

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-60522

DISH NETWORK CORPORATION,

Petitioner Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent Cross- Petitioner

Petitions for Review of an Order of the
National Labor Relations Board

Before SOUTHWICK, WILLETT, and OLDHAM, Circuit Judges.

PER CURIAM:

THIS CAUSE came to be heard upon a petition filed by the DISH Network Corporation to review an Order of the National Labor Relations Board dated June 28, 2018, in Case Nos. 16-CA-173719, 16-CA-173720, 16-CA-173770, 16-CA-177314, 16-CA-177321, 16-CA-178881 and 16-CA-178884, reported at 366 NLRB No. 119, and upon a cross-application for enforcement filed by the National Labor Relations Board to enforce said Order. The Court heard argument of the parties and has considered the briefs and agency record filed in this cause.

On March 20, 2020, the Court, being fully advised in the premises, handed down its opinion granting the petition of DISH

Network Corporation and granting in part the Board's cross-petition for enforcement. The Court now renders judgment for all the reasons and on all the grounds stated in *Dish Network Corp. v. NLRB*, 953 F.3d 370 (5th Cir. 2020). In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Fifth Circuit that Petitioner/Cross-Respondent DISH Network Corporation, Farmers Branch and North Richland Hills, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from
 - (a) Telling employees that "the union is gone."
 - (b) Threatening employees that the Farmers Branch and North Richland Hills offices would close because they engaged in union or any other protected concerted activities.
 - (c) Implicitly threatening employees with discharge by inviting their resignations because they engaged in union or any other protected concerted activities.
 - (d) Threatening employees that they will be disciplined if they discuss the Union with newly-hired employees.
 - (e) Creating the impression that employees' union or other protected concerted activities were being monitored.
 - (f) Unilaterally changing its disciplinary policy and discharging unit employee Dakota Novak, by failing to afford the Union preimplementation notice of his contemplated discipline and an opportunity to bargain.
 - (g) In any like or related manner interfering with, restraining, or coercing its 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) Offer Novak full reinstatement to his former job or, if his job no longer exist, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he previously enjoyed, unless it is shown that DISH would have discharged him under the preexisting

terms and conditions of employment.

- (b) Make Novak whole for any loss of earnings and other benefits suffered as a result of his discharge, in the manner set forth in the remedy section of this decision, compensate him for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year, unless it is shown that DISH would have discharged him under the preexisting terms and conditions of employment.
- (c) Remove from its files any reference to the discharge of Novak, and within 3 days thereafter notify the employees in writing that this has been done and that the discharge will not be used against him in any way, unless it is shown that DISH would have discharged him under the preexisting terms and conditions of employment.
- (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (e) Within 14 days after service by Region 16, post at its Farmers Branch and North Richland Hills, Texas facilities copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director, after being signed by DISH's authorized representative, shall be posted by DISH 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 text message, email, posting on an intranet or an internet site, and/or other electronic means, if DISH customarily communicates with its employees by such means. Reasonable steps shall be taken to ensure that

the notices are not altered, defaced, or covered by any other material. If DISH has gone out of business or closed the facilities 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 by it at any time since January 13, 2016.

- (f) Within 14 days after service by the Region, hold a meeting or meetings during working hours at the FB and NRH hubs, which will be scheduled to ensure the widest possible attendance of unit employees, at which time the attached notice marked "Appendix" is to be read to its employees by Beckham in the presence of a Board agent.
- (g) 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.

APPENDIX
NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED
STATES COURT OF APPEALS ENFORCING AN 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 tell you that “the union is gone,” threaten that the Farmers Branch and North Richland Hills offices will close because you engaged in union or any other protected concerted activities, or implicitly threaten your discharge by inviting you to resign because you engaged in union or any other protected concerted activities.

WE WILL NOT threaten that you will be disciplined, if you discuss the Union with newly-hired employees, or create the impression that your union activities or any other protected concerted activities are being monitored.

WE WILL NOT unilaterally change our disciplinary policy and discharge unit employee Dakota Novak, by failing to afford the Union pre-implementation notice of his contemplated discipline and an opportunity to bargain.

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 offer Dakota Novak, who was discharged pursuant to our unilaterally implemented disciplinary policies and procedures, full reinstatement to his former job or, if that job no longer exist, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, discharging if necessary any employees hired in his place, subject to our demonstrating in a compliance hearing that we would have discharged Novak even under the terms and conditions of employment that existed immediately prior to our unilateral

change.

WE WILL, subject to the condition set forth above, make Novak whole for any loss of earnings and other benefits suffered as a result of his discharge, less any net interim earnings, plus interest compounded daily.

WE WILL, subject to the condition set forth above, remove from our files any reference to the unlawful discharge of Novak, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL compensate David Novak for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

DISH NETWORK CORPORATION



**Certified as a true copy and issued
as the mandate on Aug 26, 2020**

Attest:

Jyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit