UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

BURGERVILLE LLC

and

Case 19–CA–182182
19–CA–182184

INDUSTRIAL WORKERS OF THE WORLD

Angelie Chong, Esq., for the General Counsel.
J. Kent Pearson, Jr., Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

AMITA BAMAN TRACY, Administrative Law Judge. This case was tried in Portland, Oregon, on March 7, 2017. The Industrial Workers of the World (Charging Party) filed charge 19–CA–182182 on August 15, 2016,[1] and an amended charge on October 31, and charge 19–CA–182184 on August 15, and an amended charge on October 31 against Burgerville LLC (Respondent). The General Counsel issued the complaint on November 25, and amended complaint on February 15, 2017. Respondent filed a timely answer, and an amended answer.

The complaint alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) (1) when on or about July 13, Vancouver Plaza Assistant Manager Phil Mild (Mild), outside of the Vancouver Plaza store, told employees that they could not be on Respondent's property; and (2) by maintaining a rule for at least the past 6 months prohibiting its employees from loitering and/or hanging out on its premises when they are not on duty.

For the reasons that follow, I find that Respondent violated Section 8(a)(1) of the Act as alleged.

[1] All dates are in 2016 unless otherwise indicated.

On the entire record,[2] including my observation of the demeanor of the witnesses,[3] and after considering the briefs filed by the General Counsel and Respondent,[4] I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware corporation, engages in the business of operating fast food restaurants in the Vancouver, Washington and Portland, Oregon metropolitan areas. During the 12 months prior to the issuance of the complaint, Respondent derived gross revenues in excess of $500,000, and purchased and received in the State of Washington goods valued in excess of $50,000 directly from points outside of the State of Washington. 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.

II. ALLEGED UNFAIR LABOR PRACTICES AND ANALYSIS

A. Background

Respondent operates approximately 44 fast food restaurants in Washington and Oregon, including the Vancouver Plaza store. Respondent employs a total of 1550 crew members who work varying shifts. Crew members report to a store's general manager, assistant managers and team managers (Tr. 14).

Respondent admits that the following individuals are supervisors within the meaning of Section 2(11) and/or agents within the meaning of Section 2(13) of the Act: Jeff Harvey (Harvey), chief executive officer (CEO); Roman Kalachik (Kalachik), general manager—Vancouver Plaza; Mild, assistant manager—Vancouver Plaza; and George "Skip" Ankeny (Ankeny), general manager —25th and Powell.

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[2] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations but rather on my review and consideration of the entire record for this case.

[3] I further note that my findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom. A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB at 622. Aside from a few inconsistencies in details, the General Counsel's and Respondent's witnesses testified consistently and there are no major credibility disputes in this matter. But where there is testimony in contradiction to my factual findings, I have discredited such testimony.

[4] Other abbreviations used in this decision are as follows: "GC Exh." for General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "Jt. Exh." for Joint Exhibit; "GC Br." for the General Counsel's brief; and "R. Br." for the Respondent's brief.

B. The July 13 Prohibition Against Handbilling Outside Respondent's Vancouver Plaza Store

In 2016, crew members Jordan Vaandering (Vaandering) and Elise Fishel (Fishel) worked at Respondent's Vancouver Plaza store. Crew member Claire Flanagan (Flanagan) worked at the 25th and Powell store (Tr. 53).[5] Vaandering, Fishel, and Flanagan along with other unnamed employees began organizing in late 2015 to early 2016 (Tr. 38, 54–55). These employees notified Respondent's management on April 26 that they had formed a union known as the Burgerville Workers Union (Tr. 38). As part of the union campaign, the employees delivered letters to Respondent, picketed, and passed out leaflets or handbills at the stores (Tr. 38).

The first leafleting or handbilling began on Wednesday, July 13, outside the Vancouver Plaza store (Tr. 14, 38). Vaandering and Fishel, neither of whom was working at Respondent that day, along with a nonemployee volunteer for the campaign, Elizabeth Schallart (Schallart), gathered outside Respondent's Vancouver Plaza store at 6 p.m., to pass out quarter sheet leaflets promoting the Burgerville Workers Union, advocating for a wage raise for the employees, and commenting on Respondent's refusal to bargain (GC Exh. 2[6]; Tr. 15–16, 24–25, 38).[7] The text of the handbill states:

> BURGERVILLE WORKERS UNION
>
> BURGERVILLE WORKERS NEED A RAISE
>
> STAND WITH THE BURGERVILLE WORKERS UNION
>
> To end poverty wages and win respect, workers at Burgerville have formed a union and are asking to negotiate with management to improve their jobs and their lives. Burgerville management opposes the union and has been misrepresenting the union to workers in order to dissuade them from joining.
>
> Customers can help workers struggle for justice!
> Tell Burgerville to negotiate with the union, give workers a raise and the respect they deserve!

(GC Exh. 2).

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[5] Vaandering no longer works for Respondent (Tr. 12), while Fishel and Flanagan remain employed (Tr. 37).

[6] The handbill that Vaandering and Fishel distributed on July 13 was on a quarter sheet but GC Exh. 2 represents a full page version of the handbill (Tr. 25, 40).

[7] Vaandering testified that he drove to the store that day, and gave Fishel a ride to the store as well (Tr. 24). Fishel testified that she rode the bus that day (Tr. 47). I do not credit Vaandering's testimony as Fishel is a current employee of Respondent, and is testifying against her pecuniary interest which makes her testimony particularly reliable. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304, 1305 fn. 2 (1961). However, Vaandering's inconsistent statement does not affect the authenticity of the remainder of his testimony.

Vaandering and Fishel testified that they stood separately at the two pillars or columns holding up the overhang at the main entrance of the store; the main entrance of the store included a set of double doors (Tr. 15, 26). Approximately 7 to 10 feet separated Vaandering and Fishel (Tr. 15, 39). From that location, they handed out these leaflets to customers (Tr. 16). As customers approached the main entrance, Vaandering and Fishel would ask customers if they had heard of the Union and handed them the leaflet if they were interested (Tr. 16–17, 39). Fishel testified that they would inform some customers how the Union could be contacted and how to keep up with the Union on Facebook (Tr. 40). Customers would need to walk through the double doors, which were located between Vaandering and Fishel, to go into the fast food restaurant (Tr. 26–27, 88-89). Schallart handed out leaflets in Respondent's parking lot 10 to 20 feet in front of the store and along the sidewalk in front of the store (Tr. 15–16, 27–28, 39).

Fifteen to 20 minutes after they began passing out leaflets, Mild came from inside the restaurant to outside the double doors to talk with Vaandering and Fishel about leafleting (Tr. 18, 25, 41, 90).[8] Mild, who Vaandering testified appeared frustrated and annoyed, stood in front of the entrance double doors (Tr. 18, 29, 41). Mild asked them what they were doing (Tr. 18). Vaandering responded that they were leafleting, informing customers about the Union (Tr. 18). Mild told them that union activity needed be done off the property and they would need to move to the public sidewalk which is off Respondent's property next to the road and next to the drive-through lane (Tr. 18, 29–31, 41, 48, 90).[9] Vaandering told Mild that Fishel and he would remain outside the store leafleting because they had a right to be on the property (Tr. 19, 30, 41, 90–91). Mild repeated they needed to move off the property and that he was going to call Kalachik (Tr. 19, 42).[10] Vaandering repeated that they would remain outside the front entrance (Tr. 19). Thereafter, Mild went inside the Vancouver Plaza store (Tr. 19, 32, 42).[11] Mild did not come back outside (Tr. 19). During their conversation Mild did not raise his voice (Tr. 29, 47). Fishel testified that Mild did not refer to any particular employer policy during the conversation (Tr. 48). This conversation lasted approximately 5 minutes (Tr. 18, 31, 41).

Vaandering, Fishel and Schallart remained outside the store, leafleting for 2 hours until approximately 8 p.m. (Tr. 19, 25, 50).[12] Mild did not come back outside to speak to Vaandering or Fishel, or to follow up on his alleged conversation with Respondent's Vancouver Plaza general manager.[13] Vaandering and Fishel, corroborated by Mild, denied being confrontational during the exchange with Mild or during their handbilling, and denied blocking customers' ingress or egress. (Tr. 19, 43, 98).

[8] Vaandering testified that Schallart remained in the parking lot distributing leaflets (Tr. 18).

[9] Fishel testified that Mild stated, "You have to leave" (Tr. 51).

[10] Mild responded that he needed to check on Vaandering's statement (Tr. 91).

[11] In contrast to the testimony of Vaandering and Fishel, Mild testified that there were four individuals leafleting on July 13 (Tr. 89). One of these individuals, who he did not identify, wore a Respondent issued uniform (Tr. 89). I do not credit Mild's testimony as the credible testimony of Vaandering and Fishel consistently shows that only two employees participated in handbilling along with one nonemployee.

[12] Some customers took the leaflets and some did not (Tr. 89). One customer complained to Mild about the leafleting (Tr. 89).

[13] Fishel testified that 2 months later she engaged in more leafleting at the Vancouver Plaza store, and no one from management attempted to stop her (Tr. 49).

The 8(a)(1) Allegation Dealing with Handbilling

The complaint alleges that Respondent violated Section 8(a)(1) of the Act on July 13 when Mild told off-duty employees who were distributing handbills to customers, that they could not be on Respondent's property performing these actions. Respondent denied that it interfered with employees in the exercise of Section 7 rights as Mild only told the employees to remove themselves from Respondent's property based on his knowledge of the law at the time (R. Br. at 10–11).[14] Respondent further argues that even if a violation of the Act occurred, as the incident was "isolated and *de minimis*," and I should therefore decline to issue a Section 10(c) remedial order (R. Br at 11–-13).

Section 7 of the Act protects employees' rights to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection which includes the right to handbill. See *NLRB v. Servette*, 377 U.S. 46, 49–50 (1964); *Glendale Associates, Ltd.*, 335 NLRB 27 (2001), citing *Oakland Mall*, 316 NLRB 1160, 1163 fn. 14 (1995), enfd. 74 F.3d 292 (D.C. Cir. 1996). Included within those rights are the rights of off-duty employees to handbill on their employer's property in nonwork areas. In *Town & Country Supermarkets*, 340 NLRB 1410, 1414 (2004) (citing *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945) and *Hudgens v. NLRB*, 424 U.S. 507, 521 fn. 10 (1976)), the Board stated that unlike nonemployee union representative, employees "are not strangers to the employer's property, but are already rightfully on the employer's property pursuant to their employment relationship, thus implicating the employer's management interests rather than its property interests." Therefore, the Board found that off-duty employees could engage in protected activity in nonwork areas of their employer's property and the employer violated Section 8(a)(1) by prohibiting these employee's handbilling near the exit and entrance of its retail grocery store.

Applying the above principles here, I find that Respondent violated the Act when Mild told Vaandering and Fishel, who were off duty, that they could not handbill at the Vancouver Plaza front entrance and needed to leave and move to the public sidewalks. It is undisputed that this was the first time the employees passed out handbills promoting their Union and their position on wages. The record evidence establishes that Vaandering and Fishel passed out handbills peacefully without deterring customers from entering or exiting the Vancouver Plaza. Mild came out from the restaurant's interior to ask them what they were doing, and told them in response they could not pass out handbills from Respondent's property and needed to leave. Vaandering disagreed with Mild's instructions. Even after Vaandering refused Mild's instructions based upon his proper belief they had a right to be on Respondent's property, Mild reiterated that they could not handbill on Respondent's property. Mild left the two men with the impression that, should they continue their conduct, he would call general manager Kalachik. Thus, they continued to handbill with the possibility that they could face consequences, such as discipline, for not following Mild's instructions. Considering the entire factual scenario, I do not find Mild's actions to be a brief, isolated incident as Respondent claims (R. Br. at 7–8). Ultimately, they were not disciplined but simply because Respondent did not discipline the employees do not negate Mild's unlawful actions.

[14] Respondent does not argue that it had a legitimate business reason for denying access to its property for off-duty employees to handbill.

Respondent argues that its actions were "marginal infringements" of the Act which had "no meaningful impact on employees' exercise of their Section 7 rights (R. Br. at 10-11). Thus, Respondent argues that I should decline to issue a 10(c) remedial order. The Board has recognized that under certain circumstances it does not effectuate the policies of the Act to find a violation of the Act has occurred and issue a remedial order. *American Federation of Musicians, Local 76 (Jimmy Wakely Show)*, 202 NLRB 620 (1973); *Bellinger Shipyards, Inc.* 227 NLRB 620 (1976); *Wichita Eagle & Beacon Publishing Co.*, 206 NLRB 55 (1973); *Square D Co.*, 204 NLRB 154 (1973). In each of these instances, the employer substantially remedied or effectively contradicted the unlawful conduct to ameliorate the violation. Again, in this matter, Mild never returned to Vaandering and Fishel to correct his prior unlawful statement. In fact, thereafter, Respondent reissued its no loitering/no hanging out rule, which I find unlawful as discussed below and which certainly does not appear to remedy Respondent's violation of the Act but instead continues to seemingly support Mild's statement that the off-duty employees needed to leave Respondent's property to handbill. Moreover, only a few months prior, the employees who formed the Burgerville Workers Union notified Respondent that they had organized. The July 13 handbilling event was the first time they attempted to publicize their labor organization to Respondent's customers. Under these circumstances, I find that Respondent violated Section 8(a)(1) of the Act, and the violation does not fall within the de minimis standard and a remedial order is necessary.

C. Respondent's Alleged Unlawful Rule

Respondent admits paragraph 5 of the complaint which alleges that within the 6-month period of filing the charges in this matter and continuing at least to the date of the hearing, Respondent has maintained a rule prohibiting its employees from loitering and/or hanging out on its premises when they are not on duty.

The rules in question are:

(1) A portion of Respondent's attendance policy, contained in its orientation manual dated March 2012, which states, "At no time are you to loiter around the premises when you are off duty" (Jt. Exh. 1).

(2) A portion of Respondent's time and attendance policy, contained in the 2016 orientation manual according to Mild, which states, "At no time are you to hang around the premises when you are off duty" (Jt. Exh. 2).

With regard to the first rule noted above, it was issued at Respondent's stores at different times beginning in July 2016 (Tr. 95, 97). The day after leafleting the Vancouver Plaza store on July 13, Vaandering received a text message with a photo of this attendance policy from Flanagan (Tr. 21; Jt. Exh. 1). Flanagan asked Vaandering if the attendance policy was a labor law violation as she had not seen the policy previously (Tr. 21, 82). Vaandering testified that his behavior of remaining on Respondent's property after completing his shift did not change after this rule was brought to his attention by Flanagan (Tr. 35). Also, on approximately August 9, union members staged a rally at Respondent's Portland Convention Center store (Tr. 59–60). Two days later, Respondent's 25th and Powell manager called Flanagan into a meeting with a couple of her coworkers (Tr. 61). During this meeting, employees viewed a video from

Respondent's CEO Harvey opposing the Union (Tr. 62). The manager also asked employees to sign the attendance policy (Jt. Exh. 1), as well as its sick leave policy (Tr. 63)). The manager told the employees that the policies he distributed were not new (Tr. 64–65).

Vaandering, Fishel, and Flanagan also testified consistently that before and after July 13 employees frequently stayed on Respondent's premises after their shifts ended, eating meals, waiting for transportation, or waiting for coworkers (Tr. 20, 34–35, 43–44, 67). Respondent's managers knew that employees remained at the store because they would serve the employees food and would observe them waiting in the dining area for rides (Tr. 20, 44, 68). Prior to July 13, Respondent never told Vaandering he could not remain on its property after his shift ended (Tr. 20).

Mild testified that the no loitering/no hanging out rules, listed above, have been in effect since at least 2001 when he began employment with Respondent (Tr. 94). He also testified that Respondent has not vigorously enforced its no loitering/no hanging out rules, because it was aware that employees needed to catch public transportation (Tr. 95–96).

The 8(a)(1) Allegation Regarding No Loitering

Respondent admitted that within the 6-month period of filing the charges in this matter and continuing at least to the date of the hearing, Respondent has maintained a rule prohibiting its employees from loitering and/or hanging out on its premises when they are not on duty. However, Respondent disagrees with the General Counsel's allegation that the rule violates Section 8(a)(1) of the Act. At the hearing, the General Counsel presented two policies or rules which essentially prohibit the employees from loitering or hanging around Respondent's property after their shift is completed. This prohibition is encompassed in two policies: The 2016 orientation manual, time and attendance section, states, "At no time are you to hang around the premises when you are off duty"; and the 2012 orientation manual, attendance section, states, "At no time are you to loiter around the premises when you are off duty."

Section 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 [of the Act]." Section 7 provides that "employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities." Specifically, Section 7 protects employees' right to discuss, debate, and communicate with each other regarding workplace terms and conditions of employment.

Board law establishes 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. *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646 (2004), citing *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999); *Valley Health System LLC d/b/a Spring Valley Hospital Medical Center*, 363 NLRB No. 178 (2016); *T-Mobile USA, Inc.*, 363 NLRB No. 171 (2016). Mere maintenance of a rule which inhibits Section 7 activity is an unfair labor practice. *Lutheran Heritage Village*, supra at 646. The analytical framework for determining whether maintenance of rules violate the Act is set forth in *Lutheran Heritage*

Village-Livonia. Under that test, a work rule is unlawful if "the rule *explicitly* restricts activities protected by Section 7." 343 NLRB 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.

An employer's rule denying access to off-duty employees to all areas of its premises violates the Act unless there are legitimate business concerns to justify the rule or policy. The Board has found similar no loitering rules unlawful in several decisions. *Tecumseh Packaging Solutions, Inc.*, 352 NLRB 694 (2008); *Palms Hotel & Casino*, 344 NLRB 1363, 1363, 1391 (2005); *Lutheran Heritage Village*, 343 NLRB 646, 649 fn. 16, 655 (2004); *Ark Las Vegas Restaurant Corp.*, 343 NLRB 1281 (2004); and *Tri-County Medical Center*, 222 NLRB 1089 (1976). For example, in *Lutheran Heritage Village*, the Board found a rule prohibiting loitering on company property without permission to be illegal as the rule chilled employees in the exercise of their Section 7 rights such as speaking with coworkers after a shift about organizing or any other workplace concerns. Any ambiguity in a workplace rule "must be construed against the [employer] as the promulgator of the rules." *Ark Las Vegas Restaurant*, 343 NLRB 1281, 1282 (2004).

Here, I find that Respondent's rule prohibiting employees from hanging around or loitering at its premises when off duty is overbroad and ambiguous. These rules were maintained in Respondent's orientation manuals which appear to have been in effect within 6 months of the unfair labor practice charges.[15] Rules are examined to determine whether an employee could reasonably construe the language to prohibit Section 7 activity. *Lily Transportation Corp.*, 362 NLRB No. 54, slip op. at 3 (2015). The rules do not explicitly prohibit Section 7 activity, but the terms "loiter" and "hang around" are undefined and can reasonably be interpreted to prohibit employees from engaging in protected activity, such as handbilling, in non-work areas of Respondent's property. Read within the context of the entire policies, there is no explanation to employees as to why they cannot loiter or hang around the premises when they are off duty. See *Palms Hotel & Casino*, supra at 1363 fn. 3. Furthermore, the rule contains no qualifiers or exceptions for when employees engage in Section 7 activity. By prohibiting all loitering or hanging around Respondent's premises, employees may reasonably construe the rule to prohibit lawful protected activity including handbilling.

Respondent argues that the rule prohibiting hanging around or loitering off duty at Respondent's premises was "rarely, if ever" enforced (R. Br. at 7). However, facial challenges to rules do not depend on evidence of enforcement. *Schwan's Home Service*, 364 NLRB No. 20, slip op. at 1 fn. 4 (2016). It is also of no consequence that employees continue to "violate" the rule by remaining on Respondent's premises when off duty and that further handbilling occurred where employees were not disciplined. Employees essentially continue this behavior at their peril as Respondent could at any time enforce its rule. Respondent failed to establish that it

[15] The General Counsel does not allege that the 2016 orientation manual, time and attendance policy, was promulgated in response to the July 13 handbilling event. However, Respondent passed out this policy 1 day after the July 13 handbilling event which raises a reasonable suspicion that Respondent sought to apply this rule to restrict the exercise of Sec. 7 rights.

communicated to employees that they could exercise their Section 7 rights despite the rule against loitering or hanging around Respondent's premises when off duty. Furthermore, there is no evidence that Respondent has maintained its no loitering rule for any legitimate business reason.[16]

Consequently, I find that Respondent's prohibition against loitering or hanging around the premises when employees are off duty is overbroad and in violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent violated Section 8(a)(1) of the Act by telling off-duty employees they cannot handbill in the exterior of the employer's property.

3. Respondent violated Section 8(a)(1) of the Act by maintaining an overly broad rule that prohibits off-duty employees from loitering or hanging around the employer's property.

4. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist there from and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and the entire record, I issue the following recommended[17]

ORDER

Respondent, Burgerville LLC, Washington and Oregon, its officers, agents, successors, and assigns, shall

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[16] In *Tri-County Medical Center*, 222 NLRB 1089, 1089 (1976), the Board held that an employer's rule barring off-duty access to its facility is valid only if: (1) limits access solely with respect to the interior to the plant and other working areas; (2) is clearly disseminated to all employees; and (3) applies to off-duty employees seeking access to the plant for any purpose and not just to those employees engaging in union activity. Again, Respondent failed to argue such a defense but even if it had, this rule would be overly broad as it does not limit access to Respondent's interior work areas and includes nonwork areas such as the front of the store. Moreover, when an employer has a business justification for denying access to nonworking areas, such a restriction cannot be based on Sec. 7 activity. *Santa Fe Hotel, Inc.*, 331 NLRB 723, 723 (2000); *Automotive Plastic Technologies*, 312 NLRB 462, 463 (1993).

[17] 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

(a) Telling off-duty employees that they cannot engage in union or other protected activities such as handbilling in the exterior area of Respondent's property;

(b) Maintaining an overly broad rule which prohibits off-duty employees from loitering or hanging around the employer's property;

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

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

(a) Rescind and/or revise the employer's no loitering/no hanging around policies which are found in the 2012 and 2016 orientation manual in the "Attendance" and "Employment Policies and Procedures."

(b) Within 14 days after service by the Region, post at all Respondent's fast food restaurants, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by Respondent's authorized representative, shall be posted by 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 Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by 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, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since February 15, 2016.

(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 Respondent has taken to comply.

Dated, Washington, D.C., May 4, 2017.

Amita Baman Tracy
Administrative Law Judge

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

APPENDIX

NOTICE TO EMPLOYEES

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 prohibit off-duty employees from engaging in union or other protected activities such as handbilling in all exterior areas of Respondent's property.

WE WILL NOT maintain an overly broad rule which prohibits off-duty employees from loitering or hanging around the employer's property

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 and/or revise the employer's no loitering/no hanging around policies which are found in the 2012 and 2016 orientation manual in the "Attendance" and "Employment Policies and Procedures."

BURGERVILLE LLC
(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.NLRB.GOV.

915 2ND AVENUE, ROOM 2948, SEATTLE, WA 98174-1078
(206) 220-6300, HOURS: 8:15 A.M. TO 4:45 P.M.

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, (206) 220-6284.