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American Medical Response West and United Emergency Medical Service Workers, American Federation of State County, and Municipal Employees, Local 4911. Cases 20–CA–229397, 20–CA–229699, and 20–CA–230007

December 10, 2020

DECISION AND ORDER

BY MEMBERS KAPLAN, EMANUEL, AND MCFERRAN

On December 6, 2019, Administrative Law Judge Ariel L. Sotolongo 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

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.²

We adopt the judge’s finding that the Respondent violated Section 8(a)(1) of the Act by directing employees to remove and not to wear a button bearing the message “No

on Prop 11.” As an initial matter, the judge found that employees wearing the “No on Prop 11” button engaged in protected activity, and the Respondent did not except to this finding. As such, the Respondent’s ban on employees wearing the button is presumptively invalid in the absence of special circumstances. See *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–803 (1945); see also *USF Red Star, Inc.*, 339 NLRB 389, 391 (2003).³

It is the employer’s burden to prove the existence of special circumstances justifying a prohibition on employees’ Section 7 right to wear union insignia in the workplace. See, e.g., *Meijer, Inc.*, 318 NLRB 50, 51 (1995), *enfd.* 130 F.3d 1209 (6th Cir. 1997). In addition, the Board has made clear that an employer’s ban or prohibition on union insignia must be narrowly tailored and not extend beyond the special circumstances justifying the ban or prohibition. See *USF Red Star, Inc.*, 339 NLRB at 391; see also *Boch Honda*, 362 NLRB 706, 707–708 (2015), *enfd.* 826 F.3d 558 (1st Cir. 2016).

Here, the Respondent asserts that the ban on the “No on Prop 11” button is justified by concerns for patient safety and its public image. As the judge found, however, the Respondent’s ban applied to all employees during their working hours, even when they were not interacting with patients or the public.⁴ Thus, even assuming the special circumstances identified by the Respondent could justify a more tailored restriction on the employees’ right to wear the “No on Prop 11” button, the ban here extends beyond

¹ In its reply brief, filed on March 2, 2020, the Respondent argued that the General Counsel’s answering brief was untimely filed and should be stricken. On the same day, the Respondent filed with the Board a separate motion to strike the General Counsel’s answering brief on the same ground. By letter dated March 4, 2020, the Executive Secretary’s Office explained that the General Counsel’s brief was timely filed and properly denied the Respondent’s motion to strike as moot.

² We shall modify the judge’s recommended Order to conform to the Board’s standard remedial language and in accordance with our recent decision in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020). We shall also substitute a new notice to conform to the Order as modified.

³ We thus reject the Respondent’s argument that the judge erred in applying the special circumstances test rather than the test articulated in *Boeing Co.*, 365 NLRB No. 154 (2017). See *Wal-Mart Stores, Inc.*, 368 NLRB No. 146, slip op. at 2–3 and fns. 10 and 13 (2019) (discussing application of the two frameworks).

We also find it unnecessary to pass on the Respondent’s argument that the Board should extend to ambulance companies the presumption of validity, created in the healthcare facility setting, for employer restrictions on nonofficial insignia in immediate patient care areas. See, e.g., *Healthbridge Mgmt.*, 360 NLRB 937, 938 (2014), *enfd.* 798 F.3d 1059 (D.C. Cir. 2015); see also *NLRB v. Baptist Hospital*, 442 U.S. 773, 781 (1979). Even if the presumption were to apply to the Respondent’s operations, the Respondent’s button ban would nevertheless be unlawful because, as discussed below, it is overbroad and applies to employees with no in-person interaction with patients, as well as to patient-facing employees at times when they are at their deployment center and not interacting with patients or the public.

In light of the above, we do not rely on footnote 22 of the judge’s decision addressing his views of the healthcare presumption precedent, the judge’s statement that “the Board has had the chance to pass on this very issue on a couple of occasions, but did not address it,” the judge’s statement that he is not persuaded that the first responder setting here “is the functional equivalent of the patient care area of the hospital,” or on *Alert Medical Transport*, 276 NLRB 631 (1985), and *Metro-West Ambulance Services, Inc.*, 360 NLRB 1029 (2014), cited by the judge, in which the Board adopted the judges’ findings pertaining to bans on the wearing of union insignia in the absence of exceptions. Nor do we rely on the judge’s findings that the Respondent’s assertion that the healthcare presumption justifies the ban here demonstrates “shifting rationales,” “shifting justifications,” and “pretext.”

Member Emanuel would analogize the transportation of patients in an ambulance to the immediate patient care areas of a hospital and find that bans on wearing union insignia at those times are presumptively valid. Nonetheless, he agrees with his colleagues that the Respondent’s ban is still unlawfully overbroad because the Respondent applied it to employees while they did not have contact with patients or the public.

⁴ As relevant here, the judge found that the Respondent told two employees, who were also union officials, that the Respondent’s employees were not permitted to wear the “No on Prop 11” button. In addition, the judge found the Respondent directed employees who had no in-person interaction with patients or the public to remove the “No on Prop 11” button and also directed an employee who did have in-person interactions with patients and the public to remove the button when he was in the deployment center and not interacting with patients or the public.

those circumstances to prohibit employees from wearing the button even in situations where patient safety and public image concerns would not be present. See *USF Red Star*, supra.⁵ We thus agree with the judge that the Respondent's ban was overbroad and violated Section 8(a)(1).

ORDER

The National Labor Relations Board orders that the Respondent, American Medical Response West, Sacramento, West Sacramento, Rocklin, Santa Rosa, and San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting employees from engaging in protected concerted activity by directing them to remove and not to wear the "No on Prop 11" button.

(b) 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) Post at its Sonoma County, Yolo County, Sacramento, and San Francisco, California facilities copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since October 16, 2018.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification

of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 10, 2020

Marvin E. Kaplan, Member

William J. Emanuel, 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 prohibit you from engaging in protected concerted activity by directing you to remove and not to wear the "No on Prop 11" button.

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

⁵ Member McFerran notes that even if the Respondent's prohibition on the "No on Prop 11" button was narrowly tailored to times when employees were interacting with patients or the public, she would nevertheless find it unlawful because the Respondent has not established special circumstances justifying such a prohibition.

⁶ If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after

the facilities reopen and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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."

AMERICAN MEDICAL RESPONSE WEST

The Board's decision can be found at www.nlr.gov/case/20-CA-229397 or by using the QR code below. Alternately, 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.



Marta I. Novoa, Esq., for the General Counsel.
Daniel F. Fears, Esq. (Payne & Fears, LLP), for the Employer.
Thomas I.M. Gottheil, Esq. (Weinberg, Roger & Rosenfeld), for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARIEL L. SOTOLONGO, Administrative Law Judge. At issue in this case is whether American Medical Response West (Respondent or AMR) violated Section 8(a)(1) of the Act by prohibiting its employees from wearing union supplied buttons during working time with the message "No on Prop 11," which referenced a ballot proposition before California voters in the November 2018 election.

I. PROCEDURAL BACKGROUND

Based on charges filed by United Emergency Medical Service Workers, American Federation of State, County and Municipal Employees Local 4911 (Union or Local 4911) in Case 20-CA-C229397 on October 16, 2018, in Case 20-CA-229699 on October 19, 2018, and in Case 20-CA-230007 on October 25, 2018, the Regional Director for Region 20 of the Board issued a complaint on December 20, 2018, alleging that Respondent had violated Section 8(a)(1) of the Act by prohibiting its employees from engaging in protected activity as briefly described above. Respondent thereafter filed a timely answer denying the substance of the allegations and raising certain affirmative defenses. I presided over this case in San Francisco, California, on March 19, 2019.

II. JURISDICTION AND LABOR ORGANIZATION STATUS

The complaint alleges, and Respondent admits, that Respondent is a California corporation with offices and places of business in Sacramento, West Sacramento, Rocklin, Santa Rosa, and San Francisco, where it is engaged in providing ambulance and wheelchair van transportation services. The complaint further alleges, and Respondent admits, that during the 12-month period ending on November 30, 2018, in conducting its above-described operations, it derived gross revenues in excess of

\$500,000 and purchased and received goods or services valued in excess of \$5000 which originated from points outside the State of California. Accordingly, Respondent admits, and I find, that it is an employer within the meaning of Sections 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. FINDINGS OF FACT

A. Background Facts

Many, and perhaps most, of the facts in this case are not truly in dispute, and indeed the parties (the General Counsel, Respondent, and the Union) entered into the record a Joint Stipulation of Facts admitted as Joint Exhibit 1 (Jt. Exh. 1). The factual stipulations are as follows:

1. American Medical Response West (Respondent) is a private ambulance company providing 9-1-1 and non-emergency transportation services in California.

2. Respondent is part of the Global Medical Response family of companies.

3. Respondent has operations throughout the State of California, including in Sacramento, San Francisco, Sonoma, and Yolo Counties. Respondent operates under the name Sonoma Life Support in Sonoma County.

4. At all material times, the following individuals held the positions set forth by their respective names and have been supervisors of Respondent within the meaning of Section 2(11) and agents within the meaning of Section 2(13) of the Act:

- a. Dean Anderson—Regional Director
- b. Galand Chapman—Administrative Paramedic Supervisor
- c. Scott Gowin—Operations Manager
- d. Nicole Henriksen—Operations Manager
- e. Daniel Iniguez—Operations Manager
- f. Trudy Tang—Operations Supervisor

5. United Emergency Medical Services Workers, American Federation of State, County, and Municipal Employees Local 4911 (Union) is a labor organization within the meaning of Section 2(5) of the Act in that it is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

6. The Union represents a bargaining unit at Respondent's Northern California operations consisting of all full-time and regularly scheduled part-time employees as follows:

EMT-1 s, EMT-2s, EMT-Ps, Drivers, Wheelchair Van Drivers, Paramedic CCTs, EMT CCTs, Gurney Van Drivers (Sacramento only), and RNs in Alameda, Contra Costa, Marin, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Solano, Sonoma, Stanislaus, Tulare and Yolo Counties and any distinct CCT and IFT divisions; Dispatchers, Call-takers/Customer Service Representatives, System Status Controllers in Santa Clara, Sacramento, San Mateo (BayCom), Sonoma (REDCOM) and Stanislaus (LifeCom) Counties; Pre-billers, Billers, Clerks 1 s,

Clerks 2s, Stockers, Washers, Vehicle Service Technicians, Mailroom Clerk (Alameda only), Couriers, Deployment Coordinators and Schedulers in Alameda, Contra Costa, San Mateo, Santa Clara, Stanislaus (Vehicle Service Technician only) and Tulare (Clerk 1 s and Clerk 2s only), and any distinct CCT and IFT divisions; Facilities Coordinators (Santa Clara, Stanislaus only and CCT and IFT divisions only). Excluding EMT-1 s and EMT-Ps in Tracy and Turlock, EMT-Ps in San Mateo County, and all other personnel, including guards and supervisors as defined by the National Labor Relations Act, as amended.

7. Respondent and Union were party to a collective-bargaining agreement (CBA) dated January 1, 2015 through and including June 30, 2018. (Jt. Exh. 2.) There were no signed extensions of the collective-bargaining agreement. As of October and November 2018, Respondent and the Union were still in the process of negotiating a successor agreement.

8. Joint Exhibit 2 (Jt. Exh. 2) contains the following article regarding uniforms:

16.1 Uniforms

All full-time and part-time field employees shall wear the uniform provided by the Employer while on duty. Wearing uniforms while not on duty or while performing non-Employer related business is prohibited. Properly sized uniforms shall be provided to employees. No unauthorized buttons, patches, or pins may be worn on the uniform (other than legally permissible union insignia).

9. The State of California permits initiative measures to be submitted to the electorate for voting through the ballot proposition process. Ballot propositions may include referenda or initiative measures proposing new laws.

10. The State of California's November 2018 ballot included a ballot proposition titled "REQUIRES PRIVATE-SECTOR AMBULANCE EMPLOYEES TO REMAIN ON CALL DURING WORK BREAKS. CHANGES OTHER CONDITIONS OF EMPLOYMENT. INITIATIVE STATUTE," which was commonly referred to as Proposition 11 or Prop 11.

11. Proposition 11 was an initiative statute proposing a new law. Joint Exhibit 3 (J. Exh. 3) is the text of the law proposed by Proposition 11 as printed in the California Secretary of State Official Voter Guide for the November 2018 election.¹

12. Beginning approximately mid-October 2018, some of Respondent's bargaining unit employees wore the button

¹ Over the objection of Respondent, I also admitted into the record a copy of the Official Voter Information Guide (GC Exh. 3) prepared by the Legislative Analyst's Office under the auspices of the California Secretary of State, among whose duties, inter alia, is to provide California voters with an accurate, unbiased and non-partisan analysis of proposed legislation appearing on the ballot as required by California Elections Code § 9005, and as such is a public report pursuant to FRE 803(8) & 902(5). This analysis provides a succinct summary of the provisions and impact of Proposition 11, the text of which is also part of the record as Jt. Exh. 3. As discussed below, in view of the text of Proposition 11, as explained and summarized by the Legislative Analyst, there can be little doubt that Proposition 11 would have a significant and direct impact on the working conditions of EMTs and paramedics employed by

depicted in Joint Exhibit 4 while on duty and in uniform. The buttons have a directive to vote "No on Prop 11" and include the Union's name and a drawing of an ambulance.

13. On October 15, 2018, Union Labor Representative Casey Vanier and Respondent's Regional Director Dean Anderson exchanged a series of emails regarding Respondent's position regarding the button depicted in Joint Exhibit 4. (Jt. Exh. 5.)

14. On October 16, 2018, Respondent sent a page to all Sonoma County full-time and part-time EMTs and Paramedics through its Everbridge paging system. (Jt. Exh. 6.) Respondent's Sonoma County operations regularly use the Everbridge paging system to communicate with its field personnel, who are required to have a device capable of receiving messages through Everbridge.

15. Around mid-October 2018, Respondent by Administrative Paramedic Supervisor Galand Chapman, at its Sonoma facility, told one or more on-duty paramedics and/or EMTs they could not wear the buttons depicted in Joint Exhibit 4.

16. Around mid-October 2018, Respondent by Operations Manager Scott Gowin told one or more on-duty paramedics and/or EMTs that they could not wear the buttons depicted in Joint Exhibit 4.

17. Around mid-October 2018, Respondent by Operations Supervisor Trudy Tang, at its San Francisco facility, told one or more on-duty paramedics and/or EMTs they could not wear the buttons depicted in Joint Exhibit 4.

B. Testimonial Evidence

The parties also called several witnesses to the stand to supplement the evidence contained in the above-described stipulated facts. They testified as follows:

Sam Martarano, called as a witness by the General Counsel, testified that he has worked as a paramedic for AMR for about 2 years, based at the San Francisco facility. At the time of the hearing he was the chief shop steward for the Union, a position he had held for about 6 months. According to Martarano, a Union representative provided him with a number of "No on Prop 11" buttons on October 20, 2018,² which he then distributed to other employees.³ He also left a bag containing these buttons at the employee break room and, wore one on his uniform while on duty in the field. Upon returning to the San Francisco facility at the end of his shift, he was still wearing the button when he met with supervisor Trudy Tang.⁴ According to Martarano, Tang told him that she did not think he could wear the button but would check with Operations Manager Rod Brouhard. Tang

Respondent and other private-sector ambulance or medical transportation companies.

² All dates hereafter shall be in calendar year 2018, unless otherwise indicated.

³ As discussed above, a photo of the button at issue herein was admitted in the record as J Exh. 4. Briefly, the photo shows that the button, red in color with white letters and numbers, is about 2.5 inches in diameter. Inside a white rectangle at the center of the button, the message "NO ON PROP 11" appears, with a drawing of an ambulance to the right of the rectangle. Just below the rectangle, the button bears the name of the Union, "UEMSW-AFSCME Local 4911," and a small union "bug" appears at the bottom.

⁴ In the joint stipulation, Tang is described as an "Operations Supervisor" and is an admitted statutory supervisor.

took a photo of the button, which she then texted to Brouhard. Within about 5 minutes, Brouhard responded and informed Tang that employees could not wear the button while on duty, a directive that Tang then relayed to Martarano.

Tang, called as a witness by Respondent, admitted that she had spoken to Brouhard about the “No on Prop 11” button and that she told Martarano that he could not wear such button while on duty, although she could not recall taking a photo of the button or sending such photo to Brouhard. In these circumstances, no credibility resolution is necessary, since both witnesses agree that Tang informed Martarano that he could not wear the button—which is the issue at the heart of this case.⁵ Additionally, Martarano testified that during 2018, while collective-bargaining negotiations between the parties for a new contract were going on, he wore a button in the field while on duty which bore the message “I Support My Bargaining Team 2200 Strong.”⁶ Tang testified that she never saw any employees wearing these buttons during that time. There is no evidence that Respondent ever directed employees not to wear these buttons.

Kourtney Moore, an AMR paramedic based in San Francisco, testified that she occasionally was assigned to work at Respondent’s Sonoma facility. When she worked in Sonoma, she was assigned “light duty” work, which consisted of in-house duties such as office clerical work, which involved no contact with patients or the public. While working in Sonoma in mid-October, she wore the “No on Prop 11” button which a coworker gave her, in order to support the Union’s stance on the proposition. On October 16, she was told by supervisor Galand Chapman, at the employee lounge in Sonoma, that she could not wear such button. She also testified that earlier in 2018, she wore the “I Support My Bargaining Team” button (GC Exh. 4) both in the field while on duty as well as in the office. Moore indicated that while in the office, she sees (and presumably, is seen by) supervisors “all the time,” but that she rarely sees supervisors in the field, where she spends about 12 hours a day. Chapman did not testify. I credit Moore’s testimony, which was not refuted in any way.

Nathan Du Vardo testified that he had worked for AMR for about 13 years, based at the Santa Rosa station in Sonoma, where he is the Union’s chief shop steward. He first saw the “No on Prop 11” buttons at a union meeting, during which the buttons were distributed. He took a bag of these buttons home with him to later distribute to other employees. Later on the same day, while he was off-duty, he received a call from Chapman, who told him that employees could not wear these buttons.

⁵ Indeed, Tang admitted telling another (unnamed) employee whom she saw in the parking lot wearing the button that this was not allowed.

⁶ A photo of these buttons, one in red with white lettering, the other in blue with white lettering, were introduced in the record as GC Exh. 4.

⁷ Du Vardo also testified that he was copied in the email exchange between the Union and Respondent regarding these buttons, emails which are part of the record (Jt. Exhs. 5 and 6) and referenced in the factual stipulations described above.

⁸ The button, about 2.5 inches in diameter, is red with white and blue lettering.

⁹ This button, about 2 inches in diameter, is red and white, with white and blue lettering.

¹⁰ During cross-examination, Du Vardo admitted that he had never (prior to October 2018) seen employees wear campaign-related buttons

According to Du Vardo, Chapman explained that these buttons were in violation of the collective-bargaining agreement, which allowed employees to wear union “insignias,” which these buttons were not. Du Vardo further testified that Chapman did not express any concern about the buttons compromising safety or possibly causing agitation in patients or their families. He testified that he told Chapman that in his view wearing these buttons was protected activity.⁷ Du Vardo also testified that during contract negotiations 3 years earlier, he (and other employees) while on duty openly wore a button with the message “4911 I Support My Bargaining Team (GC Exh. 5).⁸ Similarly, some years before that during contract negotiations, he wore a button while on duty with the message “We Stand United.” (GC Exh. 6).⁹ Additionally, Du Vardo testified that he has seen employees wear other type of buttons while on duty, on a regular basis, including a “Mothers Against Drunk Driving” button, one depicting a metal turtle, and one with the outline of the State of California map, with some blue shading.¹⁰ As previously noted, Chapman did not testify, and I credit Du Vardo’s testimony, which was not contradicted or refuted.

Jennifer Taylor testified that she worked for AMR as a dispatcher for Placer County, based at the employer’s Sacramento facility. She is also the shop steward and acting chief shop steward for the Union at this facility. As a dispatcher, Taylor testified, she works exclusively within the office, and has no in-person contact with the public. Sometime during October, she received a “No on Prop 11” button from a fellow shop steward and wore the button on her uniform while on duty. A few minutes after she started wearing the button, she was informed by Daniel Iniguez, the Sacramento facility field manager, that she was not allowed to wear the button, and he asked her to take it off. Iniguez told her she could get “in trouble” for wearing the button, to which she replied “Seriously?” When Iniguez said “yes,” she took the button off. Iniguez did not testify, and I credit Taylor’s testimony, which was not refuted in any way.

Darin Licthy testified that he has worked for AMR for 10 years as a paramedic in Yolo County based at the Davis facility. He is the union chapter president for his area. Licthy received a bagful of “No on Prop 11” buttons from Union Representative Jeff Misner, and he started distributing the buttons to union shop stewards and members.¹¹ Licthy was in Placer County distributing the buttons to others when he received a phone call from Scott Gowan, AMR operations manager for Yolo County, who asked him if he was passing out the “No on Prop 11” buttons.

or any other “political paraphernalia” while on duty. Based on the record, it is clear that Du Vardo, in answering these questions, understood the term “political” in the narrow sense, that is, expressions in support or against a candidate or a ballot proposition. As he pointed out, however, the “Mothers Against Drunk Driving” button, or the button with the State of California outline—an expression of support for the police—could arguably be seen as political in nature as well.

¹¹ When he was shown the photo of the button depicted in Jt. Exh. 4, Licthy said the button he distributed was similar, but he remembered the union logo as being smaller. In that regard, I note that Union Representative Casey Vanier testified that there was only one version of the button distributed, the one depicted in Jt. Exh. 4, and that there is no evidence that a second version existed. I therefore conclude that Licthy’s memory was faulty in that regard, but that otherwise his testimony was credible.

Lichy, who was off duty at the time, confirmed that he was passing out said buttons, and Gowan then told him that there had been a management meeting about it and that employees were not allowed to wear such buttons. Gowan did not testify, and I credit Lichy's testimony, which was unrefuted.

Dean Anderson, AMR's regional director for Sonoma County, called to testify by Respondent, testified about the "uniform policy" contained in article 16.1 of the parties' collective-bargaining agreement. According to Anderson, under article 16.1, which states, *inter alia*, that employees must wear uniforms while on duty (and cannot wear them while off duty), and that "[n]o unauthorized buttons, patches, or pins may be worn on the uniform (other than legally permissible union insignia)," Respondent has never allowed employees to wear "political buttons." Anderson further testified that the term "union insignia" has been interpreted to apply to union "lapel pins" or insignia indicating membership.¹² According to Anderson, when he learned from a field supervisor that employees were wearing the "No on Prop 11" buttons, he contacted fellow regional directors and Respondent's HR department. After consultations (with counsel, apparently), it was decided that such buttons were "political" in nature, since the message involved a public election issue that was before the voters—as opposed to an "internal" or "union support" issue—and thus not allowed. Anderson explained that employees' uniforms, which they wore as representatives of the company, should not be used as "billboards" to advocate for political viewpoints that might be perceived as contrary to what Respondent's customers favored.¹³ Anderson additionally testified that the buttons of the type at issue could potentially raise a "safety issue," inasmuch the (metal) button was attached to the uniform of an employee that might be in close physical contact with patients, and because the employer wanted to discourage "political discourse" with patients.¹⁴ Shown the photographs of buttons that employees had testified they had worn on their uniforms during collective-bargaining negotiations in the past (GC Exhs. 4; 5; & 6), Anderson testified that he had never been aware of employees wearing such buttons and added that in his opinion such pins would not be allowed under article 16.1 of the contract. Finally, Anderson authenticated and verified Respondent's "Policy and Procedure Manual" (R. Exh. 1), which, *inter alia*, sets forth Respondent's uniform policies and procedures in effect for Sacramento, Placer and Yolo Counties, as well as Respondent's

¹² I note, however, that Anderson never provided any details about such contractual "interpretation," such as whether it was by mutual agreement of the parties, or by an arbitrator, for example. Indeed, Anderson acknowledged that no discussions were held about this subject during negotiations he was involved in, and that the wording of art. 16.1 was "boilerplate" and had been in place long before he joined AMR (Tr. 191). Accordingly, I do not credit his testimony that the collective-bargaining agreement had been "interpreted" in this manner, unless he was solely referring to Respondent's own interpretation.

¹³ Anderson thus testified: "We don't see it as appropriate that the uniform of the employee, that is a representative not only of that employee themselves (sic), but also a representative of the Company, that that should be used as a billboard to put forth a political message. And as you know, this issue happens to be about Prop 11, or what inflamed this issue was the Prop 11 issue, but the answer could be the same whether it was a candidate position, or city council board of supervisors. We hold contracts with cities and counties all over the place, and we

"Standard Operating Procedure" (R. Exh. 2), in effect in Sonoma, which similarly sets forth Respondent's uniform policy in effect for that County.

Nicole Henrickson, called as a witness by Respondent, testified that she has been Respondent's operations manager, based at its Santa Rosa facility. She testified that Respondent has strictly adhered to the (employee) uniform policy as contained in its "Standard Operating Procedure (R. Exh. 2), as described above. She testified as to the importance of uniforms in projecting an image of professionalism, since Respondent's employees have to deal with members of the general public, which need to feel assured in different—and unknown—situations. Henrickson indicated that it's important to be "nonpartisan," and suggested that wearing buttons such as the "No on Prop 11" buttons would detract from the image of professionalism that Respondent's employees needed to convey and could be a "distraction" that could "agitate" members of the general public or their families.¹⁵

IV. ANALYSIS

As briefly touched upon in the preamble of this decision, at issue in this case is whether Respondent violated Section 8(a)(1) of the Act by prohibiting its employees, while on duty, from wearing buttons bearing the message "No on Prop 11," which referred to a ballot proposition before California voters in the November 2018 election. The General Counsel, relying primarily on *Eastex, Inc. v. NLRB*, 437 U.S. 556 (1978), and *AT&T*, 362 NLRB 885, 889 (2015), contends that the "No on Prop 11" button was protected union insignia, and that Respondent violated the Act when it directed its employees to remove (or not to wear) the buttons while on duty. It further asserts that Respondent failed in its burden to establish "special circumstances" which would permit it to restrict this otherwise protected activity. Finally, it contends that that the Union did not waive the right of its members to wear such insignia in the collective-bargaining agreement with Respondent, which in any event had expired when the conduct took place and thus no longer enforceable as to this conduct. Respondent, on the other hand, asserts that the buttons at issue were not "union insignia" permissible under article 16.1 of the parties' collective-bargaining agreement, but rather a "partisan, political message" aimed at the general public and thus not protected under the Act or permissible

can't afford to have our folks be perceived as representing an issue that may be contrary to what one of our customers is in favor of." (Tr. 172–173.)

¹⁴ Although not specifically testified to by Anderson, the implication, raised throughout the hearing as well as in its post-hearing brief by Respondent, was that patients—or their families—might become upset or agitated by political messages conveyed by such buttons.

¹⁵ Henrickson additionally testified that she was off work during October 2018, when the events at issue in this case took place. During her time off, she testified, she volunteered to lend her support in favor of Proposition 11, including having her photo appear in flyers mailed to the general public, and being featured in TV commercials in support of that Proposition. As a result, she testified, she was snubbed by many of her fellow employees, some of whom left (anonymous) hostile or offensive messages under her door and was attacked by blogs in the internet. Henrickson also acknowledged that AMR was one of the primary financial backers of Proposition 11.

under the contract. It further argues that the collective-bargaining agreement's limitations on wearing any buttons or pins other than "union insignia" survived its expiration because the parties are obligated to maintain the "status quo" on all mandatory subjects of bargaining, including this issue. Finally, it asserts, for a variety of reasons more thoroughly discussed below, that special circumstances existed in this instance that would permit Respondent to prohibit the wearing of the buttons, particularly in light of the fact that the "healthcare" exception was applicable in this case. For the reasons discussed below, I conclude that the General Counsel has the better argument and that Respondent accordingly violated the Act in these circumstances.

The Board and the courts have long recognized and held that Section 7 of the Act protects the rights of employees to wear and distribute items such as buttons, pins, stickers, T-shirts, flyers, or other items displaying a message relating to terms and conditions of employment, unionization, and other protected matters. Accordingly, an employer that maintains or enforces a rule restricting employees from wearing (or distributing) such items violates Section 8(a)(1) of the Act. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–803 (1945); *Boise Cascade Corp.*, 300 NLRB 80 (1990); *Medco Health Solutions of Las Vegas, Inc.*, 364 NLRB No. 115 (2016); *In-N-Out Burger, Inc.*, 365 NLRB No. 39 (2017), *enfd.* 894 F.3d 707 (5th Cir. 2018); *Constellation Brands, U.S. Operations, Inc.*, 367 NLRB No. 79 (2019). It matters not that the message conveyed by such insignia, paraphernalia, or flyers might be "political" in nature, so long as the message has a reasonable and direct nexus to the advancement of mutual aid and protection in the workplace. In *Eastex*, *supra*, for example, the Supreme Court held that the distribution during nonworking times and in the nonworking areas of a union newsletter advocating opposition to amending the State constitution to incorporate a right-to-work statute and, criticizing a presidential veto of a federal minimum wage bill, was protected activity. Likewise, and closer to the issue herein, in *AT&T*, *supra*, the Board held that the wearing by employees of "No on Prop 32" buttons, signaling opposition to a California ballot proposition that would have prohibited unions from using dues collected through payroll deductions to be used for political purposes, was likewise protected activity. I find that *Eastex*, and particularly *AT&T*, are dispositive of the issue of whether wearing the "No on Prop 11" buttons was protected activity; I conclude that it was. Indeed, it is evident that in the instant case, Proposition 11 would have had a more immediate, significant, and direct impact on the working conditions of EMTs and paramedics employed by AMR than Proposition 32 would have had on the general

population of employees in question in *AT&T*.¹⁶ Accordingly, if the wearing of "No on Prop 32" buttons in *AT&T* was deemed protected, there can be no doubt that the wearing of "No on Prop 11" buttons in this instance was likewise protected.¹⁷

The issue then becomes whether "special circumstances" existed in this instance that would have allowed Respondent to restrict or prohibit this otherwise protected activity. The Board has consistently ruled that the "special circumstances" exception exists only in a limited number of situations, such as were permitting such activity would: (1) jeopardize employee safety; (2) damage machinery or products; (3) exacerbate employee dissension; or (4) unreasonably interfere with the public image that the employer has established, as part of its business plan, through appearance rules for its employees. *P.S.K. Supermarkets, Inc.*, 349 NLRB 34, 35 (2007); *Bell-Atlantic-Pennsylvania*, 339 NLRB 1084, 1086 (2003), *enfd.* 99 Fed.Appx. 233 (D.C. Cir. 2004). In examining the special circumstances, the Board starts with the premise that any rule that infringes upon employees' Section 7 right to wear protected items is presumably invalid, and that the employer bears the burden to overcome such presumption. To meet this burden, employers must set forth substantial, nonspeculative evidence supporting of the special circumstances that justify its restriction. Conjecture, conclusory assertions, and generalizations will not suffice under this standard. *Medco Health Solutions*, *supra*; *In-N-Out Burger*, *supra*; *Healthbridge Mgmt., LLC*, 360 NLRB 937, 938 *fn.* 5 (2014); *Eckerd's Market, Inc.*, 183 NLRB 337, 338 (1970).

For the reasons discussed below, I find that Respondent has not met its burden in establishing that special circumstances existed in the instant situation that would have allowed it to lawfully restrict its employees display of union insignia. First, it should be noted that Respondent's initial, real time, justification for banning the "No on Prop 11" buttons was that such buttons were "political" in nature and thus did not meet the definition of "union insignia" that employees were allowed to wear under article 16.1 of the collective-bargaining agreement. This is evident, first of all, by the exchange of emails between the Union and Respondent on October 15 (Jt. Exh. 5), when Sonoma regional director Anderson wrote union representative Casey Vanier—who had written to complain about Respondent's banning of the buttons—as follows: "Union insignia pins are fine, as they have always been. Political campaign buttons worn on the company uniform without permission exceed the parameters of the CBA and our local SOP" (which apparently stands for Standard Operating Procedure—see, e.g., R. Exh. 6).¹⁸ This justification was also repeated by Supervisor Galand Chapman, who told

¹⁶ From the language and text of Proposition 11, it is clear that it was legislation aimed at an extremely narrow subset of employees in the State of California, EMTs and paramedics, and that it targeted a particular subset of their working conditions—whether they had to remain "on-call" during their breaks and whether they had to be paid overtime if they did. Indeed, to say that Proposition 11 had an infinitesimally small impact on workers in California in general, and its general population as a whole, could arguably be deemed an understatement.

¹⁷ Respondent argues that the buttons in this case were "partisan" in nature, and no different than buttons endorsing or opposing a candidate for office or a candidate's position or philosophy (examples given by Respondent: "Vote for Newsom;" "Impeach Trump;" "MAGA"). This

argument is completely devoid of merit. First, there is absolutely no evidence, nor reason to believe, that support or opposition to Proposition 11 broke along partisan lines. Second, the Board and the Supreme Court have clearly distinguished between expressing political support or opposition for legislation or official acts that have a close nexus to and would impact terms and conditions of employment (e.g., *Eastex*; *AT&T*) which are permissible, from messages endorsing or opposing partisan candidates (e.g., *Firestone Steel Products Co.*, 244 NLRB 826 (1979), *affd.* 645 F.2d 1151 (DC Cir. 1981), which an employer may prohibit.

¹⁸ Anderson initially confirmed this justification early in his testimony, before adding more justifications, as will be discussed below. These additional justifications, however, were apparently added ex post

shop steward Nathan DuVardo that employees could not wear the buttons because they were in violation of the collective-bargaining agreement, since the buttons were not “union insignias.” The are several reasons why this justification lacks legal merit and is thus invalid. First, the meaning of the term “union insignia,” as used in the contract is arguably vague, and there is no evidence that the parties ever reached an agreement or understanding as to the precise definition or interpretation of such term.¹⁹ As some of the above-cited cases reveal, however, the Board and the courts have defined the term “union insignia” broadly to cover a wide spectrum of items bearing protected messages displayed or worn by employees, including not only buttons but ribbons, banners, T-shirts, and other similar items.²⁰ Inasmuch I have found that wearing the “No on Prop 11” buttons in these circumstances was protected activity, Respondent bears the burden of showing that the Union, as the collective-bargaining representative of the employees, had clearly and unambiguously waived its members’ statutory right to wear such buttons. Respondent has not met this burden. Moreover, even if it could be validly argued that the Union had waived its members’ statutory rights in this instance, it is well-established that a contractual

facto, which indicate shifting justifications and raise questions as to whether those added justifications are pretextual in nature.

¹⁹ Respondent appears to define “union insignia” in a very narrow manner, referring to something akin to a small lapel pin indicating union membership. There is simply no evidence in the record as to what the parties exactly meant by such term as it appears in the collective-bargaining agreement.

²⁰ Accordingly, since art. 16. 1 of the collective-bargaining agreement permits the wearing of “legally permissible union insignia” (emphasis added), it is reasonable to conclude that the buttons at issue here fall within the scope of the definition used by the Board and the courts.

²¹ In its post-hearing brief Respondent, citing the “Katz rule”—presumably referring to *NLRB v. Katz*, 369 U.S. 736 (1962), which it did not cite—argues that since the dress code is a “mandatory subject of bargaining,” art. 16.1 survived the contract’s expiration, since the parties must maintain the status quo ante until a new agreement—or an impasse—is reached. This argument simply lacks merit, as the cases cited above indicate. What needs to be noted is that Sec. 7 rights are vested exclusively on employees—neither employers nor unions have such rights—and the Board has always recognized that there are limitations on the authority and liberty of third parties, such as labor organizations, to waive or bargain away such statutory rights. One of those limitations is that any such waiver cannot last beyond the expiration date a collective-bargaining agreement.

²² At this point, I feel it necessary to digress somewhat, in order to point out what I believe to be a puzzling anomaly in the “healthcare exception” doctrine described above. For some 40 years now, the Board and the courts have cited 2 seminal Supreme Court cases decided in 1978 and 1979, namely *Baptist Hospital*, supra., and *Beth Israel Hospital v. NLRB*, 437 U.S. 483 (1978), for the proposition that “the restriction on wearing union insignia in ‘immediate patient care areas’ (emphasis supplied) are presumptively valid.” See, e.g., *Saint John’s Health Care Center*, 357 NLRB 2078 (2011); *Sacred Heart Medical Center*, 347 NLRB 531 (2006), review granted on other grounds sub nom *Washington State Nurse’s Assn. v. NLRB*, 526 F.3d 577 (9th Cir. 2008); *Casa San Miguel*, supra; and *Mesa Vista Hosp.*, supra., which in turn cites *London Memorial Hospital*, 238 NLRB 704, 708 (1978). It is puzzling that two above-referenced Supreme Court cases are repeatedly cited in support of that proposition, because the Supreme Court never said anything of the sort. In *Baptist Hospital* and *Beth Israel*, the Supreme Court, following the

waiver of statutory rights does not survive the expiration of the contract. *Paul Mueller Co.*, 332 NLRB 312, 313 (2000); *Ryder/Ate, Inc.*, 331 NLRB 889 fn. 1 (2000); *Ironton Publications*, 321 NLRB 1048 (1998). The collective-bargaining contract between the parties in this instance had expired on June 30, 2018, several months before the events at issue herein. Accordingly, the parties’ collective-bargaining agreement provides Respondent with no shelter or valid justification for banning the buttons in question.²¹

The primary focus of Respondent’s defense, other than as discussed above, appears to be centered around the argument that it was engaged in providing emergency medical services, and that in such “healthcare” context, the burden of establishing NLRB special circumstances either did not exist or the threshold for establishing such special circumstances was much lower. For the following reasons, I find that these arguments also lack merit. First, while it is true that in the healthcare context the restriction on wearing union insignia in “immediate patient care areas” are presumptively valid, such restrictions on other areas of a hospital are presumably invalid. *Casa San Miguel*, 320 NLRB 534, 540 (1995); *Mesa Vista Hospital*, 280, 298–299 (1986).²² It is not

1974 healthcare amendments to the Act, decided to strike a balance among the interests of hospital employees, patients and employers. Thus, the Supreme Court decided that restrictions on *union solicitation and distribution* in immediate patient care areas were presumptively valid, in order to preserve a “restful, uncluttered, relaxing, and helpful atmosphere” which is the desired goal of patient recovery, rather than expose patients to “the tensions in the marketplace in additions to the tensions of the sick bed.” *Baptist Hospital*, supra. at 783. Although these cases addressed only union solicitation and distribution, in the last 40 years the Board and the courts have often substituted the phrase “union insignia” or “union apparel” for “union solicitation and distribution,” even though the Supreme Court *never* used the term “insignia” or “apparel”—or anything else other than “solicitation and distribution,” which was what the rules in those cases solely addressed. Although it isn’t completely clear, it appears that this doctrinal sleight of hand had its genesis in *London Memorial Hospital*, supra., a Board case decided shortly after *Beth Israel*. In that case, the Board, without further analysis, adopted the Administrative Law Judge’s statement that “there is no basis for applying a different rule to insignia...” *Id.*, at 708. It may be argued that this is a distinction without a difference; I respectfully disagree, because this off-handed statement, completely lacking in analysis, casually upends over 70 years’ worth of carefully drawn distinctions between solicitation/distribution and the wearing of insignia. Thus, both in its plain English meaning as well as in its traditional labor law definition, the term *solicitation* conveys an act where the solicitor invites, even demands, an active response from the person solicited. This could be a request to sign a petition or authorization card, or accepting flyer or other literature, or to listen to an argument or pitch. Thus, by its very nature, solicitation represents a more disruptive and perhaps provocative type of conduct by the solicitor which engages the person(s) being solicited. Wearing a union insignia, on the other hand, is passive conduct that does not necessarily invite a response (unless the message is vulgar, racist or otherwise offensive or provocative), but simply conveys an affiliation or support for a cause that may be lawful and non-controversial. Hence, this important difference explains why, for some 70 years or more, Board law regarding when it is lawful for employers to restrict solicitation (during working time and in working areas) differs from that regarding restrictions on union insignia (restrictions permissible only if special circumstances exist). It may be that in the final analysis, the Supreme Court’s directive in the healthcare arena to preserve the “restful

clear that the “healthcare” presumption is applicable to Respondent, a medical transportation/ambulance company. In that regard, I note that the Board has had a chance to pass on this very issue on a couple of occasions, but did not address it, instead basing its rulings—that the prohibition on wearing union pins was unlawful—on other grounds. See, *Alert Medical Transport*, 276 NLRB 631, 662–663 (1985); *Metro-West Ambulance Services, Inc.*, 360 NLRB 1029 (2014). It is true that as first responders, EMTs and paramedics provide initial, and perhaps critical, medical stabilization treatment while transporting the patient to a hospital, where the main treatment would take place. Thus, assuming that this initial treatment, whether at the location where the patient is first encountered or in the ambulance itself, can be considered the functional equivalent of the “immediate patient care areas” of a hospital, then Respondent’s prohibition regarding the wearing of “union insignia” *during such times* may arguably be considered presumptively valid. There are several reasons, however, why Respondent’s defenses in this regard are not persuasive or valid in these circumstances.

First, I am not persuaded that first responder treatment setting in these circumstances is the functional equivalent of the patient care areas of the hospital. Quite simply, I cannot imagine that an individual undergoing a heart attack or in acute pain and distress following a traumatic injury, for example, would take notice, let alone be distressed about a “No on Prop 11” button on the uniform of a first responder. A thousand, perhaps a million, thoughts are likely to be racing through the mind of a person in such acute distress, but I cannot conceive that his/her views on Proposition 11 would be one of them. Indeed, I find such prospect so unrealistic so as to border on the delusional. Second, even assuming that the “healthcare exception” to the rules regarding wearing union insignia is applicable here, the reasons given are pretextual in nature and the application of the rule was so overbroad so as to render it unlawful. As noted *infra*, the sole reason initially given by Respondent for the prohibition on the “No on Prop 11” buttons was that they were in violation of the collective-bargaining agreement. This argument completely lacks merit, as discussed above. Respondent never provided a different rationale for the prohibition until the hearing, and then in its posthearing brief. Indeed, Respondent did not raise, or even suggest, the “healthcare exception” defense in its answer to the complaint. (GC Exh. 1(1).) This clearly suggests a shifting rationale that was never present at the time of the prohibition—and suggests pretext. Moreover, the application of the directive prohibiting of wearing the “No on Prop 11” buttons was

atmosphere” in patient care areas trumps everything else, including the right to wear union insignia. That is *not* what the Supreme Court explicitly ruled in *Baptist Hospital* or *Beth Israel*, however, which only addressed solicitation and distribution. It is certainly within the purview of the Board or the courts to conclude that this is what the Court implied, but if such implication is applicable, the Board and the courts should so explicitly rule and proffer a better rationale and analysis than the conclusionary and off-handed declaration provided in *London Memorial*, which its progeny has blindly followed for 40 years. It is disingenuous to go on pretending that there is absolutely no difference, even in the healthcare area, between engaging in solicitation and the passive wearing of union insignia—and erroneous to continue to cite *Baptist Hospital* and *Beth Israel* as if the Supreme Court had so explicitly ruled.

overbroad. It prohibited employees from wearing the buttons, *not* during times they were encountering or in the presence of patients, but rather at all times when they were working. The evidence shows that EMTs and paramedics spent significant portions of their day *not* in the presence of patients, but rather in staging areas waiting for 9-1-1 calls, at their base facilities at the beginning and end of their shifts, or in other places that did not involve interactions with patients or the public. Indeed, at least two employees who never had contact with the public—Moore, who was working in-house at the Sonoma facility, doing office clerical work; and Taylor, who worked as a dispatcher in the Sacramento facility—were directed not to wear the buttons. Accordingly, since the rule was applied broadly to prohibit the wearing on the buttons during working time, even in circumstances where the employees were not in “patient care areas” or otherwise in contact with the public or patients, the burden shifts to Respondent to show that “special circumstances” existed to justify the prohibition. Respondent did not meet this burden, and accordingly I conclude that it violated Section 8(a)(1) of the Act. *Enloe Medical Center*, 345 NLRB 874, 876 (2005), *affd.* after remand 348 NLRB 991 (2006); *St. Luke’s Hospital*, 314 NLRB 434 (1994); *London Memorial Hospital*, 238 NLRB 704 (1978).

In concluding that Respondent did not meet its burden to establish special circumstances outside the “functionally equivalent” patient care areas, assuming that analogy is applicable. I note that there is absolutely no evidence of any complaints by patients or customers regarding the “No on Prop 11” buttons, and that the argument is thus based on sheer speculation.²³ Likewise, there is no evidence that the *buttons* caused employee dissension, jeopardized employee safety, or otherwise caused a potential disruption to the harmonious employee-management relationship. See, e.g., *Southwestern Bell Telephone Co.*, 200 NLRB 667, 670 (1972). In that regard, the testimony by Sonoma Operations Manager Henrickson, who testified that she was vilified in the internet and that she received nasty or unpleasant messages under her door as a consequence of her appearing on television commercials and in flyers bearing her photograph in support of Proposition 11, does not come close to meeting the threshold necessary to find that that employee safety was jeopardized or that dissension had become such a problem that employee Section 7 rights had to be suppressed. For one thing, it was not the buttons worn by employees—which were not offensive in any way—that caused any problems, but rather Henrickson’s very public and spirited advocacy in favor of a proposition opposed by the Union and many employees which apparently resulted in

²³ Moreover, the evidence suggests that Respondent was not as concerned about the impact the button might have on patients as it did on clients, which in Respondent’s case were the counties and cities that hired it to provide ambulance services. Thus, Anderson testified that “. . . We hold contracts with cities and counties all over the place, and we can’t afford to have our folks be perceived as representing an issue that may be contrary to what one of our customers is in favor of.” (Tr. 172–173). The problem with this rationale, however, is that the Board has explicitly ruled that the opinion or disapproval of clients cannot trump employees’ Section 7 rights. See, *Medco Health Solutions*, 364 NLRB No. 115, *supra.*, (“the pleasure or displeasure of an employer’s customers does not determine the lawfulness of banning employee display of insignia.”).

some individuals displaying antipathy towards her. This isolated and limited example of some arguable dissension, not caused by the protected activity in question, is simply insufficient to meet the threshold necessary to negate the employees' protected right to display union insignia. Finally, I reject Respondent's arguments that the buttons in some way interfered with the image of professionalism that the uniforms worn by employees were meant to convey. First, I note that the requirement that employees wear a uniform is not alone a special circumstance justifying button prohibition. *AT&T*, 362 NLRB at 888; *P.S.K. Supermarkets*, 349 NLRB at 35. Unlike the uniforms in question in *W San Diego*, 348 NLRB 372 (2006), which were unique in appearance and were meant to convey an image special to the W Hotel brand unlike any other, there is nothing special or unique about the uniform worn by Respondent's employees. Thus, I reject the notion that wearing the "No on Prop 11" buttons somehow soiled Respondent's unique image or made their employees look unprofessional, as Respondent implies.

In sum, I find that Respondent failed in its burden to show special circumstances so as to justify its banning of the "No on Prop 11" buttons.²⁴ Accordingly, I conclude that Respondent violated Section 8(a)(1) of the Act as alleged in the complaint.

CONCLUSIONS OF LAW

1. American Medical Response West (Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Emergency Medical Service Workers, American Federation of State County, and Municipal Employees, Local 4911 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. By directing employees to remove, and not to wear "No on Prop 11" buttons during working hours, Respondent has interfered with, restrained, and coerced employees in their exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act.

REMEDY

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

Specifically, having found that Respondent violated Section

8(a)(1) of the Act by directing employees to remove, and not to wear "No on Prop 11" buttons during working hours, I shall recommend that Respondent be ordered to cease and desist from such conduct. Additionally, Respondent will be required to post a notice to employees assuring them that Respondent will not violate their rights in this or any other related manner in the future. Finally, to the extent that Respondent communicates with its employees by email or regular mail, it shall also be required to distribute the notice to employees in that manner, as well as any other means it customarily uses to communicate with employees.

Accordingly, based on the forgoing findings of fact and conclusions of law, and on the entire record, I issue the following recommended²⁵

ORDER

American Medical Response West, Sacramento, West Sacramento, Rocklin, Santa Rosa, and San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) directing employees to remove, and not to wear "No on Prop 11" buttons during working hours.

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

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

(a) Within 14 days after service by the Region, post at all its facilities in Sacramento, Sonoma County, Yolo County, and San Francisco, California, where notices to employees are customarily posted, copies of the attached notice marked "Appendix."²⁶ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these

²⁴ The General Counsel additionally argues that since Respondent allowed employees to wear other types of buttons, such as the "Mothers Against Drunk Driving" button, the "turtle" button, the "State of California Outline" button, as well as other union insignia such as the "I Support My Bargaining Team" and the "We Stand United" buttons worn by some employees during negotiations in years past, Respondent was discriminatorily enforcing its rules by banning the "No On Prop 11" buttons. I find this argument unpersuasive for two reasons. First, the evidence isn't clear that Respondent was aware of these other buttons, even though employees testified that the buttons were worn openly. There is simply no direct evidence that supervisors were aware of these buttons. Moreover, even if I were to conclude that Respondent was aware of these buttons, the fact that it allowed the "I Support My Bargaining Team" and the "We Stand United" buttons to be worn actually works against the argument that banning the "No On Prop 11" buttons was based on animus and discriminatory. To the contrary, if anything, it would tend to support

Respondent's argument that the "No On Prop 11" buttons, unlike the others, presented a "special circumstance" that supported their banning. Nonetheless, I have concluded that Respondent did not meet its burden to establish that such special circumstances existed here, which renders the General Counsel's additional argument moot.

²⁵ 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.

²⁶ If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 16, 2018.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 20, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C. December 6, 2019

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 benefits and protection

Choose not to engage in any of these protected activities.

In recognition of these rights, we hereby notify employees that:

WE WILL NOT direct our employees to remove, or not to wear “No On Prop 11” buttons.

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

AMERICAN MEDICAL RESPONSE WEST

The Administrative Law Judge’s decision can be found at www.nlr.gov/case/20-CA-229397 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.

