

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

REGISTRY OF INTERPRETERS FOR THE DEAF, INC.

and

Case No. 20-CA-164088

PACIFIC MEDIA WORKERS GUILD, LOCAL 39521

Richard McPalmer, Esq., for the General Counsel.

Christopher Michalik, Esq. (McGuire Woods LLP), counsel for the Respondent.

Michael Melick, Esq. (Barr & Camens), counsel for Charging Party.

Decision

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge. On November 8, 2016, the parties submitted a joint motion to transfer proceedings to the Division of Judges together with a stipulation of facts and supporting exhibits. The joint motion waives a hearing before an administrative law judge and seeks findings of fact, conclusions of law, and an appropriate order based upon the stipulation of facts and briefs submitted by the parties. On November 10, 2016, Associate Chief Administrative Law Judge Gerald Etchingham issued an Order approving the joint motion and stipulation of facts, assigned the case to me and set a date for the filing of briefs in this matter. The parties stipulated that the issues presented for determination are as follows:

1. Whether the language of Respondent's civility and/or antitrust policies, specified in the August 31, 2016 complaint and notice of hearing (Joint Exh. C) and promulgated on its website and its video interpreter member section Facebook page (Joint Exhs. G, H), explicitly restrict its members¹ from participating in activities protected by Section 7 of the National Labor Relations Act. See, e.g., *Lutheran Heritage Village-Livonia*, 343 NLRB 646-647 (2004).
2. Whether Respondent's members would reasonably construe the language of Respondent's civility and/or antitrust policies, specified in the August 31, 2016 complaint and notice of hearing and promulgated on its website and its video interpreter member section Facebook page, to restrict or prohibit Section 7 activity.
3. Whether the Respondent's maintenance of its civility and/or antitrust policies, specified in the August 31, 2016 complaint and notice of hearing and promulgated on its website

¹ The accompanying stipulated factual record will demonstrate that, at any given time, some portion of Respondent's members are employees within the meaning of Sec. 2(3) of the National Labor Relations Act, employed by entities other than Respondent. The record will further show that some portion of those members who participated in the video interpreter member section Facebook page exchange at issue here were employees within the meaning of Sec. 2(3) of the National Labor Relations Act, employed by entities other than Respondent. So as not to suggest that Respondent's members are its own employees, the term "member" is used here.

and its video interpreter member section Facebook page, constitutes violations of Section 8(a)(1) of the National Labor Relations Act, as amended.

5 4. Whether the Respondent restricted its members' exercise of their Section 7 rights by
applying its civility and/or antitrust policies, specified in the August 31, 2016 complaint and
notice of hearing and promulgated on its website and its video interpreter member section
Facebook page, to remove member exchanges on its video interpreter member section
Facebook page, thus constituting a violation of Section 8(a)(1) of the Act.

10 5. Assuming a violation (or violations) of the Act are found as alleged, whether it is appropriate
to include a nationwide electronic notice posting as part of the remedy.

The parties also agreed to the following

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Joint Exhibits:

A. The Charge in Case 20-CA-164088;

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B. The Affidavit of Service of the Charge in Case 20-CA-164088;

C. The Complaint and Notice of Hearing in Case 20-CA-164088;

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D. The Affidavit of Service of Complaint and Notice of Hearing in Case 20-CA-164088;

E. Respondent's Answer to Complaint and Notice in Case 20-CA-164088;

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F. A discussion engaged in amongst members of Respondent and its Video
Interpreter Member Section ("VIMS") on Respondent's VIMS Facebook
page, dated October 21, 2015, through about October 27, 2015, including
Respondent's own post in reaction, dated October 27, 2015;

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G. Respondent's Antitrust Policy as it appeared via the link included in
Respondent's October 27, 2015, post to its VIMS Facebook page and as it
appears on Respondent's website today.

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H. Respondent's Civility Policy as it appeared on Respondent's primary
Facebook page as of October 27, 2015 and as it appears on Respondent's
primary Facebook page today.

I. Respondent's current organizational Mission Statement.

J. Respondent's current organizational chart.

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K. E-mail communications dated June 18, 2015 through July 29, 2015
between Respondent and Charging Party.

L. A letter dated August 3, 2015 from Respondent to the Charging Party.

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The Stipulation of Facts:

The parties agree that the following facts are true. The parties do not concede the

relevance of each fact recited, and this stipulation is made without prejudice to any objection that any party may have as to the relevance of any facts stated herein or related argument.

- 5 1. The charge in Case 20–CA–164088 was filed by the Charging Party on November 10, 2015, and a copy was served on Respondent by U.S. mail on November 13, 2015.
- 10 2. (a) Since at least October 15, 1974, Respondent has been a California corporation with its principle office located at 333 Commerce Street, Alexandria, Virginia (Respondent’s office), and has been engaged in the operation of a trade and professional association of interpreters for deaf individuals.

(b) During the 12-month period ending August 31, 2016, Respondent, in conducting its operations described above in subparagraph 2(a), collected and received dues and fees in excess of \$50,000 from entities and individuals located outside the Commonwealth of Virginia, and remitted said dues and fees to its principal office located in the Commonwealth of Virginia.
- 15 3. Since at least June 15, 1964, Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.
- 20 4. Since at least November 2012, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.
- 25 5. Respondent is a national professional association for interpreters of deaf individuals. Respondent plays a leading role in advocating for excellence in the delivery of interpretation and transliteration services between people who use sign language and people who use spoken language. Consistent with its Mission Statement (Jt. Exh. I) and in collaboration with the deaf community, Respondent certifies interpreters and advocates for best practices in interpreting, for professional development for interpreting professionals, and for the highest standards in the provision of interpreting services.
- 30 6. Currently, Respondent has a large, growing, and diverse membership of more than 16,000 professional interpreters, transliterators, interpreting students, and educators. Respondent’s membership also includes individuals who are deaf, deaf-blind, hard-of-hearing, and organizations that promote and support the mission and philosophy of Respondent. The number of Respondent’s individual members was similar as of October 2015.
- 35 7. Individual and organizational members pay annual dues to maintain membership with Respondent.
- 40 8. Respondent employs fewer than twenty individuals. (See Jt. Exh. J.) Respondent’s employees are not members of Respondent. Interim Executive Director Anna Witter-Merithew is a member of Respondent but is not, in her current capacity, an employee within the meaning of Section 2(3) of the National Labor Relations Act.
- 45 9. At any given time, some portion of Respondent’s individual members are employees (as defined by Section 2(3) of the National Labor Relations Act) of other entities, while others are freelance or independent interpreters or interpreting students who do not have an employment relationship with any entity. This is true currently and since at least October 2015.
- 50 10. Respondent’s individual members are not employees of Respondent and do not work on Respondent’s premises. Respondent does not provide any fringe employment benefits

to its individual members and does not provide compensation to its individual members for being members. Respondent occasionally contracts individual interpreter-members on a freelance basis to perform interpretation services at meetings of its committees and at its regional and national conferences. In these circumstances, the individual interpreter-members are not employees of Respondent within the meaning of Section 2(3) of the Act and are not on a long-term or continuous contracted status with Respondent.

11. At any given time, Respondent may have individual members who are employed by competitors in the interpreting market. For example, one member may be employed by Purple Communications, Inc., which is a private sector entity engaged in video relay interpreting services, while another member may simultaneously be employed by Sorenson Communications, Inc. (Sorenson VRS), which is also a private sector entity engaged in video relay interpreting services, while yet another member may be employed by CSDVRS, LLC d/b/a ZVRS, which is also a private sector entity engaged in video relay interpreting services.

12. Respondent maintains “member sections” organized by industry or interpretation focus. One example is Respondent’s Video Interpreter Member Section (“VIMS”). Respondent has sponsored and maintained VIMS since at least June 27, 2009. The VIMS currently totals 2437 individual members. The number of Respondent’s VIMS members was similar as of October 2015.

13. At any given time, some portion of Respondent’s VIMS individual members are employed in the video relay interpreting industry and meet the definition of employee as defined by Section 2(3) of the National Labor Relations Act. This is true currently and since at least October 2015.

14. Respondent also directs, maintains, and operates certain social media forums for its members, including Facebook pages. One example is Respondent’s VIMS Facebook page, which has been operated by Respondent and been available to Respondent’s members since late-2011.

15. Respondent’s VIMS Facebook page is closed inasmuch as Respondent members interested in gaining access must request permission from the page’s administrator(s). So long as an individual requesting access is a Respondent member, they are granted access to participate in the VIMS Facebook page. At any given time, some portion of Respondent’s individual members accessing the VIMS Facebook page are employed in the video relay interpreting industry and meet the definition of employee as defined by Section 2(3) of the National Labor Relations Act. This is true currently and since at least October 2015.

16. Respondent operates the VIMS Facebook page as a professional association for its members—not for its employees—in order to provide information for its members, to promote its mission to encourage the growth of the interpreting profession, and to allow for a forum for its members to share and discuss industry-related information.

17. Respondent has ultimate control of the VIMS Facebook page’s content.

18. Respondent maintains an antitrust policy (the “Antitrust Policy,” Jt. Exh. G) that is applicable to its members and their discussions or communications on any Respondent provided forums, events, programs, or activities, including Respondent-provided social media and including the VIMS Facebook page. Respondent has maintained the antitrust policy and posted it on its website since at least October 2015. Respondent also maintains a civility policy (the “Civility Policy,” Jt. Exh. H) that is applicable to its members and their discussions or communications on Respondent-operated Facebook pages, including the VIMS Facebook

page. Respondent has maintained the civility policy and has posted it on its primary Facebook page since at least October 2015.

5 19. The antitrust policy and the rationale for its adoption are prominently displayed on
Respondent's website. (See Jt. Exh. G.) This is true currently and since at least October
2015. As a professional association, certain federal and/or state antitrust laws apply to
Respondent. Accordingly, and in order to avoid potential civil or criminal action directed at it or
10 at certain of its employees and/or board members, Respondent is particularly careful to avoid
explicit or implicit understandings among its competitor-members that they will act in concert to
control prices, fees, or other economic terms. Whether and to what extent federal and/or state
antitrust laws may apply to the VIMS Facebook page exchanges captured by Joint Exhibit F,
and
15 whether such questions are even relevant to the alleged unfair labor practices at issue, are legal
questions left to the Parties' briefing.

20. The antitrust policy applies only to Respondent members and only to Respondent-provided
forums. The civility policy applies only to Respondent members and only to Respondent
provided and operated Facebook pages.

20 21. Respondent does not and cannot control the content of non-Respondent-provided forums.
As such, Respondent's antitrust policy and civility policy do not apply to member discussion
or communications on non-Respondent-provided forums, including members' personal social
media, forums proved by members' employers, and other public forums.

25 21[sic]. The antitrust policy and civility policy do not apply to Respondent's own employees.

22. Among other things, Respondent ensures that its Facebook page complies with its
antitrust policy and its civility policy.

30 23. The Charging Party has embarked on an effort to organize interpreters, some of whom may
be members of Respondent. The Charging Party's efforts have focused on the video relay
interpretation service industry. This is true currently and since at least late 2012.

35 24. The Charging Party has not engaged in efforts to organize Respondent's employees.

25. Respondent has publicized no official position on the unionization of its members, and
Respondent does not condition membership on its members' or prospective members' views on
unionization.

40 26. The Charging Party has previously sought to use Respondent forums as a means of
spreading its message to Respondent's members who may be employees of some other
employer.

45 27. Respondent holds a national conference every other year, which it organizes for its
members. Prior to Respondent's 2015 national conference in New Orleans, the Charging
Party sought to become an organizational member of Respondent and to serve as an exhibitor
at the conference. (See Jt. Exh. K.)

50 28. Respondent rejected the Charging Party's membership and exhibitor request, citing the
antitrust policy. (See Jt. Exhs. K, L.)

29. On October 21, 2015, a Respondent member named Julie Balassa posted a message on

the Respondent's VIMS Facebook page. The message generated responsive posts from numerous Respondent members. The exchanges went on for several days. (See Jt. Exh. F.)

5 30. In accordance with the antitrust policy and the civility policy, on October 27, 2015, Respondent removed the posts captured by Joint Exhibit F (page ranges 000001—000056) posted a reminder to its members of the rules for posting on Respondent's Facebook pages, and provided a link to the antitrust policy. (See Jt. Exh. F, p. 000057-000062.)

10 31. Purple Communications, Inc., is not and never has been a contractor of Respondent. Purple Communications, Inc., also was not a member of Respondent in fiscal year 2016 (July 1, 2015, through June 30, 2016). Sorenson Communications, Inc. (Sorenson VRS) is not and never has been a contractor of Respondent. Sorenson Communications, Inc. (Sorenson VRS) also was not a member of Respondent in fiscal year 2016 (July 1, 2015, through June 30, 2016).

15 CSDVRS, LLC d/b/a ZVRS is not and never has been a contractor of Respondent. CSDVRS, LLC d/b/a ZVRS also was not a member of Respondent in fiscal year 2016 (July 1, 2015, through June 30, 2016).

20 32. At the time of the VIMS Facebook posts captured by Joint Exhibit F, the following list of Respondent individual members who participated in the posts captured by Joint Exhibit F worked in either a full-time or flex capacity at the Purple Communications, Inc., facilities appearing across from their names and were employees as defined by Section 2(3) of the Act:

25 Judith Kroeger—Corona, California
 Martin Yost—San Diego, California
 Sarah Spencer—Denver, Colorado
 Paula DiMuro—Oakland, California
 Norma Villegas—San Diego, California (“Norma BrownSuspect Villegas”)
 30 Desere Phoenix-Patterson—Corona, California
 Renee Souleret—Long Beach, California
 Lindsey Antle—Denver, Colorado

35 33. The list of persons at stipulation no. 32, above, is not necessarily an exhaustive list of Section 2(3) employees appearing on Joint Exhibit F.

34. The Charging Party is a not a Respondent member and, as such, would not be entitled as an organization to utilize or post on Respondent's members-only social media sites.

40 35. All documents attached as Joint Exhibits are true and correct copies of the documents described. The parties agree to the authenticity of the Joint Exhibits.

45 36. The Parties additionally and jointly request that the Administrative Law Judge take judicial notice of the two NLRB Decisions appended here as Notice Exhibits A and B and of the four Certifications of Representative appended here as Notice Exhibits C through F.

The antitrust policy, as set forth above in paragraphs 18 and 19, and appearing in Exhibits G and H are set forth below: Exhibit G states, inter alia:

50 RID is committed to compliance with the antitrust laws of this country, which laws prohibit anticompetitive behavior, regulate unfair business practices, and encourage competition in the marketplace.

Neither RID, nor any of its affiliate chapters, member sections, councils, committees, or task forces shall be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, between or among competitors that may restrain competition or harm consumers. In connection with membership or participation in RID, there shall be no discussion, communication, or agreement between or among members who are actual or potential competitors regarding their prices, fees, wages, salaries, profit margins, contract terms, business strategy, business negotiations, or any limitations on the timing, cost, or volume of their services. This includes any RID-related listserv, online discussion groups, sponsored RID social media, RID publications, or other RID sanctioned event, program, or activity.

Frequently Asked Questions About Professional Associations and Antitrust Risks

Introduction: Most association activities are procompetitive or competitively neutral; but antitrust enforcers have always been concerned about the potential for harm arising from the activities of groups made up of competitors. This document was designed for RID members, committees, task forces, work groups, member sections and state affiliate chapters to help them better understand what they and their groups can do and discuss in fight of such antitrust concerns.

Antitrust law applies to all organizations, no matter how small or how localized, and the penalties for violating federal or state antitrust laws are severe. Professional association members, as well as professional associations themselves, need to avoid any activity that might lead to the appearance that the association members had agreed, even informally, to something that could have an effect on prices, fees, or competition. Many members may not be aware that discussions about fees, rates, and other economic terms can create such an appearance and raise concerns about possible violations of antitrust law. These concerns come to the forefront when members ask their committees, task forces, work groups member sections and state affiliate chapters to take action about fees/rates, bargaining positions regarding terms of employment / engagement, etc. This document is designed to answer some commonly asked questions.

Exhibit H, Respondent's Civility Policy, states, inter alia:

We welcome you to the RID Facebook page and encourage your participation. It is our hope that you will use this page to join in on discussions, network with other professionals in the field, receive helpful information about RID initiatives and news updates, share links to useful information about the interpreting profession and community, see deadline reminders, event details and more. We welcome your comments and expect that posts on the RID Facebook page will be polite and respectful and fall within our operating guidelines.

We review Facebook comments routinely and those that are off-topic or include solicitation will not be allowed. We also expect a basic level of civility in user posts; disagreements are fine, but mutual respect is a must, and profanity or abusive language are out-of-bounds. Users are responsible for the content of their comments. RID reserves the right to delete comments/ submissions that are inappropriate, including comments/submissions that contain:

vulgar language;
 comments that threaten or harm the reputation of any person or organization;
 advertisements or solicitations of any kind;
 5 comments that suggest or encourage illegal activity;
 posts that are in violation of RID’s antitrust and civility policies [Exhibit G above];
 multiple off-topic posts or repetitive posts;
 infringements on copyright or trademark laws.

10 The Stipulation also includes posts on the Respondent’s Facebook page. The most prominent and responded to was a October 21, 2015 post from Balassa, a former employee of Sorenson, an employer in the industry that was highly critical of that employer, including statements such as:

15 The pressure, the endless rules, the punitive measures taken when SOA was even a few seconds over the goal, when a break was even just one minute over the allowable time...the daily unethical, dishonest and even illegal trampling on the rights of
 20 interpreters, on best practices that we have worked tirelessly to establish, is simply astounding...In my center there were interpreters in tears just about every day...There were times when I wet my pants, was close to vomiting or passing out, was beyond emotionally spent by vicarious trauma.

25 There were numerous responses to this post from, at least, eight statutory employees, some from Respondent’s members who were employed by Sorenson and other employers, some supportive and some in disagreement with the posting. Further, a number of these responses were supportive of unionization as the best way to improve working conditions. The Respondent removed the October 21, 2015 Balassa post, as well as those that were responsive, on October 27, 2015. On October 27, the Respondent posted the following on its Facebook page:

30 This page is an official RID forum for the RID Video Interpreter Member Section, an official entity of the Registry of Interpreters for the Deaf, Inc. As such, the dialogue and conversations that take place on this official forum of the organization must follow all policies and procedures, including the Civility Policy and Antitrust Policy.

35 Recently, RID had to delete a post due to violation of both of these policies in some parts of the discussion and dialogue.

40 Portions violating antitrust and civility include the references to the union, referral to its website, photos of the union leaders, and specifically naming companies and their practices.

45 While these forums are available to discuss the VRS Industry in general, including your experiences, thoughts and insights, they cannot promote unionization or ways to restrict competition. For RID to remain In compliance, we cannot allow those types of discussions within our official forums.

Analysis

50 The Respondent is a trade and professional association of interpreters for the deaf. It advocates for excellence in this area and certifies interpreters for professional development in the profession. Of the approximately 16,000 members who pay annual dues to the Respondent, some are employees as defined by Section 2(3) of the Act of other employers in the industry (such as Purple Communications and Sorenson), while others are freelance or independent

5 interpreters or interpreting students who have no employment relationship with any employer in the industry. Respondent's individual members are not employees of the Respondent and while the Respondent employs approximately twenty individuals, they are not members of the Respondent.

10 The Respondent maintains "member sections" organized by industry. The relevant one herein is its video interpreter member section ("VIMS") for members employed in the video relay interpreting industry, and these members are employees within the meaning of Section 2(3) of the Act. Respondent maintains social media forums for its members, but not for its employees, including its VIMS Facebook page, which has been in operation since late 2011 and its members are granted access to participate in this Facebook page. The Respondent has also maintained an antitrust policy and civility policy since at least October 2015 and in order to avoid any potential civil or criminal action, it ". . . is particularly careful to avoid explicit or implicit understandings among its competitor-members that they will act in concert to control prices, fees or other economic terms." [Stipulation of Facts, No. 19] The Charging Party has attempted to organize interpreters in the video relay interpretation service industry, as shown by Notice Exhibits A and B attached to the stipulation. Some of the employees of these targeted employers may be members of the Respondent, but the Charging Party has not attempted to organize the Respondent's employees and the Respondent has not publicized an official position on the unionization of its members. Neither Purple Communications, Inc. nor Sorenson Communications, Inc. was a contractor for, or a member of, the Respondent between July 1, 2015, and June 30, 2016.

25 The Respondent's antitrust policy, after stating the reason for the policy, states: "there shall be no discussion, communication or agreement between or among members who are actual or potential competitors regarding their prices, fees, wages, salaries, profit margins, contract terms, business strategy, business negotiations, or any limitations on the timing, cost or volume of their services."

30 It requires little discussion to state that, in a normal employer-employee situation, a restriction on the discussion or communication of wages and salaries would violate Section 8(a)(1) of the Act. *Lafayette Park Hotel*, 326 NLRB 824, 828 (1998), *enfd.* 203 F.3d 52 (D.C. Cir. 1999) and *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), and numerous cases that followed. Because the antitrust policy explicitly prohibits activities protected by Section 7 of the Act, there is no need to determine if employees would reasonably construe it to prohibit this activity. There could be no better example of an unlawful restriction under Section 8(a)(1) of the Act than a prohibition against discussing wages and salaries. Employees could hardly miss the inference that it would curtail their right to engage in protected concerted activities by discussing wages and salaries with their fellow employees. In fact, when Respondent removed the posts on October 27, it informed its members that while the forums were available to discuss the industry, "they cannot promote unionization or ways to restrict competition." Counsel for the Respondent, in his brief, argues that the Section 7 right involved herein applies only when there is a direct employer-employee relationship, stating: "The Act does not envisage a universal right untethered to the employment relationship, and neither the courts nor the Board have issued such a decision." I disagree. While the restriction herein relates to the Respondent's members, not its employees, the Act and the case law are clear that even when this restriction does not apply to its employees, this limitation on nonemployee member's postings still violates the Act.

50 In *Fabric Services, Inc.*, 190 NLRB 540, 541 (1971), the employer instructed an individual who was employed by another employer, but was performing work on its premises, to remove his union pocket protector as a condition of performing work at his plant. The

respondent defended that the complaint should be dismissed because it was not the employee's employer. Trial Examiner Arthur Leff stated, inter alia:

5 I reject that defense as without merit. I find no basis, either in the declared policy of the Act or in any delineating provision of it for construing Section 8(a)(1) as safeguarding employees in the exercise of Section 7 rights only from infringement at the hands of their own employer. To the contrary, the specific language of the Act clearly manifests a legislative purpose to extend statutory protection of Section 8(a)(1) beyond the
10 immediate employer-employee relationship. Thus, Section 8(a)(1) makes it "an unfair labor practice for *an* employer to interfere with, restrain or coerce employees in the exercise of rights guaranteed in Section 7." And Section 2(3) declares, "The term employee shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise." Moreover, Section 2(9), which defines "labor dispute" as including "any controversy...regardless of whether the disputants stand in the proximate relationship of employer and employee" further
15 discloses a statutory aim to give the Act's various prohibitions a broad rather than narrow meaning, except, of course, where the prohibition is limited in its internal context or is specifically restricted by other express language of the Act.

20 Further, in *Lucky Stores, Inc.*, 243 NLRB 642, 643 (1979), the Board stated: "In implanting the statutory protections provided for employees who exercise their rights guaranteed in Section 7 of the Act, this Board has consistently held that an employer may violate Section 8(a) of the Act not only with respect to actions taken affecting its own employees, but also by actions affecting employees who do not stand in such an immediate employer-employee relationship." See also
25 *Jimmy Kilgore Trucking Co.*, 254 NLRB 935 (1981), and *International Shipping Association, Inc.*, 297 NLRB 1059 (1990). More recently, in *New York, New York LLC*, 356 NLRB 907 (2011), the respondent (NYNY), a hotel operator, prohibited the employees of the food service contractor at the hotel (Ark) from handbilling on its property. In finding a violation, the Board stated:

30 As a preliminary point, it is clear that the undisputed lack of an employment relationship between the Ark employees and NYNY is not dispositive here. The Act clearly regulates the relationship between an employer (such as NYNY) and employees of other employees (such as the employees of Ark). The Act contains not only a broad definition of the term "employee," but one whose breadth is aimed directly at the question at issue.
35 The Act provides that "the term 'employee' shall include any employee and *shall not be limited to the employees of a particular employer*, unless the Act explicitly states otherwise." Section 2(3), 29 U.S.C. Sec. 152(3) [Emphasis supplied]. The precise terms of the Act's prohibitions also make clear that an employer's action toward the employees of other employers can constitute an unfair labor practice. The prohibition at issue in this
40 case, contained in Section 8(a)(1), provides that it is an unfair labor practice for an employer "to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7." The prohibition is not limited to interference with the rights of *his* employees.

45 It is important to note that the Facebook posts responding to Ms. Balassa's post referred to the desire to improve the members' terms of employment, rather than on setting standard prices for their services. Therefore, by removing Ms. Balassa's post on October 27, the Respondent violated Section 8(a)(1) of the Act.

50 The Respondent defends these restrictions on the basis of its fear that unchecked Facebook postings could place it in jeopardy of antitrust laws. I find that while this could be a valid defense in some circumstances, this is not one of those circumstances. The Respondent's

members who participated in the Facebook postings were employees within the meaning of the Act and their postings were meant to publicize and improve their working conditions at other employers in the industry rather than to regulate the prices charged and therefore could not violate antitrust laws. Neither Purple Communications nor Sorenson were members of the Respondent with access to the Facebook postings. If they were, and the Respondent's Antitrust Policy restricted discussions of their pricing and charges, those rules would be proper to protect against antitrust violations, but that is not the issue herein. While the Respondent was not legally obligated to maintain Facebook pages for the use of its members, by maintaining these Facebook pages and unlawfully restricting the content of the posts and removing the post that it deemed to violate its antitrust rules, it violated Section 8(a)(1) of the Act.

Conclusions of Law

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

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

3. Respondent's civility and/or antitrust policies that is specified and maintained on its website and its video interpreter member section Facebook page unlawfully restricts its members in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act.

4. By removing the posting of member Julie Balassa as well as other member posts on its Facebook page, on about October 27, 2015, the Respondent further violated Section 8(a)(1) of the Act.

5. Because Respondent's civility and/or antitrust policies found to be unlawful apply to all of its employees, I recommend that the Respondent post the Notice required herein at all of its facilities, nationwide.

Remedy

Having found that its civility and/or antitrust policy unlawfully restricts its employees in the exercise of their Section 7 rights, I recommend that the Respondent be ordered to rescind these rules and to notify its members nationwide that these rules have been rescinded and will no longer be enforced, and that they are free to post messages on the Facebook page about their terms and conditions of employment without fear that these postings will be removed.

Upon the joint motion and stipulations of facts and the entire record, I hereby issue the following recommended²

ORDER

The Respondent, Registry of Interpreters for the Deaf, Inc., its officers, agents, successors and assigns, shall

² 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.

1. Cease and desist from

5 (a) Maintaining or enforcing its civility and/or antitrust policy contained on its website and its video interpreter member section Facebook page.

(b) Removing messages from its Facebook page because they violate the civility and antitrust policy promulgated and maintained by the Respondent.

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

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

15 (a) Notify all of its members, nationwide, that the civility and/or antitrust policy has been rescinded, and will no longer be enforced, and that they are free to post messages on the Facebook page without fear that these messages will be removed.

20 (b) Within 14 days after service by the Region, post at all of its offices, nationwide, and on its Facebook page, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the
25 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 October 2015.

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

35 **Dated, Washington, D.C. December 29, 2016**



Joel P. Biblowitz
Administrative Law Judge

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50 ³ 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."

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APPENDIX

NOTICE TO MEMBERS

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT maintain or enforce the civility and/or antitrust policy restricting postings on our video interpreter member section Facebook page and **WE WILL NOT** remove postings that we consider have violated that policy.

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 notify all of our members nationwide that our civility and/or antitrust policy has been rescinded and will no longer be enforced and that they may post message on our video interpreter member section Facebook page about their terms and conditions of employment without fear that the posting will be removed.

REGISTRY OF INTERPRETERS FOR THE DEAF, INC.
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

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

901 Market Street, Suite 400
San Francisco, California 94103-1735
Hours: 8:30 a.m. to 5 p.m.
415-356-5130.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/20-CA-164088 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 415-356-5139.