matters as the OSHA requirements relevant to his job. One of the forms he signed was the Non-Compete and Confidentiality Agreement (NCCA) which contains the language quoted above. Respondent did not explain or discuss the agreement with Spear, it merely had him sign it.

Respondent paid Spear for the 17 hours he spent in orientation at the Portage office (Jt. Exh. 2). Minteq recorded Spear's time manually. On Monday, March 25, Spear reported to the Arcelormittal Mill, clocked in and began his training in Minteq's procedures for "gunning" the blast furnaces. He remained a probationary employee for 6 months (Jt. Exh. 1 and 3). Under the parties' collective bargaining agreements, the discharge, discipline or lay-off of a probationary employee was not, and is not, a violation of the collective bargaining agreement.

Although, the parties appear to believe that Spear's status when he signed the agreement to be important to this case (employee or job applicant), Minteq is apparently suing or threatening to sue other employees at common law who went to work for Magnesita, for breach of their fiduciary duties to Minteq. These employees began working for Minteq prior to 2012 and therefore never signed a NCCA.

Respondent maintains the following rules and since 2012 has required new employees to sign a Non-Compete and Confidentiality Agreement that contains the following provisions that allegedly violate the Act.

[3] Magnesita subsequently lost the contract and all 4 employees were apparently laid off.

[4] Spear does not recall the September 29 letter. However, it appears that Respondent sent him a similar letter on October 17, followed by the October 23 letter, which is discussed below.

[5] This prohibition emanates from Section 1.2 of the NCCA, which was not the focus of the instant litigation (not mentioned in paragraph V of the complaint; but possibly encompassed by paragraph VII). 1.2 entitled "competitive activities," states that for 18 months following the termination of his or her employment, an employee will not as an employee render services for any person or entity which engages in the business of manufacturing, distribution or sale of products manufactured, distributed or manufactured by the company at the time of the employee's termination . . . (elsewhere described as refractory products and application methods).

There is no evidence in this record that Minteq employees who were hired by Magnesita, but whose employment with Minteq predated 2012 and the NCCA, received letters like that October 23 letter to Spear. They apparently did not receive letters advising them that they were prohibited from working for a competitor for 18 months. They received letters dated October 17, which advised them that Respondent expected them to maintain the confidentiality of much of the information they had acquired while working for Minteq, R. Exhs. R3a –R3c.

"Section 2: CONFIDENTIAL INFORMATION. Employee will maintain in confidence and will not disclose or use, either during or after the term of his or her employment, any proprietary or confidential information or know-how belonging to the Company ("Confidential Information"), whether or not in written form except to the extent required to perform duties on behalf of the Company. Confidential Information refers to any information not generally known in the relevant trade or industry which was obtained from the Company, or which was learned, discovered, developed, conceived, originated, or prepared by me in the scope of my employment. Such Confidential Information includes, but is not limited to, software, technical, and business information relating to the Company inventions or products, research and development, production processes, manufacturing and engineering processes, machines and equipment, finances, customers, marketing, and production and future business plans and any other information which is identified as confidential by the Company. Upon termination of Employee's employment, or at the request of the Employee's supervisor before termination, Employee will deliver to the Company all written and tangible material in Employee's possession incorporating Confidential Information or otherwise relating to the Company's business. These obligations with respect to Confidential Information extend to information belonging to customers and suppliers of the Company which may have been disclosed to the Company or to Employee as the result of his or her status as an employee of the Company...

Section 4: INTERFERENCE WITH RELATIONSHIPS During the Restricted Period [a period commencing on the date hereof and ending eighteen months following termination of Employee's employment with the Company for whatever reason], Employee shall not, directly or indirectly, as employee, agent, consultant, stockholder, director, partner or in any other individual or representative capacity intentionally solicit or encourage any present or future customer or supplier of the Company to terminate or otherwise alter his, her, or its relationship with the Company in an adverse manner...

Section 12: AT- WILL -EMPLOYEE. Employee acknowledges that this Agreement does not affect Employee's status as an employee-at-will and that no additional right is provided herein which changes such status.

Section 13: REMEDY. Any breach or violation by Employee of the Agreement will result in immediate and irreparable injury to the Company in amounts difficult to ascertain. Therefore in the event of such breach or violation, employee agrees the Company shall be entitled to proceed directly to court to obtain the remedies of specific performance and injunctive relief without the necessity of posting a bond or other undertakings therewith.

Analysis

There are no material facts in dispute in this case. However, there are a number of legal issues upon which Respondent takes a markedly different view than the General Counsel and the Union. These include whether the NCCA constitutes a mandatory subject of bargaining, whether the complaint is time barred pursuant to Section 10(b) of the Act, whether Charles Spear was an "employee" or "bargaining unit employee" when he signed the NCCA, whether Respondent violated Section 8(a)(5) and (1) by dealing directly with employees by insisting they sign the NCCA during their new employee orientation and whether Respondent violated Section 8(a)(1) in maintaining certain sections (2, 4, 12, and 13) of the NCCA,

Also at issue is whether the Union waived its bargaining rights with regard to the NCCA, by not demanding bargaining about it in its November and December 2014 collective-bargaining negotiations with Respondent.

Sections 2 and 13 of the NCCA are mandatory subjects of bargaining

In some situations, I would conclude that a confidentiality pledge is not a mandatory subject of bargaining and is exempt from bargaining even if it arguably impacts the employment relationship pursuant to *First National Maintenance Corp. v. NLRB,* 452 U.S. 666, 679 (1981). This is the case, for example, when the burden placed on the conduct of the employer's business far outweighs the benefit for labor-management relations and the collective bargaining process.

An example would be if employees of Coca Cola (assuming they were represented), who had knowledge of a new formula for Coke, were required to sign a document promising not to divulge that formula to anyone not authorized to know it—upon pain of termination. Similarly, if Respondent were to inform its employees and/ or job applicants that the formula for its "monolithic product" is a trade secret and is not to be disclosed to anyone outside the company, I believe that would be exempt from bargaining. Such decisions would lie at the core of entrepreneurial control and thus would not be mandatory subjects of bargaining, *Fibreboard Products v. NLRB,* 379 U.S. 203 (1964).

However, in the instant case, I find that it is the ambiguity of Respondent's confidentiality rules that makes it a mandatory subject of bargaining. Under the principles in *Dubuque Packing Company, Inc.,* 303 NLRB 386 (1991), the issue of a bargaining obligation focuses on whether the employer's decision is amenable to bargaining.[6] While in some cases, such as the Coca Cola example, the decision is clearly not amenable to bargaining; in others it is. In the instant case the ambiguity of the NCCA renders it particularly amenable to bargaining. It is difficult to determine from the NCCA and the letters sent to former Minteq employees what exactly they are prohibited from doing. Bargaining with the Union might help to clarify what Section 2 of the NCCA actually prohibits.

Section 2 forbids the new employee (or job applicant) to disclose confidential information ***during*** and after the term of his or her employment. Thus, I assume an employee could be disciplined or fired for disclosing any information the Respondent considers confidential or proprietary. Thus, section 2 clearly impacts a term and condition of employment. The parties' focus on whether Charles Spear or other persons were employ-

[6] The *Dubuque Packing* decision is limited to employer decisions to relocate work. However, it is useful to this case by analogy.

ees or merely applicants when they signed the NCCA is beside the point—given the consequences of violating the terms of section 2 ***during*** their employment with Minteq.[7]

Due to the ambiguity of Section 2, Section 13 could be reasonably read to inflict punishment on an employee for engaging in protected conduct. Thus, I conclude that Section 13 affects terms and conditions of employment. Therefore, I find Section 13 is also a mandatory subject of bargaining. The Union and employees are entitled to know just what sort of disclosures will subject employees to injunctive relief.

Sections 4 and 12 of the NCAA are not mandatory subjects of bargaining

The General Counsel appears to contend that all the provisions of the NCCA are mandatory subjects of bargaining. I conclude that Sections 4 (interference with relationships) and 12 (at-will employment) must be analyzed independently of Sections 2 and 13. The issue of whether Sections 4 and 12 are mandatory subjects of bargaining is closely related to whether they are overly broad, i.e., could be reasonably interpreted to chill employees' section 7 rights. As I discuss below, I find they cannot be so reasonably interpreted. Therefore, I find that they do not pertain to the wages, hours and other terms and conditions of employment of Minteq employees. As I result I find these sections are not mandatory subjects of bargaining. Moreover, as to section 12, the Union and Employer have bargained over its subject matter and have agreed that new employees are probationary employees to whom the grievance procedures of the collective bargaining agreement do not apply. Thus, even if Section 12 were a mandatory subject of bargaining, I conclude Respondent met its bargaining obligations.

With regard to section 4, the Board found in *Mental Health Services, Northwest,* 300 NLRB 926 (1990), that an employer violated the Act in insisting to impasse in bargaining on a permissive subject of bargaining. The proposal in question was a provision prohibiting the Union from lobbying for measures that would adversely affect the employer's funding from Hamilton County, Ohio. The provisions of Section 4 of the NCCA are analogous to that in *Mental Health Services, Northwest*. Unless section 4 "interference with relationships" is read to affect section 7 rights, which I do not, I find that it a permissive, rather than mandatory subject of bargaining.

The 10(b) issue

I conclude there is absolutely no merit to Respondent's 10(b) defense. Respondent began requiring new employees to sign the NCCA during the new employee orientation in 2012. Charles Spear signed the NCCA during his new employee orientation in March 2013. The initial charge in this matter was not filed until October 30, 2014, well beyond the 6-month period prescribed in Section 10(b). However, the six-month limitation period does not begin to run until the party adversely affected receives actual or constructive notice of the unfair labor practice, *Leach Corp.,* 312 NLRB 990 (1990). In this case, the Union did not receive actual or constructive notice until October 2014, when Charles Spear brought the NCCA to the Union's attention.

There is no evidence that any union official, including union stewards, were aware of the NCCA prior to October 2014. There was no reason for any union official to suspect the existence of the NCCA. The only employees who knew of its existence were the new employees who signed the NCCA. Even those employees are likely not to have read the document or have had any understanding of its significance.

Was Charles Spear an "employee" or "job applicant" when he signed the NCCA?

In *Star Tribune,* 295 NLRB 543 (1989), the Board held that applicants for employment are not employees with the meaning of the collective bargaining obligations of the Act.[8] Thus, the Board found that the applicants for employment in that case were not bargaining unit employees and thus the employer did not have to offer the Union an opportunity to bargain about pre-employment drug and alcohol testing. In *Postal Service,* 308 NLRB 1305 (1992), the Board held that the employer was not required to bargain with its union over its hiring practices.

Whether or not Charles Spear was a bargaining unit employee when he signed the NCCA is not dispositive of this case. Section 2 of the NCCA governed his conduct throughout his employment with Minteq.

Waiver

Respondent argues that the Union waived its bargaining rights by not requesting bargaining over the NCCA in the parties' November and December contract negotiations. I reject this contention in that Respondent had presented the Union with a fait accompli. It required a number of employees to sign the NCCA prior to commencement of these negotiations. An employer cannot implement a change and then claim that a union waived its right to bargain by failing to do so retroactively, *Intersystems Design Corp.,* 278 NLRB 759 (1986). "To be timely, the notice must be given sufficiently in advance of actual implementation of the change to allow a reasonable opportunity to bargain," *Ciba-Geigy Pharmaceuticals Division,* 254 NLRB 1013, 1017 (1982), *Pontiac Osteopathic Hospital,* 336 NLRB 1021, 1023–1023 (2001).

The Alleged Overbroad Rules in Sections 2, 4, 12, and 13 of the NCCA

The Board has held that an employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights, *Lafayette Park Hotel,* 326 NLRB 824, 825 (1998). A rule is unlawful if it explicitly restricts activities protected by Section 7. If this is not true, a violation is established by a showing that 1) employees would reasonably construe the language to prohibit Section 7 activity; 2) that the rule was promulgated in response to pro-

[7] Additionally, by prohibiting employees from working for a competitor under any condition in section 1.2, Respondent may have also markedly compromised the bargaining power of its employees while they worked for Minteq. However, since Section 1.2 was not fairly litigated before me, I do not reach the issue of whether Respondent violated the Act in unilaterally implementing it.

[8] However, job applicants are clearly "employees" within the meaning of Sec. 2(3) of the Act. It is a violation of the Act to discriminate against job applicants for engaging in protected activity,

tected activity or 3) that the rule has been applied to restrict the exercise of Section 7 rights, *Lutheran Heritage Village-Livonia,* 343 NLRB 646, 647 (2004).

Sections 2, 4, 12, and 13 of the NCCA do not explicitly restrict protected activity and were not applied to restrict protected activity. Since they were not promulgated in response to protected activity, these sections could only be considered violative if an employee could reasonably construe them to prohibit Section 7 activity. While it is possible that an employee could construe Sections 4 and 12 to inhibit protected activity, such a reading would not be reasonable.

Sections 2 and 13, however, are in an entirely different category. Section 2 is so ambiguous that an employee could reasonably read it to prohibit protected activity. The catchall phrase "any other information which is identified as confidential by company" could reasonably be read to include wages and benefits. Given the fact that Section 13 threatens the employee with punishment for anything Minteq decides is confidential, I find that Sections 2 and 13 restrain employees in the exercise of their Section 7 rights and violate Section 8(a)(1).

On the other hand, it would be quite an extrapolation from Section 4 to conclude that employees were prohibited, for example, from striking, because it would interfere with Minteq's relationship with suppliers or customers. Similarly, if any employee, or employees, seeks the aid of a customer or supplier in a labor dispute, they are not seeking to get that company to terminate or alter that company's relationship with Minteq. The employees would be seeking rather to enlist the support of the customer or supplier in altering the relationship between Minteq and the employees.

Section 12 merely advises the new hire that he or she is an at-will employee and that nothing in the NCCA affects that status. Under the collective bargaining agreement, an employee is an at-will employee for the first 6 months of his or her employment with Minteq. There is nothing in Section 12 that reasonably would lead an employee to conclude that he or she is waiving his or her Section 7 rights (assuming that he or she is aware that they have such rights). Even employees who are at-will employees throughout their employment retain their Section 7 rights.

Direct Dealing

An employer violates Section 8(a)(5) and (1) by dealing directly with represented employees under the following conditions: (1) the employer communicates directly with union-represented employees; (2) the communication concerned establishing wages, hours and/or other terms and conditions of employment, or undercutting the Union's role in collective bargaining; and 3) such communication was made to the exclusion of the Union, *El Paso Electric Co*., 355 NLRB 544 (2010). As the first condition, whether or not individuals were bargaining unit employees when they signed the NCCA is irrelevant. That is because the NCCA impacted their rights while they were covered by the parties' collective bargaining agreement. As to condition number 2, signing the NCCA subjected the individual to discipline or termination during his employment. As to condition (3) Respondent excluded the Union in its communications with employees concerning the NCCA. Finally, by imposing a condition of employment on bargaining unit members of which the Union was unaware, Respondent undercut the Union's role as these employees' collective-bargaining representative. Thus, Respondent engaged in unlawful direct dealing in requiring new employees to sign the NCCA.

CONCLUSION OF LAW

Respondent violated Section 8(a)(5) and (1) by unilaterally requiring new employees to sign Sections 2 and 13 of its non-compete confidentiality agreement and dealing directly with new employees in imposing this requirement.

Respondent is violating Section 8(a)(1) and the Act in maintaining the rules set forth in Sections 2 and 13 of the NCCA.

REMEDY

Having found that the Respondent has violated the Act by failing to notify and offer the Union an opportunity to bargain concerning the imposition of the requirement that all new employees sign and abide by Sections 2 and 13 of its non-compete and confidentiality agreement, it shall cease and desist and take certain affirmative action necessary to effect the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Minteq, International, Inc., and Specialty Minerals, wholly owned subsidiaries of Mineral Technologies, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally announcing and implementing Sections 2 and 13 of its Non-Compete and Confidentiality Agreement (NCCA).

(b) Bypassing the Union and dealing directly with employees in the "gunner" bargaining unit regarding the terms and conditions of their employment.

(c) Maintaining the rules set forth in Sections 2 and 13 of the NCCA.

(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 Sections 2 and 13 of its Non-Compete and Confidentiality Agreement.

(b) Upon request, bargain with the Union over Sections 2 and 13 of the Non-Compete and Confidentiality Agreement.

(c) Make whole all employees adversely affected by the unlawful implementation of Section 2 and 13 of the Non-Compete and Confidentiality Agreement

(d) 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

[9] 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.

or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at all its subject to the non-compete and confidentiality agreement copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2012.

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

Dated, Washington, D.C., December 23, 2015.

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.

WE WILL NOT bypass the Union and deal directly with represented employees regarding their wages or other terms and conditions of employment.

WE WILL NOT unilaterally and without bargaining with the Union impose and require as a condition of employment that employees or job applicants sign a Non-Compete and Confidentiality Agreement that contains language similar to Section 2 and 13 of our current Non-Compete and Confidentiality Agreement.

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

WE WILL rescind the unilateral changes in Sections 2 and 13 of our current Non-Compete and Confidentiality Agreement.

WE WILL, on request, bargain with the Union about our decision and effects of our decision to implement Sections 2 and 13 of current Non-Compete and Confidentiality Agreement.

MINTEQ INTERNTIONAL, INC., AND SPECIALTY MINERALS, INC., WHOLLY OWNED SUBSIDIARIES OF MINERAL TECHNOLOGIES, INC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/13-CA-108215 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.

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