

Dated: June 27, 2018

Respectfully submitted,

/s/ Carrie B. Hoffman

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ATTORNEYS FOR PETITIONER

Denton County Electric Cooperative, Inc.

d/b/a CoServ Electric

CERTIFICATE OF SERVICE

I do hereby certify that on June 27, 2018, a true and correct copy of the foregoing Petition for Review was served upon the following parties via first-class U.S. mail and email:

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EXHIBIT A

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Denton County Electric Cooperative, Inc. d/b/a Co-Serv Electric and International Brotherhood of Electrical Workers Local 220, affiliated with International Brotherhood of Electrical Workers.
Case 16-CA-149330

June 12, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS PEARCE
AND MCFERRAN

On June 28, 2016, Administrative Law Judge Robert A. Ringler issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.¹ Additionally, the General Counsel filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

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 exceptions² and briefs and has decided to affirm the judge's rulings, findings,³ and conclusions and

¹ The Respondent filed a motion to strike portions of the General Counsel's answering brief, the General Counsel filed an opposition, and the Respondent filed a reply. We deny the Respondent's motion. Although a party is "procedurally foreclosed" from asserting cross-exceptions in its answering brief, *White Electrical Construction Co.*, 345 NLRB 1095, 1096 (2005), the General Counsel's answering brief's references to record evidence as background information do not constitute cross-exceptions and thus do not warrant striking the brief.

² There are no exceptions to the judge's dismissal of the complaint allegations that the Respondent violated Sec. 8(a)(5) by failing to reduce to writing and honor an alleged collective-bargaining agreement and by failing to promote employee Derek Wolzen.

The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

³ The General Counsel and the Respondent have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In his decision, the judge inadvertently stated that the parties bargained for an initial contract over the course of approximately 15 sessions. The correct number is 25 sessions. He also inadvertently stated that Clint Hart, an FMCS mediator, assisted at the last few negotiating sessions. Hart assisted at the first and last sessions. These errors do not affect our disposition of the case.

The judge found that a notice-reading remedy is warranted to counteract the coercive impact of the Respondent's substantial and perva-

to adopt the recommended Order as modified and set forth in full below.⁴

1. Consideration of the Respondent's previously settled conduct

We adopt the judge's factual findings that the Respondent violated Section 8(a)(5) by changing its past practice of increasing employees' wage ranges without providing the Union with notice and an opportunity to bargain, and Section 8(a)(1) when Supervisor Kevin Vincent blamed the Union for the lack of a raise. In doing so, we reject the Respondent's contention that the judge erroneously denied its motion to strike these mat-

sive unfair labor practices, but he inadvertently omitted this remedy from his recommended Order. We agree with the judge that such a remedy is warranted in this case, and we correct the omission. In adopting this remedy, we do not rely on the Respondent's conduct regarding annual wage increases or any statements blaming the Union for such conduct that were made outside the 10(b) period. Rather, we find justification for the notice-reading remedy in light of the serious and widespread impact on the unit of the Respondent's unlawful withdrawal of recognition, its change in unit employees' wages without giving the Union notice and opportunity to bargain, and its failure to provide relevant information in response to the Union's request. These violations not only adversely impacted the entire unit but also undermined the confidence of unit employees in the Union's ability to represent their interests in bargaining. A notice-reading remedy will dissipate any lingering effect of the Respondent's actions and enable employees to exercise their Sec. 7 rights free of coercion. See, e.g., *Texas Super Foods, Inc.*, 303 NLRB 209, 220 (1991). It will also assure employees that their employer understands the Board's order and is committed to complying with the Act in the future, an assurance of particular importance when, as here, the Respondent has acted so as to undermine employees' decisions regarding unionization. See *Print Fulfillment Services, LLC*, 361 NLRB 1243, 1248-1249 (2014).

Contrary to the judge and his colleagues, Chairman Ring finds that a notice-reading remedy is unwarranted. The Board has recognized that such a remedy may be warranted "where the violations are so numerous and serious that the reading aloud of a notice is considered necessary to enable employees to exercise their Section 7 rights in an atmosphere free of coercion, or where the violations in a case are egregious." *Postal Service*, 339 NLRB 1162, 1163 (2003). Here, the three unfair labor practices remedied in this case—the Respondent's withdrawal of recognition, failure to provide relevant information, and unilateral change in unit employees' wages—are not "so numerous and serious" as to render the Board's standard notice-posting remedy insufficient to dissipate their effects, nor do they rise to an "egregious" level of misconduct. Accordingly, for these reasons, Chairman Ring would not order the Respondent to read aloud to its employees the Board's remedial notice.

⁴ We shall modify the judge's conclusions of law and recommended Order to conform to the violations found and the Board's standard remedial language. We shall also substitute a new notice to conform to the Order as modified.

Complaint pars. 5, 6, 7, 8, and 24 allege that the Respondent violated Sec. 8(a)(1) by maintaining a number of handbook rules—specifically, rules 6, 13, 14, 18, 20, 22, and 24 of its "Basic Standards of Professionalism" policy, and its "Confidential Information," "Conflicts of Interest," and "Protecting CoServ Assets" policies. We find that it will effectuate the policies of the Act to sever these allegations and retain them for further consideration.



ters, which were previously resolved through a bilateral informal settlement agreement in another proceeding (the “Settlement ULPs”).⁵ Specifically, we find no merit in the Respondent’s arguments that the settlement agreement bars litigation of those allegations, and that the allegations are time barred in any event because they involve conduct that occurred more than 6 months before the filing of the charge in this case, and this conduct is not closely related to the allegations of that charge.⁶ We emphasize, however, that we are considering the Respondent’s presettlement conduct only insofar as it bears on the legality of the Respondent’s withdrawal of recognition from the Union. We do not impose liability on the Respondent for that conduct itself.

First, it is well settled that conduct that has been the subject of a settlement agreement may be litigated in a subsequent proceeding where the settlement agreement specifically reserved the right to litigate the conduct. See *Midwestern Personnel Services*, 331 NLRB 348, 352 (2000), *enfd.* 322 F.3d 969 (7th Cir. 2003). Further, a judge, the Board, and the courts may find that presettlement conduct supports allegations of postsettlement unfair labor practices where the settlement agreement explicitly permits them to make “findings of fact” and “conclusions of law” with respect to the settled conduct. *Id.*; see also *Outdoor Venture Corp.*, 327 NLRB 706, 708 (1999) (settled alleged direct dealing and plant closure threats constituted unfair labor practices that prolonged a strike, thereby converting it to an unfair labor practice strike); *Council’s Center for Problems of Living*, 289 NLRB 1122, 1141–1143 (1988) (settled alleged unlawful discharges constituted unfair labor practices, such that subsequent strike was an unfair labor practice strike), *enfd. denied* on other grounds 897 F.2d 1238 (2d Cir. 1990).

Here, the settlement agreement’s “Scope of the Agreement” clause stated, in relevant part:

The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

In the complaint in this case and at the hearing, the General Counsel made clear that he was litigating the Settlement ULPs only to establish the existence of unfair labor prac-

es that contributed to employees’ disaffection from the Union, thereby tainting the 2014 petition on which the Respondent based its present withdrawal of recognition from the Union. The use of the settled conduct for the purpose of establishing that the withdrawal of recognition was an unfair labor practice in the instant case falls within the phrase, “any relevant purpose in the litigation of . . . any other case.” The clause further allows “findings of fact” and “conclusions of law” to be made with respect to the settled allegations to decide the merits of the unfair labor practice allegation in this proceeding regarding the Respondent’s withdrawal of recognition. We so find, specifically with regard to the connection between the settled conduct and the petition on which the Respondent based its withdrawal of recognition from the Union.

Second, even assuming, as the Respondent contends, that the allegations concerning its unilateral withholding of an annual raise and its statements blaming the Union for the lack of raises are not closely related to the allegation of the timely filed charge in this case, the litigation of the settled allegations was not barred by Section 10(b) of the Act. In *Council’s Center for Problems of Living*, *supra*, the Board found a similar argument meritless insofar as the settled allegations were not remedied by the decision in the subsequent case but “merely indicate[d] the nature of the later . . . conduct examined in the complaint.” 289 NLRB at 1122 fn. 3. Similarly here, as stated above, we have considered the Respondent’s conduct outside the six-month 10(b) period only for the purpose of determining whether that conduct tainted the decertification petition. We order no remedy for the pre-10(b) conduct; our order remedies only the Respondent’s unlawful withdrawal of recognition and subsequent refusal to bargain, conduct that occurred well within the 10(b) period. Accordingly, we affirm the judge’s denial of the Respondent’s motion to strike the Settlement ULPs.

2. Unlawful withdrawal of recognition

Applying the four-part test set forth in *Master Slack Corp.*, 271 NLRB 78, 84 (1984), the judge found that the Respondent’s unfair labor practices tended to undermine the Union in the eyes of the bargaining unit employees and tainted the decertification petition that the Respondent relied on to withdraw recognition from the Union in 2014. In adopting the judge’s finding, we rely solely on the two Settlement ULPs discussed above, namely, the Respondent’s unilateral discontinuance of its annual practice of increasing employees’ wage ranges, and Su-

⁵ The Regional Director approved the settlement agreement on November 21, 2014, and the Respondent subsequently posted a remedial notice and made the employees whole for its allegedly unlawful failure to provide wage increases in 2014.

⁶ See *Redd-I, Inc.*, 290 NLRB 1115 (1988).

pervisor Vincent's unlawful statements blaming the Union for the lack of raises.⁷

As the judge observed, these unfair labor practices were unremedied during the time when the decertification petition was being circulated.⁸ And we find, for the reasons the judge stated and for the additional reasons stated below, that all the *Master Slack* factors tend to establish the requisite connection between these unfair labor practices and the Union's alleged loss of support.

The Respondent's unilateral change to its past practice of increasing employees' wage ranges involved the important, bread-and-butter issue of employee earnings for which employees sought and gained union representation, and such a unilateral change, particularly where the Union was bargaining for a first contract, is likely to have a lasting effect on employees.⁹ The unilateral elimination of the annual practice of increasing employees' wage ranges substantially affected all, or nearly all, unit employees. Further, each time the employees received a paycheck without the customary annual raise, they were reminded of the Union's ineffectiveness in preserving such raises, let alone in obtaining additional wage increases. As the Board held in *Penn Tank Lines, Inc.*, 336 NLRB 1066, 1067 (2001), "the possibility of a detrimental or long-lasting effect on employee support for the union is clear" where the employer's unlawful unilateral conduct, like here, suggests to "employees that their union is irrelevant in preserving or increasing their wages."¹⁰

⁷ We correct the judge's inadvertent misstatement that Vincent threatened to withhold raises. Rather, Vincent blamed the lack of raises on the Union.

We find that the judge correctly rejected the General Counsel's theory that Petitioner Trey Williamson's testimony demonstrates the Respondent's involvement in preparing and distributing the petition. Williamson testified that he prepared the petition, disseminated it during nonworking time, and collected signatures. Although Williamson's testimony periodically conflicted with his affidavit, as the judge found, his testimony that he did not talk to management about the petition was un rebutted.

We find it unnecessary to pass on the judge's finding that the Respondent's maintenance of certain handbook rules and policies also contributed to the taint. As noted above, we are severing the allegations concerning those rules and policies and retaining them for further consideration.

⁸ Employees signed the petition between November 3 and 18, 2014. The Respondent remedied the alleged unfair labor practices sometime after November 21, 2014, the date the Regional Director approved the settlement agreement.

⁹ See *Broadway Volkswagen*, 342 NLRB 1244, 1247 (2004), *enfd.* sub nom. *East Bay Automotive Council v. NLRB*, 483 F.3d 628 (9th Cir. 2007); *Goya Foods of Florida*, 347 NLRB 1118, 1122 (2006), *enfd.* 525 F.3d 1117 (11th Cir. 2008).

¹⁰ The record does not support the judge's finding that employees testified they were unaware of the unfair labor practices. Rather, as the Respondent states in its brief supporting its exceptions, several employ-

Accordingly, we agree with the judge that the Respondent could not lawfully rely on the decertification petition to withdraw recognition from the Union, and that by withdrawing recognition, the Respondent violated Section 8(a)(5) and (1) of the Act.¹¹

Unilateral increase in employees' wages and failure to provide relevant information

ees testified that the unfair labor practices *had no impact* on their decision to sign the decertification petition. Such testimony is irrelevant under the objective *Master Slack* analysis. See *Saint Gobain Abrasives*, 342 NLRB 434, 434 fn. 2 (2000) ("The *Master Slack* test is an objective one," and thus "[t]he relevant inquiry at the hearing does not ask employees *why* they chose to reject the Union.") (emphasis in original); *C.F. Martin & Co.*, 252 NLRB 1192, 1192 fn. 2 (1980) (disavowing reliance on employees' "subjective testimony" about the relative importance of unremedied unfair labor practices in their decision to withdraw support from the union).

Applying these principles, we find that the judge did not abuse his discretion by refusing to allow testimony from up to 23 additional employees regarding their reasons for signing the petition. See also *SFO Good-Nite Inn, LLC*, 357 NLRB 79, 83 (2011) ("To the extent that an employer seeks to elicit employee testimony about their reasons for signing documents supporting or rejecting a union, the Board and the courts have long recognized the inherent unreliability of such testimony. . . . [W]e are unwilling to subject petition signers to *ex post facto* examination about their reasons for supporting decertification."), *enfd.* 700 F.3d 1 (D.C. Cir. 2012).

¹¹ Having found that the withdrawal of recognition was unlawful on the basis of the Respondent's reliance on a tainted disaffection petition, Chairman Ring and Member McFerran find it unnecessary to pass on the General Counsel's exceptions to the judge's failure to find, in addition, that the withdrawal of recognition was unlawful on the basis that (1) the parties reached a contract on November 25, 2014, which precluded withdrawal of recognition during its term, and that (2) the settlement agreement required the Respondent to recognize and bargain with the Union for a reasonable period of time, which had not yet elapsed when it withdrew recognition.

Member Pearce would find merit in the General Counsel's exception regarding the settlement agreement. As the notice attached to the settlement agreement made clear, the Respondent agreed to notify and, upon request, bargain in good faith with the Union before implementing any changes in wages, hours, or terms and conditions of employment of bargaining unit employees. It is well established that when an employer settles unfair labor practice charges and agrees to bargain in exchange for the dismissal of those charges, the Board will infer an agreement to bargain for a reasonable period of time following the settlement. See *Poole Foundry & Machine Co.*, 95 NLRB 34, 36 (1951), *enfd.* 192 F.2d 740 (4th Cir. 1951), *cert. denied* 342 U.S. 954 (1952). If the parties have not bargained for a reasonable period of time, the employer may not withdraw recognition, irrespective of the union's majority status. *AT Systems West*, 341 NLRB 57, 61 (2004).

Here, the Respondent withdrew recognition a mere 5 days after the Regional Director approved the settlement agreement, and after only one post-settlement bargaining session. The parties were not at impasse; indeed, they had agreed to meet to finalize the last remaining issue, wages, after Thanksgiving. Under these circumstances, Member Pearce would find that the Respondent did not bargain with the Union for a reasonable period of time after the execution of the settlement agreement and, for this additional reason, its withdrawal of recognition violated Sec. 8(a)(5) and (1).

We also adopt the judge's findings, for the reasons stated in his decision, that after unlawfully withdrawing recognition from the Union, the Respondent further violated Section 8(a)(5) and (1) by unilaterally increasing unit employees' wages and by failing and refusing to provide the Union with requested information regarding the unit employees' current wages.

AMENDED CONCLUSIONS OF LAW

Delete paragraphs 3, 4, 5, and 6 of the judge's Conclusions of Law and renumber the remaining conclusions accordingly.

AMENDED REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order the Respondent to cease and desist from engaging in such conduct and, as explained in the remedy section of the judge's decision, to take certain affirmative action designed to effectuate the policies of the Act. Among other remedies, the judge recommended an affirmative bargaining order to remedy the Respondent's unlawful withdrawal of recognition, but he did not justify the imposition of such an order as required by the United States Court of Appeals for the District of Columbia Circuit. Nevertheless, for the reasons set forth below, we agree with the judge that an affirmative bargaining order is warranted on the facts of this case.

The Board has previously held that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." *Caterair International*, 322 NLRB 64, 68 (1996). In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required the Board to justify, on the facts of each case, the imposition of an affirmative bargaining order. See, e.g., *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727, 738-739 (D.C. Cir. 2000); *Lee Lumber & Building Material Corp. v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent*, supra at 738, the court summarized its requirement that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' § 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, supra, we have examined the particular facts of this case and

find that a balancing of the three factors warrants an affirmative bargaining order.¹²

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining through their designated representative by the Respondent's withdrawal of recognition and resultant refusal to bargain with the Union for an initial collective-bargaining agreement. As discussed above, the Respondent's own unfair labor practices contributed to the disaffection of employees from the Union and tainted the decertification petition. Moreover, the Respondent's refusal to recognize the Union and bargain with it only 5 days after the Regional Director approved a settlement agreement in which the Respondent acknowledged the Union's status as the unit employees' bargaining representative evinced a disregard of its bargaining obligation.¹³ At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued representation by the Union because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation. Since the Union was unfairly deprived of an opportunity to reach an initial agreement with the Respondent, it is only by restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable period of time that the employees will be able to fairly assess the Union's effectiveness as a bargaining representative in an atmosphere free of the Respondent's unlawful conduct. The employees can then determine whether continued representation by the Union is in their best interest.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. It removes the Respondent's incentive to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured by the possibility of a decertification petition or by the prospect of an imminent withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and the issuance of a cease-and-desist order.

¹² Chairman Ring acknowledges that *Caterair* is extant Board precedent. He notes that no party urges the Board to overrule it and, in these circumstances, he expresses no view as to whether the Board should adhere to it. He agrees, however, that an affirmative bargaining order is warranted here.

¹³ Under the terms of the settlement, the Respondent reaffirmed the Union's representative status by agreeing to notify and, upon request, bargain with the Union before implementing any changes in wages, hours, or terms and conditions of employment of its unit employees.

(3) A cease-and-desist order, without a temporary decertification bar, would be inadequate to remedy the Respondent's withdrawal of recognition and refusal to bargain with the Union because it would permit another challenge to the Union's majority status before the taint of the Respondent's previous unlawful withdrawal of recognition has dissipated. Allowing another challenge to the Union's majority status without a reasonable period for bargaining would be particularly unjust in light of the fact that the litigation of the Union's charges took several years and, as a result, the Union needs to reestablish its representative status with unit employees. Further, the Respondent's withdrawal of recognition would likely have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. In these circumstances, permitting a decertification petition to be filed immediately might very well allow the Respondent to profit from its own unlawful conduct. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the violations in this case.

ORDER

The National Labor Relations Board orders that the Respondent, Denton County Electric Cooperative, Inc. d/b/a CoServ Electric, Corinth, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from the International Brotherhood of Electrical Workers Local 220, affiliated with International Brotherhood of Electrical Workers (the Union), and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of unit employees.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(c) Changing wages, benefits, or other terms and conditions of employment of its unit employees without first notifying the Union and giving it an opportunity to bargain.

(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) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All linemen – Class A1, Class A2, Class B1, Class B2, Class C1, Linemen Class C2, Class G1, Class G2, Groundmen, Journeymen, Servicemen; Power Quality Technicians, System Operators and Senior System Operators employed by . . . [CoServ] at our facility in Corinth, Texas.

EXCLUDED: All other employees, including office clericals, managers, guards and supervisors as defined in the Act.

(b) On request by the Union, rescind the changes in its unit employees' terms and conditions of employment that were unilaterally implemented since November 26, 2014.

(c) Furnish to the Union in a timely manner the information requested by the Union on November 27, 2014.

(d) Within 14 days after service by the Region, post at its Corinth, Texas facility copies of the attached notice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 16, 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, it shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed at any time since November 26, 2014.

(e) Within 14 days after service by the Region, hold a meeting or meetings during working time, scheduled to ensure the widest possible attendance, at which the at-

¹⁴ 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."

tached notice is to be read to the employees by the Respondent's president and chief executive officer, Donnie Clary, or senior vice president of employee relations, Denise Smithers, in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent's option, by a Board agent in the presence of either Clary or Smithers and, if the Union so desires, of an agent of the Union.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 16 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.

IT IS FURTHER ORDERED that the allegations in paragraphs 5-8 and 24 of the first amended complaint in Case 16-CA-149330 are severed and retained for further consideration by the Board.

Dated, Washington, D.C. June 12, 2018

John F. Ring, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) 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 withdraw recognition from, and fail and refuse to recognize and bargain with, the International Brotherhood of Electrical Workers Local 220, affiliated with International Brotherhood of Electrical Workers (the Union), as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT change your wages, benefits, or other terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

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 recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All linemen – Class A1, Class A2, Class B1, Class B2, Class C1, Linemen Class C2, Class G1, Class G2, Groundmen, Journeymen, Servicemen; Power Quality Technicians, System Operators and Senior System Operators employed by . . . [CoServ] at our facility in Corinth, Texas.

EXCLUDED: All other employees, including office clericals, managers, guards and supervisors as defined in the Act.

WE WILL, upon the Union's request, rescind the changes in the terms and conditions of employment for our unit employees that were unilaterally implemented since November 26, 2014.

WE WILL furnish to the Union in a timely manner the information requested by the Union on November 27, 2014.

WE WILL hold a meeting or meetings during working hours and have this notice read to you and your fellow workers by our President and Chief Executive Officer Donnie Clary or Senior Vice President of Employee Relations Denise Smithers in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent's option, by a Board agent in the presence of either Clary or Smithers and, if the Union so desires, of an agent of the Union.

DENTON COUNTY ELECTRIC COOPERATIVE, INC.
D/B/A COSERV ELECTRIC

DENTON COUNTY ELECTRIC COOPERATIVE, INC. D/B/A COSERV ELECTRIC

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The Board's decision can be found at www.nlr.gov/case/16-CA-149330 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.



David Foley and Jonathan M. Elifson, Esqs., for the General Counsel.

Ronald M. Gaswirth and Carrie B. Hoffman, Esqs. (Gardere, Wynne, Sewell, LLP), for the Respondent.

Michael A. Murphy, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This case was heard in Fort Worth, Texas from February 1 to 3, 2016. The complaint alleged that the Denton County Electric Cooperative, Inc. d/b/a CoServ Electric (CoServ or the Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by: maintaining unlawful employee handbook provisions; withdrawing recognition from the International Brotherhood of Electrical Workers Local 220, affiliated with the International Brotherhood of Electrical Workers (the Union); unilaterally granting pay raises; and failing to provide requested information to the Union.

On the entire record,¹ including my observation of the demeanor of the witnesses, and after considering the parties' post-hearing briefs and reply briefs, I make the following

FINDINGS OF FACT²

I. JURISDICTION

CoServ, a corporation, is a utility provider in Corinth, Texas (the facility). During the 12-month period ending September 30, 2015, it derived gross revenue that exceeded \$250,000, and purchased and received at its facility goods that exceeded \$5000 directly from points outside of Texas. It, thus, 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. It further admits and I find that the Union is a labor organization, within the meaning of Section 2(5) of the Act.

¹ GC Exh. 22 and R. Exhs. 12-16 were admitted after the hearing.

² Unless otherwise stated, factual findings arise from joint exhibits, stipulations and undisputed evidence.

II. ALLEGED UNFAIR LABOR PRACTICES

*A. Introduction*³

On July 27, 2012, Region 16 of the National Labor Relations Board (Region 16) held an election in the following collective-bargaining unit (the unit), which the Union won:

INCLUDED: All Linemen - Class A1, Class A2, Class B1, Class B2, Class C1, Linemen Class C2, Class G1, Class G2, Groundmen, Journeymen, Servicemen; Power Quality Technicians, System Operators and Senior System Operators employed by ... [CoServ] at our facility in Corinth, Texas.

EXCLUDED: All other employees, including office clericals, managers, guards and supervisors as defined in the Act.

See also (GC Exh. 12). On October 28, 2013, after the Union's certification year elapsed, Region 16 held a decertification vote that the Union survived. On November 26, 2014,⁴ after receiving a petition from the unit, CoServ withdrew Union recognition. (R. Exhs. 8, 11).

At all relevant times between the Union's initial certification and loss of recognition, the parties bargained for an initial contract over approximately 15 sessions. The Union's bargaining team included: Business Manager Alan Cutler; and International Representative Laurence Chamberlain. CoServ's bargaining team included: attorneys Ronald Gaswirth and Carrie Hoffman; and Vice President of Employee Relations Denise Smithers. Clint Hart, an F.M.C.S. mediator, assisted the last few negotiating sessions.⁵

B. Prior Unfair Labor Practice Charges (ULPs) and Settlement

Between April and September, the Union filed ULPs against CoServ alleging violations of Section 8(a)(1) and (5) (the prior ULPs). (R. Exhs. 4-7). On November 4, CoServ entered into an Informal Settlement Agreement (the Settlement) concerning the prior ULPs, which covered: its unilateral decision in 2014 to withhold a raise from unit employees; telling unit employees that they would not receive a raise because of the Union; and its failure to promote unit employee, Derek Wolzen. (GC Exh. 12; R. Exhs. 4-7). The Settlement contained a non-admissions clause, which stated that, "the Charged Party does not admit that it has violated the ... Act," and provided wage increases and backpay, and a 60-day notice posting. (GC Exh. 12). Region 16 approved the Settlement on November 21. (GC Exhs. 1, 12).

1. General Counsel's theory regarding the settlement

Beyond useful context, the Settlement is crucial to the General Counsel's litigation theory, inasmuch as he avers that the Settlement and conduct underlying it precluded the withdrawal of recognition. First, he contends that CoServ could not withdraw recognition because the underlying ULPs that were eventually settled were un-remedied when the petition was signed, and created the disaffection that prompted the petition. Second,

³ Judicial notice is taken of the representation case records. *Metro Demolition Co.*, 348 NLRB 272 (2006).

⁴ All dates hereinafter refer to 2014, unless otherwise stated.

⁵ The F.M.C.S., a Federal agency, provides collective-bargaining mediation.

he asserts that the Settlement required CoServ to recognize and bargain with the Union for a reasonable duration, which had not yet transpired when it withdrew recognition.

2. Prior ULPs Covered by the Settlement and Related Evidence

The parties, as a result, presented substantial evidence about the prior ULPs covered by the Settlement. Such evidence is detailed below.

a. Supervisor Kevin Vincent's comments about the Union

In late-January, employee Robert Shelby met with Supervisor Vincent for an annual performance review. (GC Exh. 7). He said that Vincent told him that, "there will not be a raise ... because ... CoServ ... was waiting for the union." (Tr. 118). He testified that Vincen ... we ... could get raises." (Id.). On April 16, Wolzen met with Vincent for a performance review; he testified that he was told that he would not receive a raise or promotion "because it's tied up in union and CoServ negotiations," and because the Union had, "rejected a contract offer that would have enabled us to get more money." (Tr. 44-45). Chad Beck testified that, on April 16, Vincent told him that, "the reason you're not going to get a raise is because of the union." (Tr. 329.)

Vincent testified that he solely told employees that raises had not been approved by CoServ. He denied stating that benefits were being withheld because of the Union.

Given that Shelby, Beck and Wolzen stated that Vincent blamed the Union for the lack of raises and promotions, and Vincent denied such commentary, a credibility resolution is needed. Shelby, Beck and Wolzen have been credited; they were consistent and cooperative, and had strong recollections, and solid demeanors. Vincent was a less than candid witness, who mostly appeared motivated to aid CoServ and its leadership, and escape culpability.

b. Withholding 2014 Raises

The facts underlying these allegations are undisputed. In 2014, unit employees were either placed in the Employee Development Program (EDP) or outside of it (non-EDP).⁶ EDP employees moved to higher pay range steps under a pay grid system, as they satisfactorily completed training and testing.⁷ Non-EDP positions were not offered salary steps; their positions solely held a pay range, and raises were given within the parameters of their pay range. Annually, CoServ reviewed its EDP and non-EDP pay ranges, and applied a percentage increase to EDP and non-EDP pay ranges, in accordance with the Mercer Study.⁸ For at least the 5 years prior to 2014, CoServ increased its pay ranges for EDP and non-EDP slots as dictated by the Mercer study. In 2014, although the Mercer study recommended a 2.3 percent increase in unit pay ranges, CoServ

⁶ Linemen were placed in the EDP, while journeymen, system operators, and power quality technicians were not.

⁷ Each step had a pay range.

⁸ The Mercer Study, an annual compensation study, was prepared by a human resources consulting outfit. It analyzed CoServ's competitiveness in the labor market, and recommended annual wage adjustments.

froze their pay ranges. This resulted in some EDP employees still receiving raises, as they moved along their current salary schedule to higher pay steps, but, resulted in non-EDP employees' wages effectively being frozen.⁹ See also (GC Exh. 11; R. Exh. 3; tr. 701-702 (Gaswirth testimony)). CoServ failed to provide advance notice to the Union of its decision to not apply the Mercer Study in 2014, and implemented this decision without bargaining.

C. November 19—Second Decertification Petition

On November 19, another decertification petition was filed. (R. Exh. 11). Region 16 took no action, inasmuch as the Settlement's compliance period had yet to expire. Williamson, a lineman, testified that he prepared the petition,¹⁰ disseminated it during nonworking time, and collected signatures.¹¹ He stated that it continuously remained in his possession, until he delivered it to the Human Resources department. CoServ elicited testimony from several employees who signed the petition; they consistently testified that they wanted to oust the Union solely because its help was no longer wanted, and denied that the prior ULPs had relevance.

D. November 25—Final Bargaining Session

The General Counsel and the Union contend that the parties agreed to a final contract at this session, which precluded the withdrawal of Union recognition. CoServ asserts that the parties never finalized wages, and its withdrawal of recognition was appropriate. Several facts connected to this session are undisputed. First, the parties had resolved all outstanding proposals before the November 25 session, with the exception of duration and wages. (GC Exhs. 4-6, 13). Second, before November 25, when the parties agreed to a proposal, they consistently signified mutual assent by: marking the relevant article "TA" (i.e., tentative agreement); and signing and dating it. Finally, on November 25, they agreed to a 1-year contract term, and signed and dated a TA on contract duration, but, have not, to date, executed or created a wage TA.

1. General Counsel's and Union's position

Union negotiator Cutler contended that the parties reached a final agreement on wages on November 25, after the Union accepted, without reservation, Company 78. He testified that, when he voiced his assent, Gaswirth cautioned him that he

⁹ Smithers testified that every non-unit hourly employee received a raise in 2014, and that unit employees did not receive raises in 2014 because the parties were negotiating. She conceded that, prior to 2014, raises were given in January (tr. 350), and that, "we did not give them because we were negotiating." (Tr. 351); see also (tr. 363). She confirmed that the decision to provide raises is based upon the Mercer Study, and that they made a recommendation to increase wage rates in 2014 by approximately 2.3 percent.

¹⁰ He stated that he learned how to phrase the petition from the Internet research.

¹¹ Williamson was, admittedly, a less-than-stellar witness with a selective memory and crafty demeanor, whose testimony periodically conflicted with his affidavit. This circumstance is, however, in isolation, insufficient to find that his testimony, which is almost entirely un rebutted, meant that CoServ helped him prepare the decertification petition and aided its distribution, as contended by the General Counsel.

could not finalize Company 78, until he first verified the underlying wage data and confirmed that they were not inadvertently reducing someone's wages. (GC Exh. 17.) He said that Gaswirth pledged to verify the underlying data on the following Monday (i.e., after Thanksgiving), and recalled this exchange:

We . . . asked if there w[ere] . . . any other issues outstanding . . . and we both . . . said, no, . . . this is complete . . . because we expected to get the wages on Monday.

I'd already agreed to the 78 language, as far as job descriptions and job wages . . . [and] Ron said, I guess we have a contract.

(Tr. 226). He said that mediator Hart congratulated everyone. He claimed that he would have accepted whatever Gaswirth later presented, even if it meant cutting someone's wages. Chamberlain essentially corroborated Cutler.

2. CoServ's position

Attorney Gaswirth testified that wages were never finalized on November 25 because some research remained regarding the accuracy of CoServ's proposed rates. He recalled telling Cutler to contact him after Thanksgiving. He denied announcing a deal, and insisted that he solely stated that a resolution seemed closer. He added that, because the parties had a consistent practice of signing TAs, the Union could not have rationally concluded that a deal was struck, given the undisputed absence of a wage TA. Smithers essentially corroborated Gaswirth.

3. Credibility analysis

Although the issue of whether there was a meeting of the minds on a final contract will be analyzed later, Cutler's claim that he would accept *any* wage package presented after Thanksgiving raises a key credibility issue. This claim is incredible; it is implausible that, if Gaswirth eventually told him that Company 78 represented a pay decrease for certain workers, the Union would have accepted. It is just unbelievable that a newly-minted Union, whose election platform involved higher wages, would accept pay cuts in a first contract, and accepted Company 78 without reservation. Given that the Union's support was tenuous, as evidenced by repeated decertification efforts, it is improbable that Cutler would have contributed to this erosion by voluntarily cutting wages. His testimony on this point is, thus, implausible.

E. November 26—Withdrawal of Recognition

On this date, CoServ announced that it was withdrawing the Union's recognition, after receiving a petition signed by 28 of 32 unit members seeking its ouster. (GC Exh. 15). It is noteworthy that, 23 out of the 28 employees signed before November 4 (i.e., when CoServ signed the Settlement), and that everyone signed before November 21 (i.e., when Region 16 approved the Settlement). The payment of backpay, provision of wage increases, notice posting and other relief under the Settlement, thus, occurred after the petition was signed.

F. November 27—Union Response and Information Request

On this date, Cutler rejected CoServ's withdrawal of recognition. (GC Exh. 16). He requested an *Excelsior* list with the unit's current wages, which has, to date, not been provided.

G. 2015 Wage Increases

Unit employees received raises in 2015. CoServ provided raises, as dictated by the Mercer study.

H. Handbook Policies

The General Counsel avers that the following Handbook policies are invalid. (R. Exh 2.)

1. Professionalism

All employees [must act] . . . professionally . . . Failure to observe the expected standards of . . . behavior may result in disciplinary action, up to and including termination. Below is a [non-exhaustive] list of . . . [prohibited] conduct. . .

6. Unauthorized or improper use or disclosure of . . . employee data.

13. Failure to cooperate in any investigation by CoServ.

14. Lack of loyalty to CoServ.

18. [D]isrespectful attitude toward a supervisor.

20. [E]ngaging in . . . conduct which could damage [Co-Serv's] . . . image.

22. Failure to enhance the public image of CoServ while participating in non-work activities, while off duty or while wearing CoServ logo apparel.

24. Using the CoServ name or its related trademarks and/or logos, in association with any . . . personal use, without written permission.

2. Confidential information

We use confidential information only for the business purpose for which it was developed or given. We respect the confidentiality of information about CoServ, its . . . employees, . . . and partner. . . [It] will not be used for personal benefit.

3. Conflicts of interest

We avoid conflicts, or the appearance of conflicts, between personal interests and official responsibilities. . . [E]mployees are under a continuing obligation to disclose . . . the possibility of a conflict. . . Disclosure of any potential conflict is the key to remaining in full compliance with this policy.

4. Protecting assets

We [must] . . . protect the . . . assets entrusted to us from . . . misuse. . . [A]ssets, such as . . . equipment . . . or Communication Systems, may only be used for business purposes and other purposes approved by management.

III. ANALYSIS

A. Handbook Policies

The contested Handbook rules violated the Act.¹² The Board has held that:

If the rule explicitly restricts Section 7 rights, it is unlawful. If it does not, "the violation is dependent upon a showing of one

¹² These allegations are listed under paras. 5–8 and 24 of the complaint.

of the following: (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.”

Costco Wholesale Corp., 358 NLRB 1100 (2012) (citations omitted).

1. Professionalism

The *Professionalism* policy is unlawful for several reasons. First, Rule 6’s ban on discussing “financial . . . [and] employee data” without authorization is unlawful, inasmuch as it can be reasonably construed to bar wage discussions with coworkers or a union. *Costco*, supra (“[s]ensitive information such as . . . payroll may not be shared . . . without prior management approval”). Second, Rule 13’s imposition of discipline for a “failure to cooperate in any [CoServ] investigation” is unlawful. *Beverly Health*, 332 NLRB 347 (2000), enf. 297 F.3d 468 (6th Cir. 2002) (rule prohibiting “[r]efusing to cooperate in . . . investigation of . . . alleged violation of company rules, laws, or government regulations.”). Third, Rule 14’s ban of a “[l]ack of loyalty to CoServ” is unlawful, inasmuch as it could be reasonably construed to restrict protected concerted activity. *Claremont Resort & Spa*, 344 NLRB 832, 832 (2005) (rule prohibited negative conversations about associates or managers). Fourth, Rule 18’s ban of a “disrespectful attitude” towards a supervisor is unlawful. *Casino San Pablo*, 361 NLRB No. 148 (2014) (“insubordination or other disrespectful conduct”). Fifth, Rule 20’s ban of “engaging in . . . conduct which could damage the image . . . of CoServ” is unlawful. *Costco*, supra, 358 NLRB No. 106 (“statements . . . that damage Costco.”). Finally, Rule 22’s ban on the “[f]ailure to enhance the public image of CoServ while participating in non-work activities, . . . while wearing CoServ logo apparel,” and 24’s ban on “[u]sing the CoServ name or its . . . logos, in association with any . . . personal use, without written permission . . .” are unlawful, inasmuch as such rules might be reasonably construed to ban “union activity in a uniform bearing a product identification.” *Pepsi Cola Bottling Co.*, 301 NLRB 1008, 1020 (1991).

2. Confidential information

This policy unlawfully banned sharing confidential employee data. It could reasonably be construed to ban wage discussions amongst employees or with their union. *Costco*, supra.

3. Conflicts of interest

This policy, which prohibits conflicts and apparent conflicts, and has an ongoing disclosure requirement, is unlawful. It can be reasonably construed to bar protected Section 7 activities, which may conflict with CoServ’s interests. *Sheraton Anchorage*, 362 NLRB No. 123, slip op. at 1 fn. 4 (2015) (“conflict of interest with the . . . company is not permitted”).

4. Protecting assets

This policy, which bans the non-business usage of CoServ equipment, is unlawful. It can be construed to bar all unauthorized solicitation from CoServ’s facilities, and ban email during non-working time for Section 7 activities. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945); *Purple Communications*, 361 NLRB 1050, 1066 (2014) (using email for protected com-

munications on nonworking time); *Stoddard-Quirk*, 138 NLRB 615 (1962) (prohibition on unauthorized distribution of literature on company premises is unlawful).

B. Withdrawal of Union Recognition

The Complaint alleged that the parties finalized a contract on November 25, which precluded withdrawal of recognition during its term.¹³ It also alleged that CoServ’s committed ULPs, which tainted the petition.¹⁴ The latter argument is persuasive.

1. Contract bar

The contract bar rule is inapplicable, given that the parties never finalized a deal on November 25. The existence of a contract requires a “meeting of the minds” on all substantive issues. *Polycon Industries*, 363 NLRB No. 31 (2015). A contract need not be reduced to writing, when a “meeting of the minds” transpires. *Carpenters Local 405*, 328 NLRB 788, 793 (1999). The General Counsel retains the burden of proof on this issue.

The parties did not reach a “meeting of the minds” because wages were never finalized. They maintained a uniform practice of writing “TA” and signing off on each closed issue, and never finalized a wage TA. They only agreed to meet to finalize wages after Thanksgiving. Although Cutler claimed that he would have agreed to anything after Thanksgiving, such testimony was not credited. Under these circumstances, wages remained open, absent a final TA and knowing understanding of its contents; a “meeting of the minds” was, therefore, not reached.

2. Unremedied ULPs

Unremedied ULPs tainted the petition and precluded withdrawal of recognition. An employer can generally withdraw recognition, where it can prove a loss of majority status. *Levitz*, 333 NLRB 717, 717 (2001). This doctrine is, however, limited “to cases where an employer has committed no unfair labor practices tending to undermine employees’ support for unions.” *Id.* The Board has, thus, held that, “an employer may not withdraw recognition from a union, while there are unremedied unfair labor practices tending to cause employees to become disaffected from the union. *Olson Bodies*, 206 NLRB 779, 780 (1973).

a. ULPs at the time of the petition

When the petition was signed (i.e., between November 3 and 18), CoServ had committed several ULPs, which were then unremedied. This includes repeated Handbook violations, and the several serious ULPs,¹⁵ which were later settled.¹⁶

¹³ See *North Bros. Ford*, 220 NLRB 1021, 1022 (1975).

¹⁴ The Complaint also alleged that the withdrawal of recognition was unlawful because the Settlement required recognition and bargaining for a reasonable period, which never occurred. This argument will not be analyzed, inasmuch as the withdrawal has been found unlawful on other grounds and a finding on this additional issue will not affect the remedy.

¹⁵ Although the General Counsel also alleged that the failure to promote Wolzen violated Sec. 8(a)(5), there is insufficient record evidence showing a uniform practice of automatically promoting trainees, who met performance expectations after a year of service. Accordingly,

I. FAILURE TO PROVIDE ANNUAL WAGE INCREASES IN 2014

The most significant un-remedied violation involved CoServ unilaterally changing in 2014 its past practice of increasing wage ranges for EDP and non-EDP unit positions, as dictated by the Mercer study. The relevant facts are undisputed, and are as follows: for at least the 5 years prior to 2014, CoServ increased its wage ranges for EDP and non-EDP slots, as dictated by the Mercer study; in 2014, the Mercer study recommended an increase in unit pay ranges of 2.3 percent; in 2014, CoServ froze pay ranges at their current levels, which resulted in some EDP employees still receiving raises, as they moved up a salary step, but, froze non-EDP employees at their current rate; CoServ gave a wage increase to non-unit hourly employees in 2014, as dictated by the Mercer study; and CoServ failed to notify the Union in advance of its decision to not use the Mercer study's 2014 recommendations, and implemented this decision without good faith, pre-implementation bargaining.

The Board has held as follows:

[W]here parties are engaged in negotiations for a collective-bargaining agreement, the employer must maintain the status quo of all mandatory bargaining subjects absent overall impasse. . . . However, . . . the Board . . . set forth an exception to the general rule. Under this exception, if a term or condition of employment concerns a discrete recurring event, such as an annually scheduled wage review, and that event is scheduled to occur during negotiations for an initial contract, the employer may lawfully implement a change in that term or condition if it provides the union with reasonable advance notice and an opportunity to bargain about the intended change in past practice.

Neighborhood House Assn., 347 NLRB 553, 554 (2006).

Although the Mercer study increases were a discrete recurring event that would have constituted a *Neighborhood House* exception, CoServ nevertheless breached 8(a)(5) by unilaterally changing its past practice in 2014 of providing Mercer study raises, by failing to afford the Union pre-implementation notice and an opportunity to bargain about this topic. Regarding this point, Gaswirth clearly stated that:

It became 2014 [and] the company had made the decision that they were not going to increase wages while they were negotiating wages. . . . And so there was no 2014 increase.

(Tr. 701). However, neither Gaswirth, nor any other CoServ witness, testified that the Union was given pre-implementation notification of this decision. Gaswirth solely testified that Cutler first raised this matter in February or March (tr. 701), which was 1 to 2 months after implementation, and occurred when this subject was a *fait accompli*. Moreover, Cutler credibly related that pre-implementation notice was never offered. Giv-

there is insufficient evidence to find a unilateral change. The settlement of this subject, which contains a non-admissions clause, is insufficient to establish a violation.

¹⁶ These ULPs were fully litigated. CoServ was notified in the Complaint, at conferences, and during opening statements. It examined the General Counsel's witnesses, and exhaustively presented its own testimony.

en that wage increases are mandatory bargaining topics, this unilateral change was unlawful. *Neighborhood House*, supra.

II. BLAMING THE UNION FOR LACK OF RAISES

Another serious un-remedied violation involved Vincent repeatedly blaming the Union for pay freezes. In late-January, he told Shelby that he would not receive a raise because, "CoServ . . . was waiting for the Union," and that, "if people had not . . . petitioned to get the union . . . we . . . could get raises." (Tr. 118). In mid-April, he told Wolzen that he would not receive a raise "because it's tied up in union . . . negotiations," and the Union had, "rejected a contract offer that would have enabled us to get more money." (Tr. 44-45.) The Board has held that an employer violates Section 8(a)(1), when it blames a union for a lack of raises. *Atlantic Forest Products*, 282 NLRB 855 (1987); *Truss-Span Co.*, 236 NLRB 50 (1978).

b. ULPs Were Unremedied when the petition was signed

The petition was signed between November 3 and 18, which was before the Regional Director approved the Settlement on November 21. The settled ULPs were, therefore, not remedied when the petition was signed. The Handbook issues were similarly un-remedied.

c. Unremedied ULPs caused disaffection and prompted the petition

Several factors reveal whether there is a causal relationship between un-remedied ULPs and employee disaffection. These factors are: (1) duration between ULPs and withdrawal of recognition; (2) nature of the violation, including the possibility of a lasting impact; (3) tendency to cause disaffection; and (4) effect of the unlawful conduct on morale, organizational activities, and union membership. *Master Slack Corp.*, 271 NLRB 78, 84 (1984).

I. DURATION

The duration between the ULPs and the petition demonstrate causation. First, blaming the Union for wage freezes occurred 7 to 11 months before the petition.¹⁷ Second, the unilateral elimination of the 2014 Mercer study raises occurred 10 months from the petition, but, was implemented throughout the year. Third, the Handbook violations were ongoing. Under these circumstances, the duration between the ULPs and petition, which ranged from 0 to 11 months, was insufficient to dissipate the ULPs' ill effects. *Mesker Door, Inc.*, 357 NLRB 591 (2011) (7 months supports taint); *Beverly Health & Rehabilitation Services*, 346 NLRB 1319, 1328-1329 (2006) (6 to 8 months); *AT Systems West, Inc.*, 341 NLRB 57, 60 (2004) (9 months).

II. NATURE OF VIOLATIONS

The nature, tendency and extent of the ULPs demonstrate causation. The ULPs involved core matters such as wages and

¹⁷ For several reasons, I find that these statements were disseminated amongst the unit. First, they were made to multiple employees in a small workplace. Second, they were made in tandem with the actual cessation of Mercer study raises. Finally, they concerned core issues (i.e., the Union and money), and were likely to be repeated.

threats to withhold raises. The Board has held that, “wage increases and higher bonuses involve ‘bread and butter’ issues that lead employees to seek union representation, and threats to withhold them, ‘particularly where the Union is bargaining for its first contract, can have a lasting effect on employees.’” *Mesker Door*, supra, 357 NLRB at 597; *RTP Co.*, 334 NLRB 466 (2001) (blaming the absence of raise on the union).

III. EFFECT OF UNLAWFUL CONDUCT

There is mixed evidence of effect, which moderately supports causation. On the one hand, several employees testified that they were unaware of the ULPs, which weighs against causation. On the other hand, the Union went from winning a decertification election and receiving majority support on October 28, 2013 to almost unanimously losing support in the petition only a short year later. This dramatic swing in support occurred alongside the ULPs, which is circumstantial, but very strong, evidence of effect; this is afforded controlling weight.

IV. THE SETTLEMENT DID NOT SANCTION THE WITHDRAWAL OF RECOGNITION

CoServ’s later settlement of the ULPs did not remove the petition’s taint, and sanction a withdrawal of recognition. The notice posting period, backpay, restoration of the status quo ante, and other remedial relief connected to the settled ULPs had not yet occurred when the petition was signed. The Board held in *Wyndham Palmas Del Mar Resort and Villas*, 334 NLRB 514 (2001) that the *Master Slack* causation analysis is applicable to settled unfair labor practice conduct, as well as adjudicated un-remedied unfair labor practices.¹⁸ Therefore, given that the *Master Slack* analysis demonstrated that the petition was tainted by ULPs that were later settled, the existence of the Settlement itself does not cleanse such taint.

d. Conclusion

CoServ’s pervasive ULPs bred the disenchantment, which prompted the petition. Under such circumstances, it could not lawfully challenge the Union’s majority status on the basis of a petition emanating from its own wrongdoing. Thus, it violated 8(a)(5).¹⁹ *Mesker Door*, supra.

¹⁸ Although on review, the D.C. Circuit criticized the Board for finding that settled ULPs caused the loss of employee support for a union and noted that, “find[ing] a violation of the Act in the absence of substantial evidence” was inappropriate, this case is distinguishable because the record in this case clearly demonstrates by substantial evidence, *without resort to or reliance upon the Settlement Agreement itself*, that CoServ violated the Act. *BPH & Co. v. NLRB*, 333 F.3d 213, 222 (D.C. Cir. 2003). The prior ULPs were comprehensively litigated.

¹⁹ Although the complaint also alleges that CoServ could not withdraw recognition on the basis of 2 other reasons (i.e., that a reasonable time period had not yet passed between entering into the Settlement and withdrawal of recognition, and that CoServ was required under the Settlement to bargain for a reasonable duration), these theories have not been analyzed, inasmuch as their resolution will not affect the ultimate remedy.

C. Other 8(a)(5) Violations

1. Information request

CoServ violated 8(a)(5), when it ignored the Union’s request for an *Excelsior* list describing current wages.²⁰ An employer must provide requested information to a union representing its employees, when there is a probability that the information is necessary and relevant to its representational duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). This duty includes the provision of relevant bargaining information. *Postal Service*, 337 NLRB 820, 822 (2002). Information, which concerns unit terms and conditions of employment, is “so intrinsic to the core of the employer-employee relationship” that it is presumptively relevant. *U.S. Information Services*, 341 NLRB 988 (2004). The Union’s request for unit names and wages was fundamentally relevant, and CoServ’s recalcitrance in replying was unlawful.

2. Unilateral wage increase

CoServ violated 8(a)(5) by unilaterally increasing unit wages, after its unlawful withdrawal of recognition. Its unilateral return in 2015 to its past practice of providing Mercer study raises was invalid. In *Mesker Door*, the Board held that:

[B]ecause the Respondent . . . [could not] withdraw recognition from the Union, it could not lawfully change . . . terms and conditions of employment without . . . notice and bargaining to impasse or agreement. By disregarding this obligation and unilaterally . . . chang[ing] . . . wage[s], it . . . violated Section 8(a)(5).

357 NLRB at 598.

CONCLUSIONS OF LAW

1. CoServ is 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. CoServ violated Section 8(a)(1) by maintaining an over-broad *Professionalism* policy, which subjected employees to discipline for violating these rules:
 - a. Rule 6—“Unauthorized . . . use or disclosure of . . . employee data”;
 - b. Rule 13—“Failure to cooperate in any investigation by CoServ”;
 - c. Rule 14—“Lack of loyalty to CoServ”;
 - d. Rule 18—“[D]isrespectful attitude towards a supervisor”;
 - e. Rule 20—“[C]onduct which could damage the image . . . CoServ”;
 - f. Rule 22—“Failure to enhance the public image of CoServ while participating in non-work activities, while off duty or while wearing CoServ logo apparel”;
 - g. Rule 24—“Using the CoServ name or its related trademarks and/or logos, in association with any personal advertisement, online profile, or personal use, without written permission.”

²⁰ *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994).

4. CoServ violated Section 8(a)(1) by maintaining an overbroad *Confidential Information* policy, which subjected employees to discipline for using confidential information for any non-business purpose.

5. CoServ violated Section 8(a)(1) by maintaining an overbroad *Conflicts of Interest* policy, which subjected employees to discipline for “conflicts” or “the appearance of conflicts” with CoServ, and mandated “a continuing obligation to disclose any situation that presents the possibility of a conflict.”

6. CoServ violated Section 8(a)(1) by maintaining an overbroad *Protecting CoServ Assets* policy that subjected employees to discipline for all non-business usage of its assets and equipment.

7. CoServ violated Section 8(a)(5) by withdrawing recognition from, and failing and refusing to bargain with, the Union as the exclusive representative of its employees for collective bargaining within the meaning of Section 9(a) of the Act in the following appropriate bargaining unit:

INCLUDED: All Linemen - Class A1, Class A2, Class B1, Class B2, Class C1, Linemen Class C2, Class G1, Class G2, Groundmen, Journeymen, Servicemen; Power Quality Technicians, System Operators and Senior System Operators employed by ... [CoServ] at our facility in Corinth, Texas.

EXCLUDED: All other employees, including office clericals, managers, guards and supervisors as defined in the Act.

8. CoServ violated Section 8(a)(5) by failing and refusing to bargain with and refusing to provide information requested by the Union, which was relevant to its representational duties.

9. CoServ violated Section 8(a)(5) by unilaterally increasing the unit’s wages, after withdrawing recognition from the Union.

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

REMEDY

Having found that CoServ violated the Act, it is ordered to cease and desist and to take certain affirmative action. It must rescind the overbroad Handbook rules, and furnish all current employees with inserts for their current Handbooks that (1) advise that the unlawful rule has been rescinded, or (2) provide a lawfully worded rule on adhesive backing that will cover the unlawful rule; or publish and distribute to all current employees revised Handbooks that (1) do not contain the unlawful rule, or (2) provide a lawfully worded rule.

In light of its withdrawal of recognition and refusal to bargain with the Union, it must recognize and bargain with the Union for a reasonable period of time as the bargaining representative of unit employees. An affirmative bargaining order is a reasonable exercise of the Board’s broad discretionary remedial authority. *Caterair International*, 322 NLRB 64, 64–68 (1996). As the Board stated in *Anderson Lumber*, 360 NLRB 538 (2014), “We adhere to the view that an affirmative bargaining order is ‘the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees.’” *Id.*, slip op. at 1, quoting *Caterair*, supra, 322 NLRB at 68. Noting its disagreement with the United States Court of Appeals for the

District of Columbia Circuit regarding a requirement to justify imposition of a bargaining order in each case, the Board nevertheless found a bargaining order was justified in *Anderson Lumber* pursuant to the District of Columbia Circuit balancing test as set out in *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727, 738 (D.C. Cir. 2000). On virtually the identical facts, the same result occurs here.

Vincent Industrial Plastics requires balancing of three considerations. These considerations are (1) employee Section 7 rights, (2) whether other purposes of the Act override the rights of employees to choose their representative, and (3) whether alternative remedies are adequate to remedy the violations of the Act. *Id.* Because the violation found here is identical to the violation found in *Anderson Lumber*, the Board’s balancing rationale is quoted in full and adopted:

(1) An affirmative bargaining order vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent’s withdrawal of recognition and resulting refusal to bargain with the Union for a[n] . . . [initial] collective-bargaining agreement. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union’s continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation. To the extent such opposition exists, moreover, it may be at least in part the product of the Respondent’s unfair labor practices.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent’s incentive to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured by the Respondent’s withdrawal of recognition to achieve immediate results at the bargaining table following the Board’s resolution of its unfair labor practice charges and issuance of a cease-and-desist order.

(3) A cease-and-desist order, alone, would be inadequate to remedy the Respondent’s refusal to bargain with the Union in these circumstances, because it would permit another challenge to the Union’s majority status before the taint of the Respondent’s unlawful withdrawal of recognition has dissipated, and before the employees have had a reasonable time to regroup and bargain through their representative in an effort to reach a successor collective-bargaining agreement. Such a result would be particularly unjust in circumstances such as those here, where the Respondent’s withdrawal of recognition would likely have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is neces-

sary to fully remedy the allegations in this case.

Anderson Lumber, 360 NLRB at 538–539. Based on this rationale, the same determination is warranted here and an affirmative bargaining order is necessary and justified in order to remedy the allegations in this case pursuant to the balancing test of *Vincent Industrial Plastics*.

It must commence bargaining, upon request, with the Union as the exclusive collective-bargaining representative of employees in an appropriate bargaining unit, and embody any understanding reached in a signed agreement. It shall furnish the Union with the information requested in its November 27, 2014 letter. It shall, if requested by the Union, rescind the unilateral wage increases implemented in 2015 after the unlawful withdrawal of recognition. To the extent that these changes have improved unit terms and conditions of employment, the recommended Order set forth below shall not be construed as requiring rescission of such improvements, unless requested to do so by the Union.

In addition to the traditional remedies for the violations found herein, Donnie Clary or Denise Smithers will read the notice marked “Appendix” to unit employees, during work time, in the presence of a Board agent. A notice reading will counteract the coercive impact of the instant ULPs, which were substantial and pervasive. See *McAllister Towing & Transportation Co.*, 341 NLRB 394, 400 (2004). It shall also distribute remedial notices electronically via email, intranet, internet, or other appropriate electronic means to its employees, in addition to the traditional physical posting of paper notices, if it customarily communicates with workers in this manner. See *J Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended²¹

ORDER

The Respondent, Denton County Electric Cooperative, Inc. d/b/a CoServ Electric, Corinth, Texas, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining an overbroad *Professionalism* policy, which subjected employees to discipline for violating these rules:

- i. Rule 6—“Unauthorized . . . use or disclosure of . . . employee data”;
- ii. Rule 13—“Failure to cooperate in any investigation by CoServ”;
- iii. Rule 14—“Lack of loyalty to CoServ”;
- iv. Rule 18—“[D]isrespectful attitude towards a supervisor”;
- v. Rule 20—“[E]ngaging in . . . conduct which could damage the image . . . of CoServ”;
- vi. Rule 22—“Failure to enhance the public image of CoServ while participating in non-work activities, while off duty or while wearing CoServ logo apparel”;

vii. Rule 24—“Using the CoServ name or its related trademarks and/or logos, in association with any personal advertisement, online profile, or personal use, without written permission.”

(b) Maintaining an overbroad *Confidential Information* policy, which subjected employees to discipline for using confidential information for any non-business purpose.

(c) Maintaining an overbroad *Conflicts of Interest* policy, which subjected employees to discipline for “conflicts” or “the appearance of conflicts” with CoServ, and mandated “a continuing obligation to disclose any situation that presents the possibility of a conflict.”

(d) Maintaining an overbroad *Protecting CoServ Assets* policy, which subjected employees to discipline for all non-business usage of its assets and equipment.

(e) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in this appropriate unit:

INCLUDED: All Linemen—Class A1, Class A2, Class B1, Class B2, Class C1, Linemen Class C2, Class G1, Class G2, Groundmen, Journeymen, Servicemen; Power Quality Technicians, System Operators and Senior System Operators employed by . . . [CoServ] at our facility in Corinth, Texas.

EXCLUDED: All other employees, including office clericals, managers, guards and supervisors as defined in the Act.

(e) Failing and refusing to provide the Union with requested information that is relevant and necessary to its performance of its duties as the exclusive collective-bargaining representative of unit employees.

(g) Unilaterally changing wages, benefits, and other terms and conditions of employment, without first notifying and bargaining with the Union.

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

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

(a) Rescind or modify the language in the following provisions of the *Professionalism* policy

- i. (Rule 6 to the extent that it prohibited the “[u]nauthorized . . . use or disclosure of . . . employee data”;
- ii. Rule 13 to the extent that it prohibited the “[f]ailure to cooperate in any investigation by CoServ”;
- iii. Rule 14 to the extent that it prohibited a “[l]ack of loyalty to CoServ”;
- iv. Rule 18 to the extent that it prohibited having a “disrespectful attitude towards a supervisor”;
- v. Rule 20 to the extent that it banned “engaging in . . . conduct which could damage the image or reputation of CoServ”;
- vi. Rule 22 to the extent that it prohibited the “[f]ailure to enhance the public image of CoServ while participating in non-work activities, while off duty or while wearing CoServ logo apparel”;
- vii. Rule 24 to the extent that it prohibited “[u]sing the CoServ name or its related trademarks and/or logos, in association with any personal advertisement, online profile, or personal

²¹ 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.

use, without written permission.”

(b) Rescind or modify the language in the *Confidential Information* policy to the extent that it barred using confidential information for any non-business purpose.

(c) Rescind or modify the language in the *Conflicts of Interest* policy to the extent that it banned “conflicts” or “the appearance of conflicts” with CoServ, and legislated “a continuing obligation to disclose any situation that presents the possibility of a conflict.”

(d) Rescind or modify the language in the *Protecting CoServ Assets* policy to the extent that it banned all non-business usage of its assets and equipment.

(e) Furnish all current employees with inserts for the Employee Handbook that

- i. Advise that the unlawful rules have been rescinded, or
- ii. Provide the language of lawful rules or publish and distribute a revised Employee Handbook that
 - 1. Does not contain the unlawful rules, or
 - 2. Provides the language of lawful rules.

(f) Recognize the Union as the exclusive collective-bargaining representative of bargaining unit employees.

(g) Upon request, meet and bargain with the Union as the exclusive collective-bargaining representative of employees and embody any understanding reached in a signed Agreement.

(h) 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.

(g) Upon the Union’s request, rescind any or all of the unilaterally implemented changes made in the terms and conditions of employment of employees since November 26, 2014.

(h) Provide the Union with the information requested in its November 27, 2014 letter.

(g) Within 14 days after service by the Region, post at its facility copies of the attached notice, marked “Appendix.”²² Copies of the notice, on forms provided by the Regional Director for Region 16, 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, it shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed it at any time since November 26, 2014.

(i) 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 it has taken to comply.

²² 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.”

Dated Washington, D.C. June 28, 2016

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 maintain disciplinary provisions in our Employee Handbook, which prohibit you from using or disclosing employee data without authorization.

WE WILL NOT maintain disciplinary provisions in our Employee Handbook require you to cooperate with any investigation.

WE WILL NOT maintain disciplinary provisions in our Employee Handbook, which prohibit a “[l]ack of loyalty to Co-Serv.”

WE WILL NOT maintain disciplinary provisions in our Employee Handbook, which ban you from having a “disrespectful attitude towards a supervisor.”

WE WILL NOT maintain disciplinary provisions in our Employee Handbook, which bar you from “engaging in ... conduct which could damage the image or reputation of CoServ.”

WE WILL NOT maintain provisions in our Employee Handbook, which subject you to disciplinary action for the “[f]ailure to enhance the public image of CoServ while participating in non-work activities, while off duty or while wearing CoServ logo apparel.”

WE WILL NOT maintain disciplinary provisions in our Employee Handbook, which prohibit you from “[u]sing the CoServ name or its related trademarks and/or logos, in association with any personal advertisement, online profile, or personal use, without written permission.”

WE WILL NOT maintain disciplinary provisions in our Employee Handbook, which ban you from using confidential information for any nonbusiness purpose.

WE WILL NOT maintain provisions in our Employee Handbook, which subject you to discipline for “conflicts” or “the appearance of conflicts” with CoServ, and mandate “a continuing obligation to disclose any situation that presents the possibility of a conflict.”

WE WILL NOT maintain disciplinary provisions in our Employee Handbook, which subject you to discipline for all non-business usage of our assets and equipment.

WE WILL NOT withdraw recognition from, and fail and refuse to bargain with, the International Brotherhood of Electrical

Workers Local 220, affiliated with the International Brotherhood of Electrical Workers (the Union) as the exclusive collective-bargaining representative of our employees in the following unit:

INCLUDED: All Linemen - Class A1, Class A2, Class B1, Class B2, Class C1, Linemen Class C2, Class G1, Class G2, Groundmen, Journeymen, Servicemen; Power Quality Technicians, System Operators and Senior System Operators employed by . . . [CoServ] at our facility in Corinth, Texas.

EXCLUDED: All other employees, including office clericals, managers, guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to provide the Union with requested information that is relevant and necessary to its performance of its duties.

WE WILL NOT change your wages, benefits, or other terms and conditions of employment, without first notifying and bargaining with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights set forth above.

WE WILL rescind or modify these provisions of our Employee Handbook:

1. The *Professionalism* policy to the extent that it prohibits you from:
 - a. Disclosing employee data without authorization under Rule 6;
 - b. Failing to cooperate in any investigation by us under Rule 13;
 - c. Having a lack of loyalty to us under Rule 14;
 - d. Maintaining a “disrespectful attitude towards a supervisor” under Rule 18;
 - e. “[E]ngaging in . . . conduct which could damage . . . [our] image or reputation” under Rule 20;
 - f. “Fail[ing] . . . to enhance the public image of CoServ while participating in non-work activities, while off duty or while wearing CoServ logo apparel” under Rule 22; and
 - g. “Using the CoServ name or its related trademarks and/or logos, in association with any personal advertisement, online profile, or personal use, without written permission” under Rule 24.
2. The *Confidential Information* policy to the extent that it prohibits you from using confidential information for any non-business purpose.
3. The *Conflicts of Interest* policy to the extent that it bars “conflicts” or “the appearance of conflicts” with us, and mandates “a continuing obligation to disclose any situation that presents the possibility of a conflict.”
4. The *Protecting CoServ Assets* policy to the extent that it prohibits all non-business usage of our assets and equipment.

WE WILL furnish all of you with inserts for the current Employee Handbook that:

1. Advise that the unlawful provisions, above have been rescinded, or
2. Provide the language of lawful provisions, or publish and distribute revised Employee Handbooks that:

- a. Do not contain the unlawful provisions, or
- b. Provide the language of lawful provisions.

WE WILL recognize and, on request, bargain collectively with the Union as the exclusive collective-bargaining representative of our unit employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, upon the Union’s request, rescind any or all of the unilaterally implemented changes that we made in the terms and conditions of employment of employees since November 26, 2014.

WE WILL provide the Union with the information requested in its November 27, 2014 letter.

WE WILL hold a meeting or meetings during working hours and have this notice read to you and your fellow workers by either President and Chief Executive Officer Donnie Clary or Senior Vice President of Employee Relations Denise Smithers, in the presence of an agent of the National Labor Relations Board.

DENTON COUNTY ELECTRIC COOPERATIVE, INC. D/B/A
COSEV ELECTRIC

The Administrative Law Judge’s decision can be found at www.nlrb.gov/case/16-CA-149330 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.

