Stericycle, Inc. *and* Teamsters Local 628. Case 04–CA–137660, 04–CA–145466, 04–CA–158277, and 04–CA–160621

February 17, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS EMANUEL AND RING

On November 10, 2016, Administrative Law Judge Michael A. Rosas issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party each filed an answering brief, and the Respondent filed a reply brief. The General Counsel and the Charging Party each filed exceptions and supporting briefs, and the Respondent filed an answering 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,[2] findings, and conclusions[3] only to the extent consistent with this Decision and Order.[4]

We adopt the judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with internal communications concerning the recoupment of health care deductions,[5] internal communications concerning 401(k) payments to unit employees,[6] Ebola training material, the December 2014

[1] The Board issued an Order dated May 8, 2020, severing and remanding to the judge those allegations involving the maintenance of work rules related to the use of personal electronic devices, personal conduct, conflicts of interest, confidentiality of harassment complaints, electronic communications, and camera and video use.

[2] We find no merit in the Respondent's contention that the judge abused his discretion by refusing to hear testimony regarding the Respondent's assertion that Regional Director Dennis Walsh had a conflict of interest in this case. As the judge found, the Respondent conceded that it did not possess evidence of an actual conflict of interest on the part of the staff litigating the case. In addition, we agree with the judge that Regional Director Walsh's recusal and the independent review by Acting Regional Director Leticia Peña afforded the Respondent with significant due process protections.

[3] We have amended the judge's conclusions of law consistent with our findings herein.

[4] We shall modify the judge's recommended Order to conform to our findings and 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 substitute a new notice to conform to the Order as modified.

Because the violations here involve only the Respondent's Morgantown and Southampton, Pennsylvania facilities, we amend the judge's remedy and modify the judge's recommended Order to remove the nationwide notice-posting remedy.

[5] The judge found, and we agree, that the Respondent lawfully implemented its healthcare recoupment plan and that the Union waived its right to bargain over those changes. Nonetheless, we find that the Respondent violated Sec. 8(a)(5) and (1) by failing to provide information regarding the recoupment of healthcare deductions. To this end, we emphasize that the Union made clear to the Respondent that it sought the information not only for bargaining purposes but also to investigate a possible grievance. See *Emery Industries*, 268 NLRB 824, 824–825, 825 fn. 4 (1984) (stating that, where the union has waived its right to bargain over an issue, it may still obtain relevant information if it provides another "legitimate basis" for the request, such as "assessing the validity of a grievance"). Specifically, the Union was entitled to the requested information to determine the legitimacy of the Respondent's stated explanation that payroll and computer problems caused the delay in processing deductions from unit employees' pay for their share of healthcare premiums. We reverse, however, the judge's finding that the Respondent must provide to the Union its bargaining notes. See *Berbiglia, Inc.*, 233 NLRB 1476, 1495 (1977) ("If collective bargaining is to work, the parties must be able to formulate their positions and devise their strategies without fear of exposure."). For the reasons stated in her partial dissent, Chairman McFerran agrees with the judge that the Respondent violated Sec. 8(a)(5) and (1) by failing to furnish the bargaining notes to the Union.

[6] In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(5) and (1) by failing to provide internal communications concerning 401(k) payments to employees, we do not order an affirmative production requirement, as the arbitrator found that the requested information was not relevant to the grievance. We further note that the Respondent has already provided 38 pages of internal communications to the Union. In addition, we find that the Respondent is not required to provide to the Union its bargaining notes. Id.

Our dissenting colleague disagrees with our finding that the Respondent is not required to provide the Union with bargaining notes regarding the healthcare and 401(k) provisions of the collective-bargaining agreement. Contrary to the dissent, *Berbiglia*, supra, does support the proposition that bargaining notes are generally privileged. See, e.g., *Patrick Cudahy, Inc.*, 288 NLRB 968, 971 (1988) (relying in part on labor law policy set forth in *Berbiglia* to revoke subpoena of employer's bargaining notes and related documents as protected by attorney-client privilege); see also Mitchell H. Rubinstein, *Is a Full Labor Relations Evidentiary Privilege Developing?*, 29 Berkeley J. Emp. & Lab. L. 221, 241–244 (2008) (summarizing cases relying on *Berbiglia* and concluding that they demonstrate the Board's recognition of a "labor relations privilege"). Further, it is irrelevant whether an employer or a union requests or subpoenas the bargaining notes. See David I. Goldman, *Union Discovery Privileges: Protecting Union Documents and Internal Information from Subpoena*, 17 Lab. Law. 241, 242–245 (2001) (explaining that the *Berbiglia* privilege applies to both parties because "each has a similar interest in protecting from disclosure its internal thinking and strategizing on bargaining"); cf. *Champ Corp.*, 291 NLRB 803, 817 (1988) (revoking subpoena of union's bargaining notes based in part on *Berbiglia* because "failure to revoke the subpoena, insofar as it may be found relevant, would do unwarranted injury to the process of collective bargaining"), enfd. 933 F.2d 688 (9th Cir. 1990), cert. denied 502 U.S. 957 (1991); *Boise Cascade*, 279 NLRB 422, 432 (1986) (finding lawful employer's refusal to provide information regarding negotiations overview and strategy because "it might well have a tendency to frustrate the purpose of collective bargaining"). The dissent would distinguish these cases on various narrow grounds; we find them applicable and broadly instructive. Moreover, we find that the Union failed to establish that the requested bargaining notes are relevant to the Union's grievances, which related only to the Respondent's implementation of the healthcare recoupment plan and 401(k) payments.

handbook,[7] and the Code of Conduct and Harassment Training video. We also adopt the judge's finding that the Respondent's 3-month delay in providing the Union with requested information concerning the vehicle backing program constituted a violation of the Act.[8]

As discussed below, we reverse the judge's finding that the Respondent violated Section 8(a)(5) and (1) by unilaterally distributing an employee handbook. We also find, contrary to the judge, that the Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with comparative PowerPoint slides in connection with the Respondent's TMX program.

Discussion

I. DISTRIBUTION OF EMPLOYEE HANDBOOK

The Respondent, which provides medical waste collection and treatment services, operates a treatment facility in Morgantown and a transfer facility in Southampton, both in Pennsylvania. Teamsters Local 628 (the Union) was certified as the bargaining representative of the Southampton unit in 2006; the parties' most recent collective-bargaining agreement for that unit ran from November 1, 2013, to October 31, 2016. The Union was certified as the bargaining representative of the Morgantown unit in 2011; the parties ratified their most recent collective-bargaining agreement for that unit in June 2016.

In February 2015, the Respondent distributed a U.S. company-wide handbook to unit employees at the Morgantown facility. The handbook was inconsistent with several provisions in the parties' collective-bargaining agreement, including those involving attendance, overtime, time off, work rules, discipline, grievance procedures, and the employee probationary period. The handbook stated on the first page that "[s]ome benefits may not apply to union team members and in some cases these policies may be impacted by collective bargaining agreements." The Respondent has not applied the nationwide employee handbook in a manner inconsistent with the collective-bargaining agreement.

The judge, reasoning that the handbook "contained numerous Company policies and practices that affected numerous mandatory subjects of bargaining," found that the Respondent was obligated to notify the Union and afford it a reasonable opportunity to bargain over the handbook provisions before distributing it. He explained that the language regarding union-represented employees and the collective-bargaining agreement "did not provide . . . clear guidance as to the applicable policies affecting certain terms and conditions of employment."

We disagree.[9] To be unlawful, there must be evidence that a unilateral change was a "material, substantial, and significant" change to employees' terms and conditions of employment. See *Peerless Food Products*, 236 NLRB 161, 161 (1978). Here, the Respondent, in distributing the handbook, did not purport to make any changes to the terms and conditions set forth in the collective-bargaining agreement, nor did it make any representation that the handbook would supersede the collective-bargaining agreement. See *T-Mobile, USA, Inc.*, 365 NLRB No. 23, slip op. at 1, 9 (2017) (finding no violation where "[t]here is no evidence of any communication by the Company to the Union or to the employees, that the revised handbook was somehow meant to nullify any of the terms of the collective-bargaining agreement"), enfd. 717 Fed.Appx. 1 (D.C. Cir. 2018). In fact, the handbook makes clear at the outset that the collective-bargaining agreement affected the policies in the handbook, and that some terms might be different for union-represented employees. Accordingly, we find that the handbook "was clearly not intended to modify, alter or change the existing contract," and we therefore dismiss the allegation. Id., slip op. at 9.[10]

---

[7] In adopting the judge's finding, we emphasize that if no such handbook existed, the Respondent was required to communicate that to the Union.

[8] In addition, we adopt the judge's dismissals of the allegations that the Respondent violated Sec. 8(a)(5) and (1) by implementing a plan to recoup employee healthcare premiums over three pay periods; refusing to provide 401(k) earnings statements for April 13 through September 6, 2014; refusing to provide ongoing 401(k) earnings statements since September 7, 2014; and refusing to provide additional information about the discipline of Supervisor Ron Lobb in connection with unit employee Ryan Soubra.

[9] As set forth in her partial dissent, Chairman McFerran agrees with the judge and would find that the Respondent violated Sec. 8(a)(5) and (1) by unilaterally distributing the handbook.

[10] Our dissenting colleague would affirm the judge's violation finding, but the cases she relies on are readily distinguishable. Notably, unlike in the present case, in both *Heck's, Inc.*, 293 NLRB 1111, 1118 (1989), and *United Cerebral Palsy of New York City*, 347 NLRB 603, 603–605 (2006), the unilaterally distributed handbooks did not contain disclaimers referring to the collective-bargaining agreements. Indeed, to the contrary, the handbook in *United Cerebral Palsy* included a provision stating that the handbook superseded all other practices, which the Board found included practices established by collective-bargaining agreements. 347 NLRB at 606. Moreover, in *Heck's*, the respondent required employees to agree to policies that were both inconsistent with the collective-bargaining agreement and unlawful under the Act, including a policy prohibiting discussion of wages. 293 NLRB at 1119–1120. The handbook in *Heck's* also contained an anti-union policy provision that not only set forth the employer's anti-union views, but also assumed the agreement of employees with those views, stating: "you surely will agree there is no need for a union or any other paid intermediary to stand between you and your company." Id. at 1119. The handbook also included a "receipt for associate handbook," to be signed by each employee, stating that the employee agrees to "observe and be bound by present and future company personnel policies and rules outlined in this manual." Id. The Board found that while the anti-union policy was lawful in itself, in combination with the "receipt for associate handbook" it effectively compelled employees to promise to refrain from engaging in

II. TMX PROGRAM INFORMATION REQUEST

On July 9, 2015, a union representative saw a notice posted at the Respondent's Morgantown facility asking for volunteers to join a new workgroup called TMX (Team Member Experience). Among other things, the notice sought employees to participate in satisfaction surveys. Thereafter, the Union requested from the Respondent documents related to the TMX initiative including those involving planning, meetings, surveys, selection criteria, employee attendance lists, and compensation. In making the request, the Union was concerned that workgroup discussions would implicate unit employees' terms and conditions of employment.

The Respondent replied that the sign had been posted in error and that there would be no such group at Morgantown. Accordingly, the Respondent believed that most of the requested information was not relevant. The Respondent nonetheless provided to the Union a copy of a PowerPoint presentation that reflected the results of an employee satisfaction survey, but the Respondent stated that it "omitted slides that contain Company confidential information that show comparative data with our non-represented locations." Labor Relations Manager Susan Fox testified that the Respondent had shown to the Morgantown unit employees the PowerPoint comparative data slides that had been omitted from the version that the Respondent provided to the Union.

The judge dismissed the allegation that the Respondent violated Section 8(a)(5) and (1) by failing to provide the comparative data slides. He reasoned that the Union failed to show a "special need" for the comparative information or explain why it "had any bearing on the actual terms and conditions of the Morgantown facility's unit employees."

Contrary to the judge, we find that the Respondent violated the Act by failing to provide the deleted comparative data slides. To the extent the Union requested information about nonunit employees, such information is not presumptively relevant, and the Union, as the requesting party, must demonstrate its relevance. *Kauai Veterans Express Co.*, 369 NLRB No. 59, slip op. at 2 (2020). Here, the Union's assertions—that the comparative slides related to unit employees' terms and conditions of employment and implicated issues of parity with nonunit employees—were borne out by the Respondent's own decision to share and discuss those slides with unit employees. Moreover, even assuming the Respondent demonstrated a legitimate confidentiality interest in the withheld slides, it failed to meet its duty to propose an accommodation between its interest and the Union's need for the information. See, e.g., *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004) (party asserting confidentiality bears burden of proposing reasonable accommodation); *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 20 (D.C. Cir. 1998) ("An employer is not relieved of its obligation to turn over relevant information simply by invoking concerns about confidentiality, but must offer to accommodate both its concern and its bargaining obligations, as is often done by making an offer to release information conditionally or by placing restrictions on the use of that information."). Accordingly, we find that the Respondent's refusal to provide the slides was unlawful.

AMENDED CONCLUSIONS OF LAW

1. Stericycle, Inc. (the Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Teamsters Local 628 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times since September 1, 2006, the Union has been the exclusive collective-bargaining representative of the following unit of employees at its Southampton facility (the Southampton unit), which unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time drivers, driver techs, in house techs, helpers, dockworkers and long haul drivers of the Company at its Southampton, Pennsylvania location; but excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

4. At all times since September 1, 2011, the Union has been the exclusive collective-bargaining representative of the following unit of employees at its Morgantown facility (Morgantown unit), which unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time regulated medical waste (RMW) plant workers, sharps plant workers, RMW Shift Supervisors, Sharps Shift Supervisors/quality control representatives, drivers, dispatchers, yard jockey, maintenance mechanics, Maintenance Supervisor and painters employed by Respondent at its Morgantown, Pennsylvania facility; but excluding all office

protected union activity. Id. at 1119–1120. Contrary to the dissent's suggestion, this case is unlike *Heck's*. Although, as the dissent points out, the Respondent's handbook expresses *the Respondent's* belief that its employees do not need union representation, it does not imply that employees must share that view; and there is no allegation that the Respondent unlawfully required employees to promise, in writing, to abide by an antiunion policy. Further differentiating this case from *Heck's*, the Respondent's handbook expressly assures employees that the Respondent "will always follow laws and regulations regarding labor relations and will always bargain in good faith."

employees, confidential employees, guards and supervisors as defined in the Act.

5 By the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(5) and (1) of the Act:

(a) Failing and refusing to furnish the Union with internal communications concerning the recoupment of health care deductions.

(b) Failing and refusing to furnish the Union with internal communications concerning 401(k) payments to unit employees.

(c) Failing and refusing to furnish the Union with information regarding the Respondent's Ebola training.

(d) Failing and refusing to furnish the Union with the December 2014 employee handbook.

(e) Failing to respond in a timely manner to the Union's request for information regarding the Respondent's vehicle backing program.

(f) Failing and refusing to furnish the Union with the Respondent's Code of Conduct and Harassment Training video.

(g) Failing and refusing to furnish the Union with the comparative PowerPoint slides in connection with the Respondent's TMX program.

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to furnish to the Union in a timely manner the information requested, as set forth above.

ORDER

The National Labor Relations Board orders that the Respondent, Stericycle, Inc., Morgantown and Southampton, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Teamsters Local 628 (the Union) by failing and refusing to furnish it, and by unreasonably delaying in furnishing 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.

(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 actions necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the Respondent's internal communications concerning the recoupment of health care deductions.

(b) Furnish to the Union in a timely manner the Respondent's Ebola training material that the Respondent presented to unit employees.

(c) Furnish to the Union in a timely manner the December 2014 employee handbook.

(d) Furnish to the Union in a timely manner the Code of Conduct and Harassment Training video that the Respondent presented to unit employees.

(e) Furnish to the Union in a timely manner the comparative slides in the TMX PowerPoint that the Respondent presented to unit employees.

(f) Post at its Morgantown and Southampton, Pennsylvania facilities copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 4, 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 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 September 5, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region

[11] 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 members 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."

attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. February 17, 2021

William J. Emanuel, Member

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN MCFERRAN, dissenting in part.

Contrary to the majority, I would find that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally distributing a handbook that conflicted with many key provisions of the parties' collective-bargaining agreement, including those involving attendance, scheduling, overtime, time off, work rules, and discipline. I also would find that the Respondent again violated Section 8(a)(5) and (1) by failing to provide the Union with bargaining notes it had sought as part of its information requests related to potential grievances concerning the Respondent's implementation of the healthcare and 401(k) provisions of the agreement.

I.

Board precedent firmly establishes that the Respondent violated its duty to bargain by unilaterally distributing to bargaining unit employees a handbook that conflicted with the parties' agreement concerning several terms and conditions of employment, and addressed other mandatory subjects of bargaining not expressly addressed by the parties' agreement. In *Heck's, Inc.*, 293 NLRB 1111, 1118 (1989), an employer took similar unilateral action, prompting the Board to conclude that the employer's "conduct in this regard disparage[d] the collective-bargaining process and improperly undermine[d] the status of the Union as the designated and recognized collective-bargaining representative." Id., and the cases cited therein. See also *United Cerebral Palsy of New York City*, 347 NLRB 603 (2006). As in *Heck's*, the Respondent issued its handbook to employees without first negotiating with the Union and, in the provisions of the handbook, it claimed to reserve the right to make future unilateral changes.

In dismissing the allegation, the majority asserts that the Respondent did not "purport to make any changes to the terms and conditions set forth in the collective-bargaining agreement, nor did it make any representation that the handbook would supersede the collective-bargaining agreement." But the Respondent's distribution of the handbook, which it required employees to acknowledge and sign, would have conveyed just the opposite message: that the Respondent was free to sidestep the Union and supplant, expand, or alter terms and conditions of employment that the parties had reached through bargaining and impose additional terms and conditions of employment without bargaining.[1] The handbook's boilerplate language—reciting that "in some cases these policies may be impacted by collective bargaining agreements"—did not communicate to the contrary with the clarity or the specificity required by the duty to recognize and bargain with the Union as employees' exclusive representative. The boilerplate offered no clear assurance to employees that the collective-bargaining agreement superseded the handbook wherever there was conflict (not the other way around). At best, it left employees to guess which handbook "policies" were "impacted" by the collective-bargaining agreement and how and which "policies" were subject only to the Respondent's discretion, despite the Union's status. That boilerplate language also did not encompass terms and conditions of employment in the new handbook that were either not addressed in the collective-bargaining agreement or added new elements to those terms.[2]

Contrary to the majority's suggestion, finding a violation here would be entirely consistent with the Board's unilateral handbook distribution finding in *Heck's*, which turned solely on the employer's issuance of a handbook

[1] Although art. 2 of the collective-bargaining agreement included a management-rights clause that appears to have permitted the Respondent to promulgate work rules, that same clause provided that "[t]he Employer shall not exercise its management rights in a manner that is inconsistent with, or which violates the terms of this Agreement." Yet various provisions in the Respondent's handbook were unquestionably inconsistent with or expanded or altered the terms of the parties' agreement. Moreover, before implementing the handbook the Respondent made no attempt whatever to comply with art. 6 of the agreement, which mandated that "[a]ny time the Employer promulgates a new rule, it shall be posted and the Union shall have 14 days' notice during which the parties may meet and confer." As a result, the Respondent's unilateral action only further undermined the Union and the collective-bargaining process.

[2] The majority notes that, in contrast to the handbook here, the handbooks in *Heck's* and *United Cerebral Palsy* "did not contain disclaimers referring to the collective-bargaining agreements." But, for the reasons stated above, the ambiguous boilerplate language in the handbook in this case would have provided no assurance to employees that the collectively-bargained provisions remained in effect or that the Respondent was fulfilling its legal obligations under the Act.

containing policies that conflicted with the parties' collective-bargaining agreement. 293 NLRB at 1118. Significantly, the Board's finding in *Heck's* that the employer required employees to promise, in writing, to abide by the Respondent's antiunion policy related to entirely different violations than the one implicated here. Id. at 1119–1120.[3] In any event, the Respondent's unilaterally-distributed handbook required employees in this case to agree to substantially similar antiunion provisions as those in *Heck's*.[4] Moreover, the last page of the Respondent's handbook required employees to sign and return to human resources a statement attesting that they "understand it is [our] responsibility to know and abide by its contents." Accordingly, even under the majority's interpretation of *Heck's*, the Respondent would have violated Section 8(a)(5) and (1) by distributing the handbook. Indeed, these policies, taken together, further reinforce the Respondent's message to unit employees that it did not respect the Union as their exclusive representative.

For these reasons, I would adopt the judge's finding of a violation.

II.

I would find that the Respondent again violated Section 8(a)(5) and (1) by failing to provide the Union with requested bargaining notes relating to the healthcare and 401(k) provisions of the collective-bargaining agreement. The Union had raised concerns about the way the Respondent had implemented these provisions and was investigating potential grievances. Specifically, the Union had opposed the Respondent's efforts to recoup healthcare premium payments after it had failed to make the required deductions on time; the Union had also argued that the Respondent had failed to make 401(k) contributions in the manner required by the contract. As the judge explained, the requested bargaining notes were "relevant to a potential grievance because they might have reflected discussions between the parties regarding . . . future implementation of [the provisions]" including the Respondent's existing "awareness of potential delays." Consistent with longstanding precedent, the Union clearly established that this information would have been relevant to its "decision to file or process grievances."[5]

Significantly, in ordering the Respondent to produce the requested material, the judge found that the Respondent's "vague assertions of privilege and confidentiality" failed, and that the Respondent "simply rejected the Union's requests for information . . . and did not seek an accommodation of the interests it sought to protect from disclosure." Thus, the Respondent has not proffered any legitimate basis for denying the Union's relevant request. Nonetheless, the majority—relying solely on *Berbiglia, Inc.*[6]—finds that the Respondent lawfully withheld the requested bargaining notes from the Union. But in *Berbiglia* – which involved a subpoena, not an information request—the Board adopted the judge's revocation of *an employer's* expansive subpoena where the requested information would have "expos[ed] crucial material regarding pending union negotiations."[7] Here, the Union's request was limited to information from a completed round of bargaining and related solely to the implementation of contractual

[3] In *Heck's*, the Board found separately that the employer—by requiring employees to promise in writing to abide by its antiunion policy—violated Sec. 8(a)(5) and (1) by "undermin[ing] the status of the Union as the designated and recognized collective-bargaining representative . . . in derogation of the Respondent's obligation to bargain in good faith with the Union"; and Sec. 8(a)(1) by asking employees to agree in writing not to engage in Sec. 7 activities at the risk of being disciplined. Id. at 1120.

Likewise, contrary to the majority's suggestion, the Board did not rely on its separate 8(a)(1) finding in *Heck's*—that the employer's handbook unlawfully prohibited employees from discussing wages—in holding that the employer violated Sec. 8(a)(5) and (1) by unilaterally distributing the handbook.

[4] Specifically, the Respondent's handbook stated:

- "We do not believe there is a need for third-party representation, particularly a union";
- "[I]t is our position that every team member can speak for him/herself without having to pay their hard-earned money to a union in order to be heard and have issues resolved"; and
- "We greatly value our ability to work with team members individually without their being subjected to burdensome union costs, complicated rules, and costly work stoppages which could affect our competitiveness as a Company."

[5] *Beth Abraham Health Services*, 332 NLRB 1234, 1234 (2000), and the cases cited therein. Accordingly, I disagree with the majority's unsupported assertion that "the Union failed to establish that the requested bargaining notes are relevant to the Union's grievances."

[6] 233 NLRB 1476, 1495 (1977).

[7] Id. Contrary to the majority's suggestion, *Berbiglia* surely does not stand for the proposition that bargaining notes are categorically off-limits for information requests, regardless of their particular contents or the reasons that they are sought. Indeed, the majority is not able to cite a single case—related to information requests or otherwise—to support this proposition. *Patrick Cudahy, Inc.*, 288 NLRB 968, 971 (1988), is another subpoena case where the General Counsel sought an employer's internal documents regarding contract negotiations; the only issue was whether the advice that a law firm rendered to the employer in the course of negotiations was protected by the attorney-client privilege. Here, the Respondent, in response to the information request, did not make any argument related to attorney-client privilege, nor did the Union seek any information related to mental impressions or bargaining strategies. Likewise, in *Champ Corp*., 291 NLRB 803, 817 (1988), the judge revoked a union's subpoena insofar as it "called for exposing crucial material regarding pending union negotiations"; in this case the Union in its information request sought information regarding completed negotiations that did not relate to internal deliberations. Finally, in *Boise Cascade*, 279 NLRB 422, 432 (1986)—the only information-request case cited—the Board found that an employer was not required to produce information related to its negotiating strategy with the union. But the Union did not seek such information here.

provisions, e.g., how the policies would be administered, potential delays, and contingency plans. The Union did *not* seek information regarding the Respondent's mental impressions or bargaining strategies. And even if it did, the Respondent failed to identify such a confidentiality concern or propose reasonable accommodations that would have addressed its concern.

Accordingly, I would order the Respondent to provide the bargaining notes along with the other relevant requested information.

Dated, Washington, D.C. February 17, 2021

Lauren McFerran, Chairman

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 refuse to bargain collectively with Teamsters Local 628 (the Union) by failing and refusing to furnish it, or by unreasonably delaying in furnishing 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 in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner our internal communications concerning the recoupment of health care deductions.

WE WILL furnish to the Union in a timely manner our Ebola training material that we presented to our unit employees.

WE WILL furnish to the Union in a timely manner the December 2014 employee handbook.

WE WILL furnish to the Union in a timely manner the Code of Conduct and Harassment Training video that we presented to our unit employees.

WE WILL furnish to the Union in a timely manner the comparative slides in the TMX PowerPoint that we presented to our unit employees.

STERICYCLE, INC.

The Board's decision can be found at https://www.nlrb.gov/case/04-CA-137660or 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.

Lea Alvo-Sadiky, Esq., for the General Counsel.
Charles P. Roberts III, Esq. (Constangy, Brooks, Smith & Prophete LLP), of Winston-Salem, North Carolina, for the Respondent.
Claiborne S. Newlin, Esq. (Meranze, Katz, Gaudioso & Newlin, PC), of Philadelphia, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on August 24–25, 2016.[1] This controversy involves employees represented by Teamsters Local 628 (the Union) at Stericycle, Inc.'s (the Company or Respondent) Southampton and Morgantown, Pennsylvania facilities. The complaint, as amended,[2] alleges that the Company violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act)[3] by: (1) refusing to bargain with the Union before unilaterally recouping health care premiums from employees; (2) refusing or failing to provide relevant and necessary information to the Union; and (3) unilaterally imposing a team member handbook that changed numerous terms and conditions of

[1] All dates are in 2014 unless otherwise indicated.

[2] At the hearing, the General Counsel amended the second consolidated complaint to eliminate pars. 8(b) and 11 of the complaint. (Tr. 8, 28–29.)

[3] 29 U.S.C. §§ 151–169.

employment. The complaint also alleges that the Company engaged in coercive conduct and violated Section 8(a)(1) by maintaining policies and rules that interfered with Section 7 rights. The Company admits taking the alleged unilateral actions, failing to provide information requested and implementing the policy and rules at issue. It denies, however, that its conduct constituted unfair labor practices.

The Company also raised an affirmative defense alleging that the complaint "is tainted by the involvement of the Regional Director of Region 4 and should be transferred to a different region for independent review, reconsideration, and processing." This defense referenced the Board's Inspector General Report OIG-I-516 of his investigation into an alleged conflict of interest on the part of the Regional Director while volunteering on behalf of a nonprofit organization. On August 24, 2016, I entered an order denying the Company's motion to dismiss or, in the alternative, disqualify all Region 4 staff in prosecuting this case. I also denied the General Counsel's motion in limine and permitted the Company to introduce the OIG report into evidence under seal for further consideration on exceptions or appeal. However, I precluded the Company from calling Office of General Counsel staff or other witnesses in order to further litigate its conflict of interest defense.[4] At the outset of the hearing, I provided the parties with an opportunity to reargue the General Counsel's motion in limine and the Company's motion to dismiss the complaint due to the conflict of interest. The argument produced nothing new, except to clarify that the Company conceded that it did not possess evidence of an actual conflict of interest on the part of staff litigating the case. As a result, I reiterated my ruling that the Company was precluded from offering any other evidence in support of its eighth affirmative defense.

On the entire record,[5] including my observation of the demeanor of the witnesses, and after considering briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, is engaged in providing medical waste and collection treatment services to commercial customers throughout the United States, including to and from its facilities in Southampton and Morgantown, Pennsylvania, where it annually purchases and receives goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. The Company 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 and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Company's Operations

The Company is the largest medical waste disposal company in the United States. The Company performs waste treatment at its Morgantown facility involving the collection, processing and disposal of regulated medical waste (RMW), including bandages, bodily fluids, and sharp containers of needles, from hospitals, nursing homes, and medical, dental and veterinary offices. Once delivered to the Morgantown facility, RMW is processed, chemically treated, shredded in a treatment system, placed in containers and disposed of in landfills.

The Company also operates a transfer station at its Southampton facility, where drivers pick up trash which is then consolidated and brought to the Morgantown facility. These employees pick up RMW from hospitals, doctor/dentist offices, and other medical facilities. The RMW is transported to facilities for processing prior to disposal.

B. The Collective-Bargaining Agreements

1. The Southampton facility

The Union represented company employees at its former Montgomeryville, Pennsylvania transfer station from 1999 until 2006, when the Company moved those operations to Southampton. On September 1, 2006, the Union was certified as the exclusive collective-bargaining representative of employees at the Southampton facility (the Southampton unit). At all times since then, the Union has been the exclusive collective-bargaining representative of the following employees in the Southampton unit:

> All full-time and regular part-time drivers, driver techs, in house techs, helpers, dockworkers and long haul drivers of the Company at its Southampton, Pennsylvania location; but excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

On April 4, 2014, the Company and Union negotiated a collective-bargaining agreement covering the Southampton unit, retroactive to November 1, 2013, and expiring on October 31, 2016 (the 2014 Southampton Agreement). The 2014 Southampton Agreement provided, in pertinent part, that Southampton unit employees would be required to make contributions towards their health insurance:

> 22.3 Upon ratification, employees will contribute on a pre-tax basis one (1%) of their straight time hours paid per week to the cost of health coverage. The employer shall deduct this amount bi-weekly and offset it against the employer's monthly contributions to the Teamsters Health and Welfare Fund as specified in 22.2 above . . .[6]

1. The Morgantown facility

On September 1, 2011, the Union was certified as the exclusive collective-bargaining representative of the Morgantown unit. Respondent and the Union subsequently entered into an initial collective-bargaining agreement for the term of September 6, 2013, to February 29, 2016.[7] A new CBA was ratified in June 2016.

At all times since September 1, 2011, the following employees at the Morgantown facility have constituted a unit appropriate

[4] ALJ Exh. 1.

[5] The General Counsel's unopposed motion to correct the transcript, dated October 7, 2016, is granted and received in evidence as GC Exh. 33.

[6] GC Exh. 2.

[7] GC Exh. 3 at 1.

for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time regulated medical waste (RMW) plant workers, sharps plan workers, RMW Shift Supervisors, Sharps Shift Supervisors/quality control representatives, drivers, dispatchers, yard jockey, maintenance mechanics, Maintenance Supervisor and painters employed by Respondent at its Morgantown, Pennsylvania facility; but excluding all office employees, confidential employees, guards and supervisors as defined in the Act.

C. The Recoupment of Health Care Premiums from the Southampton Unit

Although the Southampton CBA was ratified on April 13, 2014, the Company's payroll contractor, ADP, encountered initial difficulties integrating the health insurance premium data for the hourly union employees with that of nonhourly employees. After several test runs, ADP was finally able to process the health care premium deductions of one percent health insurance cost in until the September 12 payroll.[8]

John Dagle, the Union's secretary/treasurer, brought the missing deductions to the attention of Willie Riess, Southampton's facility manager, in late June or July 2014. Reiss initially was unaware that the employees' share of their health insurance was not being deducted from their pay and agreed to look into it. By July, Reiss ascertained the problem and updated Dagle regarding the payroll processing issues.[9]

On September 3, Riess emailed Dagle and informed him that the Company had "completed the work and tests necessary for the payroll deductions for Health and Welfare as per Article 22.3 of the CBA" and planned "to deduct these amounts evenly over the next *three* pay days for each employee starting with the September 12, 2014 payday. If you have any questions or concerns, [p]lease let me know." A spreadsheet detailing the amount of each employee's deductions was attached.

Dagle replied on September 5, opposing the Company's "unilateral decision to recoup unpaid health care deductions beginning September 8, 2014." He added that the "recoupment decision" violated the [CBA] and [Company's] obligations under federal law."[10] Riess replied on September 8:

> Thanks for your email. I am sure it won't surprise you that we do not agree.
>
> As you know, for the past few months employees have been receiving health benefits. . . without interruption, however, the employees have not been making their contributions due to some administrative issues on our end. Nonetheless, the employees have an obligation under the CBA to make their 1% contribution and there is nothing in the contract that prevents the Company from making catch-up contributions to collect what they are legally obligated to pay. This is no different than the monthly arrears balances the Union demands from the Company for the dues obligations of employees.
>
> We can resolve this in a number of ways. You can keep insisting on your position and then, I guess I will have to ask you to justify how the dues situation is any different. If you do not want the Company to pursue the employees for moneys it owes the Company per the Agreement you signed, then the Company can pursue the amounts owed directly from the Union if you want to agree to indemnify the employees for this commitment.
>
> Right now, we will be proceeding as planned, unless I hear that you agree to my last suggestion. Of course, I am available to discuss.[11]

Dagle responded on September 9, citing section 22.3 of the CBA and the Company's failure to implement it:

> Stericycle failed to exercise its rights under the agreement. Moreover, Stericycle's decision to unilaterally deduct from employees' bi-weekly paychecks contributions retroactively for a seventeen week period (4/13/14 through 8/9/14) over the next six weeks is a violation of the company's obligations under the [CBA]. For those six weeks, the Stericycle will pay its employees at rates below those expressly required by the agreement. The Union will forward a grievance regarding this matter under separate cover.
>
> Any employee medical contribution recoupment schedule must be negotiated with the Union. Stericycle does not have the legal right to unilaterally impose its own schedule.
>
> As a precondition for bargaining, Stericycle must first rescind its decision to commence recoupment and forgo any further action pending agreement. Once the recoupment decision is rescinded, the union will, without prejudice to its position on the grievance, negotiate on this . . . matter on September 23, or September 29, 2014. Please contact me to schedule negotiations.
>
> In addition, in order for the Union to prepare for bargaining, please provide the following information:
>
> 1. All backup documentation utilized by the Company to determine the retro amounts due for the period 4/13/14 through 8/9/14.
>
> Please forward the requested information directly to the Union office by no later than Friday, September 19, 2014.[12]

Riess replied a few hours later, reiterating the Company's disagreement with the Union's position, but offering to bargain over the issue:

---

[8] The parties do not dispute the legitimacy of the difficulties encountered by the Company's payroll contractor in timely processing the new payroll changes. (Tr. 188–189.)

[9] Dagle and Reiss provided consistent testimony regarding their discussions about the missing health care deductions, but disagreed as to whether the issue of recoupment came up prior to Dagle's September 3 email. I credit Reiss' denial that Dagle raised the recoupment issue prior to September 3. Dagle was vague as to the timeframe when he allegedly told Reiss that the Company forfeited its right to recoupment or would, at the very least have to bargain over the issue first. (Tr. 38–40, 113–114, 130, 188–195). Moreover, the emails exchanged between Reiss and Dagle on September 3 make no reference to previous discussion about recoupment. (R. Exh. 1 at 1–5.)

[10] R. Exh. 1 at 5.

[11] Id. at 7–8.

[12] Id. at 9–11.

> Obviously, the Company disagrees with you . . . Nevertheless, any threatened grievance over the Company's alleged failure to follow the CBA as it pertains to making these deductions on a bi-weekly schedule is time-barred by the CBA.
>
> All these defenses to the Company's actions aside, we are willing to bargain with the union over the timing of the catch-up deductions as announced in our September 3 letter to you and as you request in your communication today. Since we did not hear anything from you for days following that communication, the first payment on the schedule has already been processed in our payroll for this coming Friday. We will hold off on making any further deductions—notwithstanding our right to do so—until you and I have had a chance to further discuss.

Dagle replied a few hours later, reiterating the Union's position and demanding the Company restore the status quo:

> To create the preconditions for bargaining over its recoupment proposal, Stericycle must maintain the status quo pending resolution of the dispute. This requires that you cancel the extra deduction set for this Friday or that you make employees whole for the shortage in accordance with section 21.2 of the contract. Please inform me tomorrow of what action Stericycle intends to take to restore the status quo.[13]

Riess and Dagle met on September 10 to discuss the Company's recoupment proposal. At that time, Riess explained that it was too late to reverse the first payroll deduction on September 12 but offered to discuss the remaining two recoupment payments. Dagle refused the offer, insisting that the Company restore the status quo by reversing the first deduction before the Union would agree to bargain over the recoupment issue. A contentious email exchange followed over the next 2 days reflecting the standstill. The end result was that the two final deductions were processed in the September 26 and October 10 payrolls.[14]

D. Information Request Relating to the Recoupment of Health Care Contributions

Unsuccessful in preventing the Company's implementation of the recoupment process, Dagle took steps to grieve the action through a series of requests for information related to the Company's difficulties in implementing the health insurance premium deductions.[15] On September 11, in connection with his "investigation" of the Company's recoupment actions and the potential filing of a grievance by the Union, Dagle requested, in pertinent part, the following information by September 23:

> 1. Provide copies of any communications, written or electronic between any Stericycle representatives or agents concerning or related to Stericycle's decision to deduct the amounts (copy enclosed) evenly over the next three (3) paydays for each employee starting with the September 12, 2014 payday.
>
> 5. Provide copies of any communications, written or electronic between any Stericycle representatives or agents regarding Stericycle's implementation of Article 22 subsection 22.3 of the Collective Bargaining Agreement.[16]

On September 22, Carol Fox, the Company's labor relations manager, denied Dagle's information requests on the grounds that were either unclear or constituted irrelevant, confidential and privileged internal Company communications that were not provided to employees or the Union.[17]

Dagle took a different tack for recoupment-related information on September 26 by requesting "copies of Stericycle's bargaining notes, including notes of side bar discussions or other contacts with union representatives concerning, or relating to discussion of employee health coverage deductions."[18] Fox declined the request on October 17 on the grounds that they were overly broad, confidential and irrelevant on the issue of whether the recoupment payments violated the CBA. Dagle explained the relevance of his request in a follow up email on October 20:

> The documentation requested should shed light on the reasons for the delay, the difficulties involved in instigating the deductions, the company's diligence in working for a solution and why the solution took as long as it did. It should also provide information on who was involved and the roles they played in working out a resolution Such information is essential to a fair evaluation of the employer's unilateral decision to recoup missed contributions through three unauthorized employee payroll deductions.
>
> The union is prepared to review and bargain over a specific Stericycle proposal to address its claimed confidentiality concerns.
>
> Finally, with respect to the request for notes (other than the bargaining notes to which the union is entitled), the union requests notes (and/or other documents) related to conversations between Stericycle representatives and the union over the employer's failure to deduct employee health contributions from the date of ratification to the date of this letter.

Although the parties entered into a confidentiality agreement on November 17, it pertained only to item 2 requested in the Union's September 26, letter, having to do with nonpublic information of the Company's payroll vender.[19] The information, subject to the confidentiality agreement, did not cover the bargaining notes requested in the September 26 letter or internal communications between the Company's personnel regarding implementation of the recoupment of the health care deductions.

E. Information Requests Relating to Employees'

[13] Id. at 12–13.

[14] Notwithstanding Dagle's contention that Riess informed him of "corporate's" intention to proceed with the 3 recoupment payments, the latter's September 12 email refuted that and reiterated the Company's offer to bargain over the 2 remaining recoupment payments. (Tr. 40–45, 48, 127–132, 193–194; GC Exh. 6; R. Exh. 1 at 14–15.)

[15] Dagle credibly testified that the information requests sought to determine and/or confirm the legitimacy and details underlying the extent of the Company's explanation for the delays in processing the health insurance premium deductions. (Tr. 43–44, 47.)

[16] GC Exh. 5.

[17] GC Exh. 7.

[18] GC Exh. 8.

[19] R. Exh. 9 at 1–4.

401(k) Contributions

Article 23.3 of the Southampton CBA provided that unit employees would receive biweekly an amount consisting of $0.3125 per hour on a "pre-tax" basis for all straight-time hours paid per pay period provided that employees made an appropriate election into either the Company's 401(k) Plan or Employee Stock Purchase Plan (the investment plans). The amounts were to be treated as "employee deferral contributions" subject to the terms and conditions of the relevant Plan[s], as applicable.

Implementation of the investment plans did not go smoothly and a dispute arose in May 2014, as to whether the contract required Company payments to be paid directly into both investment plans on a pretax basis. The Company interpreted the CBA as merely requiring it to remit the benefit amounts directly to employees and giving them the option to designate it for the 401(k) plan or stock purchase plan. If employees opted for the 401(k) plan, the Company remitted the amount on a pretax basis. However, if employees chose the stock purchase plan, the payments were taxed at the applicable rate.[20]

On June 2, the Union filed a grievance alleging that the Company "failed to remit the $0.312 per hour on a pre-tax basis for all straight-time hours paid to each active non-probationary bargaining unit employees' 401k account or Stock Purchase Plan as required by the Collective Bargaining Agreement."[21] On September 4, the Union filed for arbitration over the grievance.[22]

1. The September 5th information request

On September 5, the Union submitted a request for information entitled "Grievance – Violation of Article 23, subsection 23.3 Dated June 2, 2014."[23] On September 22, the Company provided certain information responsive to the request but objected to other portions.

Paragraphs 1 and 2 essentially requested copies of "all bargaining unit employees' bi-weekly earnings statements to include all earnings, deductions and year to date totals" between April 13 and September 6, and from September 7 on an ongoing basis. The Company attached a printout containing payroll information, but not earnings statements, which it has provided to the Union in the past.[24] The Company also objected to the need for such information "on an ongoing basis" as "not clear" and "unduly burdensome." The Company requested that the Union "identify any specific time periods and how each is related to the Union's investigation of this grievance or any particular grievance and the company will re-evaluate the reasonableness of the request."[25]

Paragraph 6 and 8 requested copies of any communications between the parties regarding the Company's implementation of article 23.3. The Company objected on the grounds of relevance to the arbitration and was "aimed solely at discovering the Company's legal theory and strategy in the arbitration of the same."[26]

2. The September 18th information request

On September 18, the Union submitted an additional information request, entitled "Grievance—Violation of Article 23, subsection 23.3," seeking copies of the company bargaining notes, proposals, agreements or understandings between the parties relating to article 23.3.[27] In Fox's reply, also contained in her September 22nd email, she rejected the Union's request on the grounds that the Company's bargaining notes were irrelevant and confidential, and were sought solely for the purpose of ascertaining the Company's legal theories and defenses related to the arbitration. With respect to proposals, agreements or understandings during bargaining, the Company referred the Union to its own records and further characterized the request as unauthorized prearbitral discovery.[28]

3. Documents provided pursuant to arbitration subpoena

The Union did not respond or followup further regarding these requests at any time until on or about August 18, 2015, when the Union's counsel issued a subpoena to the Company relating to the arbitration of the Union's grievance, which was scheduled to commence on September 10, 2015. In many respects, the subpoena mirrored the Union's prior information requests. Paragraph 2 of the subpoena sought documents relating to the Company's "implementation of Article 23.3," clearly encompassing the documents requested in paragraphs 6 and 8 of the September 5th request, as well as paragraphs 1, 2, and 3 of the September 18th request. Paragraphs 3 and 4 of the subpoena mirrored paragraphs 1 and 2 of the September 5th request.[29]

On September 4, 2015, Company Counsel Dawn Blume responded to the subpoena. The documents included a payroll report (in Excel spreadsheet format) "containing everything found on the 'earnings statements'" sought by the Union. With respect to the actual earnings statements, Blume explained "that it takes a payroll clerk in our department 3–4 minutes to download and print out a single earnings statement which is the equivalent of 8 hours of time for a single payroll period for the entire unit in Southampton" and that "we simply do not see the point in engaging in this manual exercise when the information on the earnings statements is identical to what is contained in the report I have attached hereto." Despite the Company's unwillingness to perform this manual exercise, Blume noted that she had

[20] R. Exh. 7; GC Exh. 13.

[21] GC Exh. 11.

[22] R. Exh. 5.

[23] GC Exh. 12.

[24] Fox corroborated Dagle's explanation regarding the difficulty in gleaning the appropriate pretax wage information from the payroll documents provided in contrast to the more detailed earnings statements requested. (Tr. 52–53, 299–301, 316–319; GC Exh. 13.)

[25] Dagle's testimony that the Company previously provided it with copies of earnings statements was undisputed. (CP Exh. 3; Tr. 309.) On the other hand, the Company correctly points out that the process of printing out the requested earnings statements for approximately 100 Southampton employees for 15 pay periods would have been significantly time consuming—1,500 earnings statements at 4 minutes each—would have taken a payroll clerk up to 100 hours to produce. (Resp. Exh. 7; Tr. 277–278.) Thus, complying with the Union's request would have taken between 75 and 100 hours of clerical time.

[26] GC Exh. 15B.

[27] Dagle credibly explained that the purpose of these also sought to determine if any issue came up during bargaining regarding Article 23.3. (GC Exh. 14; Tr. 58–59.)

[28] GC Exh. 15B.

[29] CP Exh. 1; R. Exh. 7.

"arranged for John Dagle, your client to have access to our payroll system for the limited purpose of accessing and printing (if he desires) the 'earnings statements' he continues to demand from the Company." Blume advised that his credentials and log-in information would be forthcoming.[30]

On September 8, 2015, Blume again emailed Newlin. As she had indicated she would in her September 4 email, Blume attached a summary payroll report for 2014 and 2015, and she provided the log-in information for the Union to directly access the employees' earnings statements.[31]

The arbitration commenced on September 10, 2015. At the hearing, the arbitrator revoked the Union's subpoena to the extent it sought the Company's bargaining notes. Two hearing days have occurred, but the hearing had not concluded as of the date when the unfair labor practice hearing.

In mid-September 2015, the Company was advised by the Union that it was having trouble printing out the earnings statements. On October 5, 2015, Dave Beaudoin, the Company's human resource information systems (HRIS) manager, contacted the Union's administrative assistant by email to offer his assistance.[32] Beaudoin inquired as to whether he "could jump on a WebEx meeting, so [he] could log on to your computer and verify that you are appropriately configured to run the software." The Union, however, was unwilling to allow Beaudoin to access its computer. After further discussions, Beaudoin forwarded a file on November 5, 2015, that the Union needed to install.[33] On November 17, 2015, Beaudoin spoke with Liz Sterling, the Union's Secretary and office manager. Sterling informed her that she was able to view the earnings statements on a computer screen but was unable to print them.[34]

F. The Ebola PowerPoint Presentation

The Company does not handle Class A medical waste, which includes waste contaminated by the Ebola virus. On or about November 12, Safety Manager Ron Maggiaro gave a 10–15 PowerPoint presentation to Morgantown employees on how to recognize Ebola waste packaging and avoid handling it. Employees were not given copies of the presentation.[35] The Union learned about the employee presentation and in emails, dated November 13 and 18, Dagle requested the Company provide it with a copy of the "Ebola video."[36]

On November 18, Fox responded, requesting that Dagle copy her on future requests and proceeded to reject his request:

> First, Ebola is Category A waste, not [RMW], so it falls outside the span of the [CBA]. Although the Morgantown employees will not be transporting or handling this waste, we decided to educate our employees on the Company's activities related to Ebola. The presentation shown to the employees is confidential and proprietary. This type of information could cause a great deal of speculation and public concern if it was released to third-parties outside our organization. Consequently, we are more than happy to review the power-point presentation with you that we shared with the employees in person, at a mutually convenient time at our offices, but we are not providing a copy to you or anyone else for reasons I stated. [37]

Dagle responded the following day, November 19, disputing Fox's confidentiality concerns and assuring her that the Union would "agree that the power-point presentation will not be shared with anyone outside the union's officers, representatives and agents." He noted that the employees were given the presentation without any mention that the information was confidential or proprietary. Nevertheless, to meet Fox's claim of confidentiality, he pledged that the Union would not show the PowerPoint to anyone outside of its officers, representatives, and agents. He then again requested a copy.[38] On November 25, Fox responded as follows:

> Under common law, employees of Stericycle are required to keep nonpublic information confidential. Employees also agree to this requirement when they sign our Handbooks. The Union has no such obligations to preserve the confidentiality of Stericycle materials (except, as I understand, for a limited agreement we recently reached over internal payroll processing data you requested). I appreciate the effort you have made to extend me these assurances, however, I also understand that you cannot personally guarantee that anyone you share these materials with will also keep the materials confidential.
>
> As I previously stated, these materials are extremely sensitive and you should know that Stericycle has spent a great deal of time answering questions from the public and other regulators surrounding whether EBOLA contaminated waste will be transported and/or treated within their town, municipality, jurisdiction etc. Many of these questions came from mere speculation and panic a situation that we are trying to avoid. For this reason, we did not permit any of the Morgantown employees to receive copies of the materials we presented to them. We only shared with them the presentation in person that I already offered to share with you. As I already stated to you, these employees will not transport the waste as it is outside their position duties. We simply presented them with the information because we want to educate all the employees on our activities in this area.
>
> Again, my offer to present to you, at a mutually convenient time, the same materials that we presented the employees still stands.[39]

On December 1, Dagle responded, disagreeing with Fox's interpretation of the law and her proposed compromise:

> I am not aware of any enforceable common law requirement that would prevent a Morgantown or Southampton employee

[30] R. Exh. 7.
[31] R. Exh. 8 at 6–21.
[32] R. Exh. 11 at 3.
[33] Id. at 2.
[34] There is no indication that Sterling requested additional assistance from Beaudoin in printing copies of the files. (Tr. 163, 206–208; Id. at 1.)
[35] Tr. 227–230.
[36] GC Exh. 17.
[37] GC Exh. 18 at 3.
[38] Id. at 2–3.
[39] Id. at 1–2.

> from sharing information presented by Stericycle concerning handling of Ebola waste and ensuring the safe handling that waste by its employees. If there is some prohibition on sharing "non public" Stericycle information with third parties in the handbook that applies to the Ebola presentation, I would like to see it. Please provide me a copy of the current Employee Handbook employees must sign.
>
> Your proposal to just let me view the presentation is inadequate. Local 628 needs to verify the accuracy of the information you are providing represented employees to ensure that their safety is being adequately protected. To verify the presentation's accuracy, Local 628 must submit a copy to professional experts in the infectious disease and biosafety field for their review. It would be neither cost effective no practical to insist that such experts attend a presentation at a Stericycle facility.
>
> I repeat Local 628's willingness to bargain over an appropriate agreement to address any legitimate Stericycle confidentiality concerns. Please provide a copy of the presentation.[40]

The Company did not respond to Dagle's December 1st email. Nor did it provide him with the employee handbook referred to in Fox's November 25th email. It did, however, post a notice at the Morgantown facility on January 16, 2015, explaining that employees were not to handle Ebola waste and that the Ebola presentation had been given for informational purposes only. The Company provided Dagle with a copy of the notice on January 20, 2015.[41] Additionally, on March 2, 2015, Fox provided Dagle with a copy of the recently implemented employee handbook at the Morgantown facility.[42]

G. Vehicle Backing Program

Sometime in November, the Company issued employee James Clay a counseling report after he was involved in a vehicular accident. The discipline subjected Clay to retraining for repeatedly violating the Company's vehicle backing program. Dagle and Transportation Manager Robert Schoennagle agreed to meet to discuss Clay's discipline. Prior to meeting, on November 24, Dagle requested several documents, including a "copy of the Company's vehicle backing program."[43] Schoennagle forwarded the information, except for the vehicle backing program, to Dagle on November 25.[44]

Schoennagle and Dagle met again on November 28. Dagle renewed his request for a copy of the vehicle backing program. Schoennagle said he did not have a copy of the program, but would look into it. At a subsequent meeting on January 22, 2015, with Schoennagle, Transportation Supervisor Glenn Oesyterling, Transportation and Human Resource Manager Susan O'Connor, Dagle renewed his request for vehicle backing program information. Shoennagle replied that the program consisted of a power point presentation and a video. He added, however, that the Company refused to produce the information because the PowerPoint presentation was "proprietary information" and the video was a "copyrighted item" that the Company purchased from an outside vendor, J.J. Keller & Associates, Inc.[45]

On January 29, 2015, Shoennagle reaffirmed the Company's refusal to provide vehicular program information, which it considered "a proprietary company training tool," but offered Dagle or union shop stewards the opportunity to "sit in on a presentation of this program with a proper written request from the Union."[46] On January 30, 2015, the Union filed a charge over the Company's refusal to provide the vehicle backing program information.

On March 2, 2015, Fox responded by reiterating the Company's position that the PowerPoint presentation proprietary and confidential, are irrelevant because Clay had seen the video several times and did not file a grievance over the discipline. She added that, without waiving future objection to any of these items, the Company was providing the PowerPoint presentation. With respect to the video, she reiterated that it was the licensing agreement with the vendor that prohibited copying and limited viewing to employees. Under these limitations, the Company offered Dagle the option of viewing the video at a mutually convenient time or visiting the J.J. Keller & Associates website. Dagle did not take Fox up on her offer.[47]

Finally, Fox also addressed Dagle's December 1st request for a copy of the employee handbook:

> Stericycle employees sign copies of the employee handbook at hire which is what I previously referenced when I relayed that employees are bound by prohibitions in the handbook on releasing confidential, proprietary and non-public information of the Company. When you requested a copy of the Handbook, we searched our records and it appears that the Company has not distributed or maintained Handbooks in Southampton since 2009 and Morgantown since 2011. As a result, the Company is now distributing its 2015 handbooks in these locations. I am attaching a copy here for your reference. Please let me know if you have any questions.[48]

H. Harassment Training Video

On December 30, Dagle requested "a copy of the Code of Conduct and Harassment Training video which the Company had bargaining unit employees view in its training." The video itself is a 10 to 15-minute harassment training video that was commissioned by the Company from a law firm in Chicago. Morgantown Plant Manager Mike Valtin responded later that day as follows: "The Code of Conduct and Harassment Training video are proprietary and can be available for you to view; however, the Company cannot give you a copy."[49] Dagle made no

[40] Id at 1.

[41] R. Exh. 4.

[42] GC Exh. 21–22.

[43] GC Exh. 19; R. Exh. 10.

[44] R. Exh. 10 at 2–4.

[45] The testimony by Dagle and Shoennagle was consistent on regarding the discussions at these meetings. (Tr. 66–70, 167–168, 215–217, 223–224.)

[46] GC Exh. 20.

[47] Dagle speculated that he would have no way of knowing whether the video link referenced in the letter was the same as the one shown to employees. That explanation defied common sense since he would have encountered the same uncertainty, requiring confirmation by a unit member, if the Company had provided him with a video. (Tr. 69–72.) Nor is there any evidence that he considered the cost of purchasing the video, for which no credible evidence of cost was offered. (Tr. 304–305.)

[48] GC Exh. 21.

[49] GC Exh. 26.

effort to view the video.[50]

I. The Soubra Grievance

On November 20, the Union filed "a formal grievance on behalf of Local 628, Ryan Suobra and the bargaining unit" alleging that "supervisor Ron Lobb egregiously and forcefully placed his hands on, grabbing, pushing and pulling employee Ryan Suobra on Saturday, November 15, 2014."[51] On December 5, Plant Manager Mike Valtin responded to the grievance as follows:

> While the Company does not necessarily agree with the Union's statement that Ron Lobb's action toward Ryan Soubra was egregious or forceful, we believe that no Manager or Supervisor should touch an employee. The Company agrees that this behavior is unacceptable and will not be tolerated. Therefore, Mr. Lobb's unacceptable behavior has been addressed with him per company policy. Harassment Training will be held for all Morgantown Plant Supervisors and Team Members by January 1st 2015.[52]

Not satisfied with the Company's response to the grievance, on December 11, Dagle informed Valtin that the Union intended "to proceed to Step 2 regarding the Ryan Suobra grievance." Dagle proposed the Step 2 meeting for December 15 and "in order for the Union to properly investigate this grievance," requested the following information:

> 1. Copies of all video tapes, photographs, or other similar media containing information relevant to the Company's investigation of . . .
>
> 2. The names and statements of any witnesses of which the Company is aware that have knowledge of the facts and circumstances regarding supervisor Ron Lobb's egregious and unacceptable action on Ryan Suobra on November 15, 2014.
>
> 3. Copies of all investigative reports concerning supervisor Ron Lobb's egregious and unacceptable action on Ryan Suobra on November 15, 2014 which are in the possession of the company including the company's investigative notes of interviews of witnesses or persons interviewed regarding this incident.
>
> 4. Copies of all documents, reports, emails, etc., relevant to the Company's investigation of supervisor Ron Lobb's egregious and unacceptable action on Ryan Suobra on November 15, 2014.
>
> 5. Copies of all documents, reports, emails, etc., related to Steicycle's discipline and reprimand of supervisor Ron Lobb for his egregious and unacceptable action on Ryan Suobra on November 15, 2014.
>
> 6. Copies of all documents, reports, email, etc., in supervisor Ron Lobb's personnel file regarding similar previous instances of egregious and unacceptable actions on employees.[53]

Dagle and Valtin met for a Step 2 grievance meeting on December 22. Valtin provided a copy of the video tape requested in item and permitted Dagle to read the disciplinary notice issued to Lobb. He also provided him with the names of at two witnesses and a written statement by one of them.[54] However, the Company refused to provide any further information responsive to items 2 through 6. Valtin confirmed the Company's position on December 30:

> Your request regarding the Company's investigation into misconduct and personnel information of a non-bargaining unit employee (items 2-6) are denied because they are not presumptively relevant and you have not provided any reasons to justify their relevance as to any grievance or discipline issued to a bargaining unit employee.
>
> Further, the Union does not have any right to access the Company's premises to attend training or otherwise – other than as negotiated in the CBA. Article 28 does not provide the Union with access rights to attend Company trainings with employees or to otherwise disrupt the Company's normal business operations.[55]

Dagle replied on January 7, 2015, insisting that the requested information was relevant to the Union's "investigation and evaluation" of the Soubra grievance:

> You have represented to me that Stericycle has disciplined Mr. Lobb for his conduct. In order to evaluate whether the discipline is sufficient to deter future misconduct against bargaining unit members, I have requested information related to Stericycle's investigation into the assault, Mr. Lobb's disciplinary record for similar incidents and Stericycle"s evaluation and consideration of the appropriate discipline under the circumstances.[56]

On January 12, Valentin acknowledged Dagle's explanation for the request but reaffirmed the Company's position denying the request:

> The Company has previously provided you access to the discipline issued to Lobb resulting from his interaction with Mr. Soubra. As you know, Mr. Soubra received no disciplinary action resulting from the incident. The reason the Company provided the Union with the discipline was to demonstrate its good faith and commitment to its policies and to assure the Union that Mr. Lobb will continue to suffer consequences for violating Company policies, which include inappropriate interactions with coworkers.
>
> The Union does not have any right to grieve or challenge any discipline issued to a non-bargaining unit member. Consequently, your rationale for wanting to review the personnel file of Mr. Lobb—to detetmine if the discipline issued was appropriate and sufficient—is not related to the Union's

[50] Tr. 150, 252–253.

[51] GC Exh. 23.

[52] GC Exh. 24.

[53] GC Exh. 25.

[54] I credit Dagle's testimony regarding his awareness of prior incidents involving Lobb, but not his speculative testimony as to what the action form stated or vague testimony that Lobb just got a "pat on the back." (Tr. 151–153.)

[55] GC Exh. 27 at 2.

[56] Id. at 1–2.

representational duties. As a result, your reasons for wanting the requested information does not overcome Mr. Lobb's right to confidentiality of his personnel information. Therefore, your request is denied.[57]

J. TMX Team Meetings

On July 9, Dagle observed a new notice posted at the Morgantown facility soliciting volunteers for a new workplace group called the TMX (Team Member Experience) Team. The notice sought employee participation to discuss and feedback in employee surveys.

Concerned that the meetings may have involved discussions of employees' terms and conditions of employment, Dagle submitted an information request to District Manager Steve Pantano on July 15, 2015. The request sought all documents relating to TMX team related planning, meetings, employee surveys, employee selection and participation criteria, employee attendance lists and compensation for attending, as well as similar documents used at other facilities.

Fox responded on August 7, 2015, explaining that the sign-up sheet had been posted in error at Morgantown and that a notice had been posted informing employees of the retraction. She added that "[s]ince there is no employee workgroup being formed in Morgantown, we feel most of the information you are requesting is irrelevant." Fox did, however, provide a copy of the TMX meeting notice and the PowerPoint presentation given to employees in response to paragraph 4 of the request. Omitted from the PowerPoint presentation were "slides that show comparative data with [the Company's] non-represented locations."[58]

K. The Employee Handbook

On December 1, Dagle requested a copy of the current Morgantown employee handbook referred to in Fox's November 25th email.[59] Fox did not respond to this request until March 2, 2015, when she wrote:

> Finally, the Company wants to address your November 25, 2014 request for the employee handbook. Stericycle employees sign copies of the employee handbook at hire which is what I previously referenced when I relayed that employees are bound by prohibitions in the handbook on releasing confidential, proprietary and non-public information of the Company. When you requested a copy of the Handbook, we searched our records and it appears that the Company has not distributed or maintained Handbooks in Southampton since 2009 and Morgantown since 2011. As a result, the Company is now distributing its 2015 handbooks in these locations. I am attaching a copy here for your reference.[60]

As referenced in Fox's email, the Company's current employee handbook was initially distributed to Morgantown employees on February 26 and 27, 2015. Since then, the handbook has been issued to and receipt acknowledged by all new United States-based employees.[61]

The current employee handbook is inconsistent with numerous provisions in the Morgantown CBA, including those relating to overtime, attendance policy, work schedules, paid time-off, paid holidays, personal time-off, work rules, disciplinary policy, use of bulletin boards, recoupment, drug testing, grievance procedure, employee probationary period, employee status and vehicle collision reporting.[62] These inconsistencies are recognized on page 1 of the handbook, which states that "[s]ome benefits may not apply to union team members and in some cases the policies may be impacted by collective bargaining agreements . . . No person is authorized to make any representations contrary to, in addition to, or to modify in any way this Team Member Handbook with the written approval of the Corporate Human Resources Department."[63]

The Company has not applied the nationwide employee handbook in a manner inconsistent with the Morgantown CBA. On the other hand, while all employees must acknowledge receipt of the employee handbook, the Company does not provide them with copies of the CBA. The Union provides current employees copies of new CBAs, but employees are not customarily provided with a copy of the CBA during the midst of a contract term unless they request it from Dagle.[64] The portions of the handbook at issue include the following:

> Retaliation—"All parties involved in the investigation [of a harassment complaint] will keep complaints and the terms of their resolution confidential to the fullest extent practicable."[65]
>
> Electronic Communication Policy—"A substantial portion of our business is transacted by telephone and over the wide area network. Therefore in order to maintain the efficiency of these systems non-business usage must be restricted. Phone and data lines must be kept open for business purposes. Accordingly, personal telephone calls and e-mails should be infrequent and brief, and limited to urgent family matters."[66]
>
> Use of Personal Electronics— "The use of personal cell phones or other personal electronic devices such as MP3 players is prohibited in waste processing, warehouse, loading and unloading areas during operating hours and any areas subject to vehicle movement at any time….Personal mobile phones and all other personal mobile electronic devices are to be kept in team member's lockers. Personal phone calls and use of personal electronic devices shall be restricted to meal and break periods. Violation of this policy may result in disciplinary

[57] Id. at 1.
[58] GC Exh. 28, 29B.
[59] GC Exh. 18.
[60] GC Exh. 21–22.
[61] GC Exh. 32.
[62] These inconsistencies are not disputed. (Tr. 90–106, 326.)
[63] GC Exh. 22 at 1.
[64] There is no evidence that the handbook was applied in a manner inconsistent with the CBA. Nor did I credit Dagle's hearsay testimony regarding the speculation conveyed by some employees about the effectiveness of handbook provisions inconsistent with the CBA. It is also undisputed that not all employees would be in possession of the CBA. (Tr. 110, 131–137.)
[65] GC Exh. 22 at 10.
[66] GC Exh. 22 at 26.

action up to and including termination."[67]

Personal Conduct—"In order to protect everyone's rights and safety, it is the Company's policy to implement certain rules and regulations regarding your behavior as a team member. Conduct that maliciously harms or intends to harm the business reputation of Stericycle will not be tolerated. You are expected to conduct yourself and behave in a manner conducive to efficient operations. Failure to conduct yourself in an appropriate manner can lead to corrective action up to and including termination."

The following are some examples of infractions which could be grounds for corrective action up to and including termination, however this list is not all- inclusive . . . Engaging in behavior that is damaging to Stericycle's reputation."[68]

Conflict of Interest—"Stericycle will not retain a team member who directly or indirectly engages in the following:

An activity that . . . adversely reflects upon the integrity of the Company or its management."[69]

The electronic use-related provisions in the employee handbook are not the only policies at issue. On May 21, 2015, Reiss approached Dagle about negotiating over policies relating to use of personal electronics, cameras and videos in the Southampton facility. Reiss explained at the time that the Company's policy manual was already implemented at all of the Company's other U.S. facilities, including Morgantown, and "corporate" required that Reiss implement them at the Southampton facility. In fact, the personal electronics policy listed an effective date of "4/1/2014," while the camera and video use policy became effective on "01-01-2012."[70]

The Camera and Video Use Policy provides, in pertinent part:

3.1 Team members are prohibited from taking pictures with a personal or company-issued cell phone camera of any Stericycle property, operation, or equipment without the permission of their supervisor/manager.

Team members are prohibited from taking video or audio recordings with a personal or company camera, camcorder, or other device of any Stericycle property, operation or equipment without the permission of their supervisor/manager."

The Use of Personal Electronics in the Workplace Policy provides, in pertinent part:

Section 5.1 Team members, visitors and vendors are prohibited from using personal mobile phones or other personal electronic devices such as MP3 players, (i.e. iPods) in waste processing, warehouse, loading and unloading areas during operating hours, and any area subject to vehicle movement at any time.

Section 5.3 Personal phone calls and use of personal electronic devices shall be restricted to meal and break periods. Section 5.5 Violation of this policy may result in disciplinary action up to and including termination.

The Company's personal electronics policies prohibit employees from carrying cellular telephones at any time into the facility beyond their lockers, although managers or supervisors have been observed using their phones in the facility. A relevant consideration is the fact that employees handle infectious medical waste and are required to wear protective clothing, including gloves. While this restriction prevents employees from photographing safety hazards, it does not preclude them from reporting dangerous conditions. In fact, Dagle confronted Company officials 2 years ago in response to a complaint from a Southampton employee about an alleged electrical hazard. The complaint triggered an OSHA investigation and the Company was fined for a safety violation.[71]

LEGAL ANALYSIS

A. The Company's Recoupment of Employee Health Insurance Premiums

The complaint alleges that on or about September 12, the Company unilaterally changed employee terms and conditions of employment at the Southampton facility by implementing a plan to recoup employee health care premiums over three pay periods. The Company denies that it unilaterally changed employees' wages, as the amounts deducted were exactly what the employees were required to contribute and the Company was entitled to deduct.

Moreover, the Respondent insists that it gave the Union adequate notice and an opportunity to bargain over the action, but the Union waived that right.

It is well settled that an employer violates Section 8(a)(5) of the Act when it makes substantial and material unilateral changes during the course of a collective-bargaining relationship on matters that are mandatory subjects of bargaining. See *NLRB v. Katz,* 369 U.S. 736, 743 (1962). Mandatory subjects of bargaining include those delineated in Section 9(a) as "rates of pay, wages, hours of employment, or other conditions of employment" and in Section 8(d) as "wages, hours, and other terms or conditions of employment." *Ford Motor Co. v. NLRB*, 441 U.S. 488, 496 (1979). Changes to payments of wages are mandatory subjects of bargaining. *JPH Management, Inc*., 337 NLRB 72, 73 (2001).

Good-faith bargaining requires timely notice and a meaningful opportunity to bargain regarding an employer's proposed changes, as no genuine bargaining can be conducted where the decision has already been made and implemented. *Ciba-Geigy Pharmaceuticals Division*, 264 NLRB 1013 (1982), enfd. 722 F.2d 1120 (3d Cir. 1983); *Pontiac Osteopath Hospital*, 336 NLRB 1021, 1023–1024 (2001); C*astle Hill Health Care*

[67] GC Exh. 22 at 28.
[68] Id. at 30.
[69] Id. at 33.
[70] Dagle's credible testimony on this point is not disputed. (GC Exh. 30-31; Tr. 87–89.)
[71] I credit Dagle's hearsay testimony regarding the employee complaint about a safety hazard because Dagle confronted the Company about the allegation and acknowledged that it was not good working practice to use cell phones while working. However, I do not credit his speculative assertion that the employee feared for his job. (Tr. 139–145, 171–172, 239–241.)

Center, 355 NLRB 1156, 1189 (2010); *S & I Transportation, Inc.,* 311 NLRB 1388 (1993). An employer's unilateral change that affects numerous bargaining unit employees certainly constitutes a Section 8(a)(5) violation. *USC University Hospital*, 358 NLRB 1205, 1213 (2012), citing, *Carpenters Local 1031,* 321 NLRB 30, 32 (1996).

The CBA subjected Southampton employees to biweekly health insurance deductions of 1 percent starting after they ratified the contract in April 2014. However, the Company did not start health insurance deductions during the period of April 13 to August 9, 2014. It is not disputed that the Company was entitled to reimbursement for the unpaid health insurance costs.[72] The only question is how it could legally accomplish the recoupment.

On September 3, Riess notified Dagle of the Company's plan to recoup the outstanding health insurance costs through equal deductions from employees' the next three paychecks, starting September 12, and asked if Dagle had "any questions or concerns." Dagle responded on September 5, asserting that the "recoupment decision is in violation of the Collective Bargaining Agreement and Stericycle's obligations under federal law." On September 9, Dagle demanded that any "recoupment schedule must be negotiated with the Union."

The Company's notification of the first recoupment after it was too late to bargain over the action presented the Union with a fait accompli and, thus, did not afford it with a reasonable opportunity for bargaining. *Intersystems Design Corp.*, 278 NLRB 759 (1986), *Ciba-Geigy Pharmaceuticals Division*, supra 264 NLRB at 1017. See also *Laro Maintenance Corp.*, 333 NLRB 958, 959 (2001); *S & I Transportation, Inc.,* supra, 311 NLRB at 1388 fn. 1, 1390.

The next issue is whether the Company's action in reducing employee wages for the next three pay periods constituted a significant and material change. *Berkshire Nursing Home,* 345 NLRB 220, 220 (2005) (citing *Crittendon Hospital*, 342 NLRB 686, 686 (2004)). As noted by the General Counsel, the contract required the Company to deduct health costs following ratification, but did not specify how and when the Company could recoup health insurance costs if the Company failed to start deducting the costs in a timely manner.

The Company's payroll processing problems lasted over 4 months before it took action to correct the situation by recouping the amounts owed in three paychecks. *Eagle Transport Corp.*, 338 NLRB 489, 490 (2002), where the Board deemed an employer's unilateral recoupment lawful after it miscalculated certain employee's wage rates, promptly corrected the error after discovering it and limited it to one paycheck, suggests different results depending on how many recoupments are in issue. In *Alexander Linn Hospital Assn.*, 288 NLRB 103 (1988), enfd. sub nom. *NLRB v. Wallkill Valley General Hospital,* 866 F.2d 632 (3d Cir. 1989), however, the Board determined the propriety of the employer's unilateral action based on the amounts at issue. In that case, the employer failed to deduct union dues on behalf of 13 employees over a period of time but continued to remit the dues to the union. The amounts owed by employees ranged from $1.60 to $38.60 and upon, discovering the mistake, the employer decided to recoup the amounts over one or two pay periods depending on whether the amount owed was more or less than $10. The judge concurred with the judge's determination that, under the circumstances, the amounts unilaterally recouped were insubstantial and, thus, did not constitute a material, substantial, or significant change in a condition of employment. Id. at 118.

Applying the principles in *Eagle Transport* and *Alexander Linn,* the Company's unilateral action in processing the first recoupment were relatively insignificant and did not constitute a material and substantial change. The 1978 Bureau of Labor Statistics Survey data cited by the Company indicates that the amounts unilaterally deducted in *Alexander Linn,* approximately 2 hours of pay, line up with those at issue in this case.[73]

In contrast, the Company's second and third recoupments of health insurance costs, however, constituted a more significant amount of employees' wages. The issue then is whether the Company provided the Union with sufficient advance notice to facilitate meaningful negotiations over the second and third recoupments.

After essentially telling Dagle that the first recoupment scheduled for September 12 was a fait accompli, Reiss offered to bargain over the future second and third recoupment pay periods. Dagle refused, conditioning bargaining on the Company's restoring the status quo by reversing its decision to implement the first recoupment. Having given a reasonable amount of time to bargain over the second and third recoupments, which had not yet been processed, the Union waived the opportunity to bargain over those changes. *Ciba-Geigy Pharmaceuticals Division,* supra at 1017 (1982); *Associated Milk Producers, Inc.,* 300 NLRB 561, 563 (1990); *Jim Walter Resources, Inc.,* 289 NLRB 1441, 1442 (1988).

Under the circumstances, the Company was entitled to recoup the 1 percent health insurance cost from Southampton unit employees. The Company did not afford the Union a reasonable opportunity to bargain over the first recoupment, but the amounts involved were insignificant and did not constitute a change. While the second and third recoupments did constitute more significant amount of wages, the Union waived its opportunity to bargain over those changes. This allegation is dismissed.

B. The Employee Handbook

1. Distribution of the employee handbook

The General Counsel alleges that the Company's February 2015 distribution of a U.S. company-wide employee handbook to Morgantown employees containing provisions inconsistent with the CBA unilaterally changed the terms and conditions of employment of unit employees in violation of Section 8(a)(5) and (1). The Company contends that it did not unilaterally change employees' terms and conditions of employment by distributing an employee handbook to Morgantown employees.

An employer violates Section 8(a)(5) of the Act by changing

[72] Dagle argued to Reiss at one point that the Company waived its right to recoup the unpaid costs, but the Union provided no precedent to support that proposition.

[73] See *Industry Wage Survey: Hospitals and Nursing Homes, September 1978*, U.S. Dept. of Labor, Bureau of Labor Statistics, November 1980, Bulletin 2069, at 6, indicating average wage rates for general duty nurses in 1978 was between $5.85 per hour and $8.30 per hour.

wages, hours or other terms and conditions of employment of bargaining unit employees without giving the employees' bargaining representative notice and a meaningful opportunity to bargain about the changes. *NLRB v. Katz*, supra; *United Cerebral Palsy of New York City*, 347 NLRB 603, 607 (2006). The Board has specifically found work rules to be mandatory subjects of bargaining: work rules involving the imposition of discipline: *United Cerebral Palsy of New York City*, supra.

The Morgantown facility employee handbook contained numerous policies inconsistent with CBA provisions relating to overtime, attendance, work schedules, paid time-off, paid holidays, personal time-off, work rules, disciplinary policy, use of bulletin board, recoupment, drug testing, grievance procedure, employee probationary period, employee status and vehicle collision reporting. Page 1 of the handbook, however, contained an acknowledgment that its policies might be superseded by certain provisions in the CBA. Additionally, there is no evidence that the Company ever enforced the employee handbook in a manner that contravened any provisions in the CBA.

Notwithstanding the employee handbook's disclaimer regarding the CBA and the lack of evidence of its enforcement, the fact remains that the document contained numerous Company policies and practices that affected numerous mandatory subjects of bargaining. That being the case, the Company was obligated to notify the Union and afford it a reasonable opportunity to bargain over the handbook provisions before distributing it to unit employees. A notation in the handbook vaguely apprising unit employees that in "some cases these policies may be impacting by collective bargaining agreements" did not provide them with clear guidance as to the applicable policies affecting certain terms and conditions of employment.

Under the circumstances, the Company's February 2015 unilateral implementation of an employee handbook at the Morgantown facility constituted material and significant changes to unit employees terms and conditions of employment in violation of Section 8(a)(5) and (1) of the Act.

2. The Company's rules and policies

The complaint also alleges that the Company's 2015 employee handbook and policy manuals contain several rules or policies that unlawfully interfere with unit employees' Section 7 rights.

The maintenance of a rule that would reasonably have a chilling effect on employees' Section 7 activity violates Section 7. *Lafayette Park Hotel,* 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). In determining whether an employer's rules or policies restrict or chill employee's rights to engage in protected activity, one must consider if: "(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; (3) or the rule has been applied to restrict the exercise of Section 7 rights." *Lutheran Heritage Village—Livonia,* 343 NLRB 646, 646–647 (2004). Where a rule or policy explicitly restricts Section 7 activity or can be reasonably read to restrict such activity, the Board is required to evaluate the employer's asserted business justification "[t]o strike a proper balance between the employees' rights and the Respondent's business justification." *Caesar's Palace,* 336 NLRB 271, 272 (2001). The Board must accommodate the respective rights of the parties "with as little destruction of one as is consistent with the maintenance of the other." *NLRB v. Babcock & Wilcox Co.,* 351 U.S. 105, 112 (1956).

(a) Use of personal electronic devices

The Company's policy manual and employee handbook contain virtually identical polices relating to the use of personal electronics in the workplace. The General Counsel contends that the policies unlawfully restrict employees' cell phones and other personal electronic devices. The Company contends that the policies, on their face, do not purport to address Section 7 activity. Nor is there any evidence that the policies were adopted in response to, or ever applied to restrict, Section 7 activity. Finally, the Company asserts that the policies are narrowly tailored to provide a safe working environment for employees.

An employer has a legitimate interest in ensuring the safety of its operations, but rules regulating the use of electronic devices must be narrowly tailored to address such concern. *Whole Foods Market, Inc.*, 363 NLRB 800, 803 (2015); *T-Mobile USA, Inc.,* 363 NLRB 1638, 1641 (2016); *Rio All-Suites Hotel & Casino,* 362 NLRB 1690 (2015).

The policy manual and employee handbook restrict the use of personal mobile phones or other electronic devices to break time, requires that they be kept in lockers during worktime, and prohibits them from entering work areas with their cell phones and other electronic devices. The General Counsel contends that the policy unlawfully inhibits protected activity because the requirement that cell phones be kept in an employee's locker except during break times is tantamount to prohibiting employees from entering work areas with personal electronic devices during nonwork time. It is also noted that these rules do not make any exceptions so employees would reasonably interpret it to even prohibit them from accessing their cell phone to take pictures of safety violations while on nonworking time.

The General Counsel's argument fails for several reasons. First, the Section 7 type of activity referred to by the General Counsel—the taking of photographs through a cell phone or other electronic device—is not explicitly mentioned in the rule. Of course, mobile phone technology has evolved to the point where many users, but not all, possess a picture taking feature on their phones and other electronic devices. However, the Company has a separate rule in place, discussed below, specifically regulating the taking of photographs or videos in working areas. In that context, a reasonable interpretation of the rule is that it prohibits employees from engaging in telephone conversations and using other electronic devices in work areas. As noted by the Company, many devices have music and reading features. Gone unmentioned are devices with game features. In a facility where employees handle regulated medical waste, one can appreciate the virtues in a prohibition against telephone conversations, listening to music, reading or playing games in work areas.

Secondly, the record established a workplace environment at the Morgantown facility that necessitates the use of protective clothing covering employees' entire bodies, including hands, when they are in work areas because they handle regulated medical waste. Given the hazardous conditions involved, it is hard to imagine how an employee could use a mobile phone or

electronic device in a work area without exposing it to the hazardous elements. The General Counsel focuses on the distinction between using and merely carrying a mobile phone or other electronic device, but that is a distinction without meaning. There is no practical point in being able to carry something to a location if one is not safely able to use it there.

The Company's maintenance of its policy manual rule regarding the use of personal electronics in the workplace policy and employee handbook policy regarding the use of personal electronics do not explicitly restrict Section 7 activity, are narrowly tailored to restrict the use of mobile phones and electronic devices in the Company's hazardous work areas, and any impact on Section 7 activity is outweighed by the Company's substantial business justification for the rules. The allegations at paragraphs 6(a)(i) and 6(c) of the complaint are dismissed.

(b) Personal conduct policy

The complaint alleges that the Company's personal conduct policy violates Section 8(a)(1) because the policy is vague and can be reasonably construed as prohibiting Section 7 activity. The Company contends that the policy does not explicitly restrict Section 7 activity and was not adopted in response to, or applied to, such activity.

Although Section 7 activity may sometimes harm the reputation of an employer, the Board and courts have never held that employees have a right to maliciously or intentionally harm their employer's business or reputation. *NLRB v. Electrical Workers Local 1229 (Jefferson Standard*), 346 U.S. 464, 472 (1953); *Valley Hospital Medical Center, Inc.,* 351 NLRB 1250, 1252–1253 (2007), enfd. sub nom. *Nevada Service Employees Union v. NLRB,* 358 Fed Appx. 783 (9th Cir. 2009); *Stanley Furniture Co.,* 271 NLRB 702, 703–704 (1984). Nevertheless, employer rules aimed at criticism by employees must contain clear language stating that they are aimed only at unprotected activity. See e.g. *Casino San Pablo*, 361 NLRB 1350, 1353 (2014). Otherwise, the failure to make that distinction would cause employees to refrain from engaging in protected activities. See *Lafayette Park Hotel*, supra at 828.

The policy provision at issue prohibits employee conduct "that maliciously harms or intends to harm the business reputation" of the Company. The example stated cites "behavior that is damaging to Stericycle's reputation." The provision makes no exception, however, for statements that would be protected by the Act, which would protect false or negative statements relating to Section 7 rights. See *Costco Wholesale Corp.,* 358 NLRB 1100 supra at 1100–1102 (2012). The statement is sufficiently vague and is accompanied by a threat of discipline or termination, causing employees to reasonably construe the rule to prohibit Section 7 activity, in violation of Section 8(a)(1). *Lutheran Heritage Village-Livonia*, supra. The fact that the policy is buried amongst 16 other rules relating to unprotected conduct is immaterial. As far as the typical employee is concerned, if the rule is there, it can be applied to him/her. Accordingly, the Company's personal conduct policy was vague, overbroad and in violation of Section 8(a)(1).

(c) Conflict of interest policy

The complaint alleges that the Morgantown facility's conflict of interest policy against activities that "adversely reflect upon the integrity of the company" is unlawfully overbroad. The Company contends that this language must be read in context and not in isolation, neither involves nor can be reasonably construed as involving protected activity, but rather, activities which would reflect adversely upon the integrity of the Company.

Section 7 of the Act protects employees' right to engage in concerted activity, even if that activity conflicts with the employer's interest. Examples include protests in front of the company, organizing a boycott of the employer and soliciting union support on nonwork time. The Board has concluded that an employer cannot prohibit employees from engaging in conduct that could conflict with its interests where those interests could include union interests. *The Sheraton Anchorage,* 362 NLRB 1038 (2015). If an employer's conflict-of-interest rule would reasonably be read to prohibit such activities, the rule will be found unlawful. See *HTH Corp.*, 356 NLRB 1397, 1398, 1421 (2011), enfd. 693 F.3d 1051 (9th Cir. 2012). Rules that are clearly limited to legitimate business interests, on the other hand, are not unlawful.

The Company's conflict of interest policy prohibits employee activity that "constitutes a conflict of interest or adversely reflects upon the integrity of the Company or its management" including "activity in which a team member obtains financial gain due to his/her association with the Company" or "activity, which by its nature, detracts from the ability of the team member to fulfill his/her obligation to the Company." The Company's policy against activities that "adversely reflect upon the integrity of the company" is overbroad. The policy does not set forth examples nor does it clarify a legitimate business interest so that employees will not understand it to prohibit protected activity. Moreover, the statement is vague and is accompanied by a threat of discipline, causing employees to reasonably construe the rule to prohibit Section 7 activity, in violation of Section 8(a)(1). *Lutheran Heritage Village-Livonia*, supra, 343 NLRB at 647. Accordingly, the Company's maintenance of the conflict of interest policy is impermissibly overbroad in violation of Section 8(a)(1) of the Act.

(d) Harassment complaints

The complaint alleges that the Company's retaliation policy in the Morgantown employee handbook, explicitly prohibiting employees from disclosing "complaints and the terms of their resolution," is unlawfully overbroad. The Company maintains that the policy's confidentiality language does not expressly restrict Section 7 rights and there is no evidence that it was adopted in response to protected activity or has been applied to Section 7 activity.

It is well settled that Section 7 of the Act grants employees the right to discuss wages and other terms and conditions of employment with other employees, and the Board has repeatedly found confidentiality rules unlawful if employees would reasonably construe the rules to prohibit protected discussions. See, e.g., *Battle's Transportation, Inc.*, 362 NLRB 125, 125–126 (2015); *Fresh & Easy Neighborhood Market*, 361 NLRB 72, 73 (2014); *Cintas Corp.*, 344 NLRB 943, 943 (2005), enfd. 482 F.3d 463 (D.C. Cir. 2007). It is likewise well settled that employees have a Section 7 right to discuss their conditions of employment with

third parties, such as union representatives, Board agents, and the public in general, and the Board has invalidated rules prohibiting such third-party communication. See, e.g., *DirecTV U.S. DirecTV Holdings, LLC*, 359 NLRB 545, 547 (2013), reaffirmed and incorporated by reference, 362 NLRB No. 48 (2015); *Hyundai America Shipping*, 357 NLRB 860, 872 (2011), enfd. in part 805 F.3d 309 (D.C. Cir. 2015); *Kinder-Care Learning Centers, Inc.,* 299 NLRB 1171, 1171–1172 (1990).

There is no question that the policy has a lawful purpose—to protect employees from all forms of harassment, and to provide a process by which they can address the problem with the employer, have the problem investigated, appropriate remedial action taken, and appropriate protective measures established. Nor is it disputed that the Company has a substantial and compelling business interest adopting rules banning any form of harassment in the workplace, and that the inclusion of a confidentiality provision is an integral part of such a policy. *Hyundai America Shipping Agency, Inc. v. NLRB,* supra.

The pertinent question, however, is whether employees would reasonably read the policy's confidentiality provision as restricting their Section 7 rights in certain situations. As noted by the General Counsel, it is not clear from the handbook that the policy is limited to sexual harassment complaints and resolutions. The Company lists a variety of types of harassment, but that list is in another section of the handbook, between its affirmative action policy and its prohibition on the use or possession of firearms and dangerous weapons on company property.

Employees who submit a complaint or participate in a complaint do not have to agree to keep the complaint, report or investigation confidential. *Fresenius USA Mfg., Inc.*, 362 NLRB 1065, 1066 (2015). Here, the Company's rule encompasses parties beyond the its representatives, requiring "all parties involved" to keep complaints and the terms of their resolution confidential. An employee could reasonably construe the restriction as prohibiting communications with Board agents or other governmental agencies about complaints related to the workplace or Section 7 activities. *Kinder-Care Learning Centers*, supra, 299 NLRB at 1172; *DirecTV U.S. DirecTV Holdings, LLC*, supra, 359 NLRB at 547.

The Company also argues that the policy merely articulates its pledge to employees, is not a rule of conduct does not mention a penalty. Those considerations ignore the fact that the portion of the harassment policy at issue, requiring that employees "*will* keep complaints and the terms of their resolution confidential to the fullest extent practicable," can be reasonably interpreted as a rule of conduct preventing employees from engaging in Section 7 protected communications. Moreover, clarifying that employees' obligation to maintain confidentiality is not ironclad and only "to the fullest extent practicable," serves to create further uncertainty in the minds of employees as to whether they might incur adverse consequences if they violate that provision. *Newsday, Inc. v. Long Island Typographical Union 915, CWA,* 915 F.2d 840, 845 (2d Cir. 1990) (upholding the right of employer to discharge employees who violated confidentiality provisions of harassment policy).

Accordingly, the Company's retaliation policy relating to the confidentiality of harassment complaints is overboard in violation of Section 8(a)(1).

(e) Electronic Communications Policy

The General Counsel alleges that a portion of the Company's electronic communication policy unlawfully restricts employees' usage of the Company's email system in violation of Section 8(a)(1). The Company contends that the language as issue does not explicitly restrict Section 7 activity, has not been applied to restrict Section 7 activity, and cannot be reasonably construed to restrict Section 7 activity.

In *Purple Communications,* 361 NLRB 100, 1063 (2014), the Board explained the rights available to employees in using an employer's email system:

> [W]e will presume that employees who have rightful access to their employer's email system in the course of their work have a right to use the email system to engage in Section 7-protected communications on nonworking time. An employer may rebut the presumption by demonstrating that special circumstances necessary to maintain production or discipline justify restricting its employees' rights.

The Company's electronic communications policy language at issue states that a substantial portion of its business is conducted by telephone and over the internet and, in order to "maintain the efficiency of these systems, nonbusiness usage must be restricted. Phone and data lines must be kept open for business purposes. Accordingly, personal telephone calls and emails should be infrequent and brief and limited to urgent family matters."

The General Counsel does not argue that the restrictions on the use of the Company's telephone system is unlawful, just the limits on the use of its email system. In contrast with telephone use, where the use of a telephone line might make that mode of communication unavailable for others, the use of email would not interfere with simultaneous use of the system by other employees.

The Company's limits on the use of its email system to "urgent family matters" can be reasonably construed to preclude employees from using the system, even on break time, to engage in protected activities relating to their terms and conditions of employment. As written, the policy poses a clear restriction upon employees Section 7 rights and the Company has not shown the special circumstances needed to justify its restriction on the nonbusiness use of its email system, even on break time. Nor does the fact that the policy permits such use to an extent that is "infrequent and brief" any less restrictive on the ability of a unit to engage in protected activity.

In contrast to *Purple Communications,* however, the record here lacks any evidence that unit employees at the Morgantown facility had access to the Company's email system. In *Purple Communications,* the employees at issue were assigned company email accounts and routinely used company computers during the course of their work. That is hardly the case here, where the only work activity described in the record relates to the handling of medical waste. The record is replete with email communications between company supervisors and managers, and between the Company and the Union. There is not a hint that unit employees even had access to the Company's email system at any time, whether during work or on break time. The allegations at paragraph 6(a)(v) of the complaint are dismissed.

(f) Camera and video use policy

The General Counsel contends that the Company's camera and video use policy unlawfully prohibits employees from taking pictures, or video or audio recordings with personal or company-issued mobile phones, cameras, camcorders or other devices of any company property, operation, or equipment without the permission of their supervisor/manager. The Company contends that the restrictions were narrowly drawn in order to protect its legitimate business interests, specifically, protecting its physical equipment, property, proprietary information and processes.

Employees have a Section 7 right to photograph and make recordings in furtherance of their protected concerted activity, including the right to use personal devices to take such pictures and recordings. See *Hawaii Tribune-Herald*, 356 NLRB 661 (2011), enfd. sub. nom. *Stephens Media, LLC v. NLRB*, 677 F.3d 1241 (D.C. Cir. 2012); *White Oak Manor*, 353 NLRB 795 (2009), incorporated by reference, 355 NLRB 1280 (2010), enfd. mem. 452 F.App'x 374 (4th Cir. 2011). Rules placing a total ban on such photography or recordings, or banning the use or possession of personal cameras or recording devices are unlawfully overbroad where they would reasonably be read to prohibit the taking of pictures or recordings on nonwork time. See e.g., *T-Mobile USA, Inc.*, supra, at 4–5 (prohibition against recording unlawfully overbroad where rule failed to distinguish between recordings protected by Section 7 and included within its scope, recordings created during nonwork time and in nonwork areas); *Whole Foods Market, Inc*., supra at 4 (employer's broad and unqualified language prohibiting work-place recordings would reasonably be read by employees as prohibiting Section 7 activity); *Rio All-Suites Hotel & Casino*, supra at 4 (photography and audio or video recording in the workplace are protected by Section 7 if employees are acting in concert for their mutual aid and protection and no overriding employer interest is present).

There is no evidence that the policy was adopted in response or applied to protected activity. It is also undisputed that the Company has a legitimate proprietary interest in its equipment and processes. The Company's contention, however, that the policy does not unqualifiedly prohibit all picture taking or recording on its property, including pictures of "people" or recording "conversations," is incorrect.

A reasonable interpretation of the policy conveys the sense that the policy totally prohibits the use of cameras, video and audio recording devices on company property. The policy is not limited in scope, but rather, broadly prohibits the use of such devices at any time on company property without permission from a supervisor or manager. The language of the policy does not make any exceptions so employees would reasonably interpret the rule to prohibit employees from such Section 7 activity as taking pictures of safety violations. Nor does it differentiate between work time and work areas, and nonwork time and nonwork areas.

The Company did not present evidence of an overriding proprietary interest in such a broad ban on camera and recording devices. Nor did it present sufficient evidence to show why it could not make an exception in the policy for Section 7 activity. Accordingly, the camera and video policy is unlawfully over broad and insufficiently tailored to protect the the Company's legitimate business interests. As currently written, the policy violates Section 8(a)(1) of the Act.

A. The Union's Information Requests

The complaint alleges that the Company failed and refused to provide relevant information to the Union. The Company denied the allegations, insisting that the information requested was irrelevant, already provided or confidential.

An employer has a duty, upon request, to furnish the union with information that is potentially relevant and useful to its role as unit employees' bargaining representative. *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 314–315 (1979). Certain types of information pertaining to wages, hours, benefits, and working conditions of employees are considered, "so intrinsic to the core of the employer-employee relationship (as to be) considered presumptively relevant." *Coca-Cola Bottling C*o., 311 NLRB 424 (1993). Where information is considered presumptively relevant, no specific showing of relevance is required, and the employer has the burden of proving lack of relevance. *Marshalltown Trowel Co*., 293 NLRB 693 (1989); *Ohio Power Co*., 216 NLRB 987, 991 (1975); *Grand Rapids Press*, 331 NLRB 296 (2000); *Contract Carriers Corp.,* 339 NLRB 851, 858 (2003). A liberal discovery type standard is applied, and the union is not required to prove that the requested data will be dispositive of the issue before the parties. *ATC/Vancom of Nevada Ltd.,* 326 NLRB 1432, 1434 (1998). An employer can avoid production only if it either proves the information is not relevant or demonstrates some reason why it cannot be provided. *Ormet Aluminum Mill Products Corporation,* 335 NLRB 788, 801 (2001); *A-Plus Roofing,* 295 NLRB 967, 970 (1989), enfd. 39 F.3d 1410 (9th Cir. 1994).

1. Information relating to the recoupment of health care costs

The Company denied the Union's requests for internal communications regarding the Company's decision and actions to recoup outstanding health care premium over three pay periods and its bargaining notes regarding the negotiation of Article 22.3 on the grounds of relevance, confidentiality and privilege.

Information relating to the Company's failure to process payroll deductions for health care costs for over 4 months is relevant because the Union was entitled to ascertain the legitimacy of the Company's explanation for the delay. One could reasonably envision a unit employee asking Dagle for a more detailed explanation as to why a larger deduction was taken out of his/her paycheck and demanding that Dagle file a grievance. In deciding whether to file a grievance, however, Dagle was entitled to more than just the information on employee's paychecks. See *Ohio Power Co.,* 216 NLRB at 991.

Similarly, the Union's request for bargaining notes was relevant to a potential grievance because they might have reflected discussions between the parties regarding the future implementation of Article 22.3. The mentioning or awareness of potential delays, or the absence of such information, during bargaining, was certainly relevant to the parties' positions on the grievance that the Union was pondering.

The Company's vague assertions of privilege and confidentiality also fail. Confidentiality claims, in certain situations, may justify a refusal to provide information. *Mission Foods,* 345 NLRB 788, 791–792 (2005). Justification, however, is determined by balancing the union's need for the information against

any "legitimate and substantial confidentiality interests established by the employer." *Detroit Edison v. NLRB*, supra 440 U.S. at 315, 318–320. Blanket claims of confidentiality are insufficient. *Pennsylvania Power Co.,* 301 NLRB 1104, 1105 (1991). In the event that the confidentiality interests are shown to outweigh the Union's need for the information, the party must still seek an accommodation to provide the information while protecting its confidentiality interests. *Mission Foods,* supra 345 NLRB at 791–792; *Tritac Corp.,* 286 NLRB 522, 522 (1987). Here, however, the Company's simply rejected the Union's requests for information relating to the decisions, planning and implementation of Article 22.3 and did not seek an accommodation of the interests it sought to protect from disclosure. *United States Testing Co. v. NLRB,* 160 F.3d 14, 20–21 (D.C. Cir. 1998).

Under the circumstances, by failing to provide information requested by the Union on September 11 and 26, relating to the recoupment of outstanding employee health insurance costs, the Company failed to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act.

2. Information requests relating To 401(k) contributions

The Union requested information on September 5 relating to the arbitration of its grievance that the Company failed to remit on a pretax basis certain monies intended for employees' 401(k) or stock purchase plans. The items sought included biweekly earnings statements from the period April 13 through September 6, and thereafter on an ongoing basis, internal communications and meeting notes to the Company's implementation of these investment plans, and bargaining notes and proposals exchanged and agreements reached regarding Article 23.3.

(a) Earnings statements for April 13 to September 6, 2014 pay periods

The Company timely responded to the September 5 request for the April through September by providing employees' earnings information, including 401(k) and stock purchase plan deductions, in an Excel spreadsheet. Dagle was unable to decipher the information contained on the spreadsheet, but never contacted Fox nor anyone else with the Company for assistance. Instead, he requested the information again 11 months later in an August 2015 subpoena in preparation for the September 2015 arbitration over Article 23.3. Under the circumstances, the Company cannot be saddled with the Union's failure to request clarification or better information than the earnings records supplied. The charge that the Company unlawfully failed to provide the Union with earnings statements for the period of April 13 to September 6 is dismissed.

(b) Earnings statements since September 7, 2014

On September 22, the Company objected to the Union's September 5 request for the biweekly earnings statements since September 7 on an "ongoing basis." The Company objected to the production of such information on an indefinite basis and as unclear. It did, however, seek to reach an accommodation, asking the Union to "identify any specific time periods and how each is related to the Union's investigation of this grievance or any particular grievance and the company will re-evaluate the reasonableness of the request."

The Union did not respond. Instead, on August 18, 2015, nearly 11 months later, it requested the same information again by subpoena in preparation for the September 2015 arbitration. On September 8, 2015, pursuant to union subpoena in preparation for the arbitration, the Company provided the Union with computer access to unit employees' earnings statements for the entire period from September 7, 2014 through September 4, 2015, which the Union was able to view, but not print. The Union did not request assistance from the Company in printing the statements. Notwithstanding the Company's eventual acquiescence to the "ongoing" request for the earnings statements in September 2014, the issue remains whether the delay in providing the information constituted an 8(a)(5) violation.

I agree with the Company's contention that the process of printing out the requested earnings statements on an ongoing basis since September 7, 2014, would have been a monumental task since it would entail approximately 1,500 earnings statements taking a payroll clerk about 100 hours to produce. At the time of the request on September 22, however, there was only one earnings statement period that would have accrued since September 7. While the production of earnings statements for one pay period on or since September 7 was justified, the request for continuous production of such information was overly burdensome under the circumstances.

The Union was entitled to earnings statements in relating to its grievance and the arbitration of same. However, it is unclear why it would need the information on an ongoing basis and there is no provision in the CBA imposing such an obligation on the Company. The historical earnings information generated prior to the September 2015 arbitration was certainly relevant to the arbitration, but the need for the information indefinitely is unclear. The Company requested further explanation for such a request and offered to reach an accommodation. The Union passed on the offer. Accordingly, the charge that the Company's unlawfully delayed in providing the Union with earnings statements on an ongoing basis since September 7 is dismissed.

(c) Internal communications, meeting notes and bargaining documents

The Company refused the Union's requests on September 5 and 18, to provide internal communications, meeting notes and bargaining documents relating to Article 23.3 on the grounds of relevance, confidentiality, privilege and impermissible pre-arbitral discovery.

The relevance of these information requests to the Union's grievance is the same as it was with the request for similar documentation relating to article 22.3. The Union's requests were relevant in order to ascertain the Company's position and comments during bargaining regarding its implementation of Article 23.3.

Once again, the Company's vague assertions of privilege and confidentiality also fail. *Mission Foods,* supra. The union's need for the information in connection with its grievance prevailed over the Company's interests in shielding from disclosure its potential legal theories for arbitration. See *Acme Industrial,* 385 U.S. 432, 438–439 (1967). The Company asserts that this information request amounted to an impermissible demand for pre-arbitral discovery. See *California Nurses Association,* 326 NLRB 1362 (1998). Moreover, the Company argues that it

essentially complied with this request by furnishing the information a few weeks after the Union counsel subpoenaed it and 6 days before the arbitration.

The request was indeed made after the Union filed for arbitration of the grievance, but it also encompassed information that it needed to evaluate its grievance going forward. *Fleming Cos.,* 332 NLRB 1086, 1094 (2000). At the very least, it was incumbent on the Company to suggest an accommodation by redacting any records encompassing information not related to Article 23.3, legal strategy or other information directly related to the arbitration. *Borgess Medical Center,* 342 NLRB 1105, 1106 (2004).

The Union's demand for copies of all collective-bargaining proposals and agreements relating to the 401(k) plan, however, were not justified. In the absence of an explanation by the Union that it was not still in possession of proposals exchanged and proposals reached by the parties, it should have specified what it possessed or did not possess. While the information was certainly relevant, the Company was not required to regenerate information the Union already possessed. *See Manitowoc Ice, Inc.,* 344 NLRB 1222, 1238 (2005). Accordingly, this allegation is dismissed.

Under the circumstances, the Company's failure to provide internal communications and meeting and bargaining notes requested by the Union on September 5 and 18, 2014, relating to the Company's implementation of Article 23.3 violated of Section 8(a)(5) and (1) of the Act.

3. The Ebola PowerPoint presentation

The complaint alleged that the Company unlawfully refused the Union's requests on November 13 and 18, and December 1 for a copy of an Ebola PowerPoint presentation shown to unit employees. The Company denied the requests for a copy, but offered to have the Union view review the presentation. The Union declined the offer, insisting that it needed a copy to provide its experts for review.

The PowerPoint presentation was informational in nature and seemingly an activity not covered by the CBA. However, an information request pertaining to mandatory employee training is presumptively relevant as it is a mandatory subject of bargaining. *Hospital of Bartow, Inc.,* 361 NLRB 352, 353 (2014). On the other hand, production of the information is sufficient if "made available in a manner not so burdensome or time-consuming as to impede the process of bargaining." *Cincinnati Steel Castings Co.,* 86 NLRB 592, 593 (1949).

Ebola and other highly infectious types of waste, which are specially packaged and labeled, are not handled by unit employees at the Morgantown facility. However, the Company's PowerPoint mandatory presentation on how to recognize and handle Ebola waste obviously sought to prepare employees for a worst case scenario if they ever encountered the deadly material. In that context, the potential danger from Ebola had some connection to employee's terms and conditions of employment in handling regulated medical waste. To suggest otherwise—that employees are not exposed and it is unrelated to their work—ignores the Company's safety reasons for conducting the training.

Although access to the PowerPoint was relevant to the Union's interests in employee training, the Company limited access to a viewing by Dagle in lieu of a copy. The Union refused the offer, insisting that it needed a copy of the presentation in order to have it reviewed by experts in infectious diseases. Given the extremely complex and sensitive nature of the information involved, coupled with the Union's assurances of confidentiality, the Company's offer to view the presentation only was unreasonable under the circumstances. See *Cincinnati Steel Castings Co.,* 86 NLRB 592, 593 (1949); *American Telephone & Telegraph Co.,* 250 NLRB 47 (1980), *'enfd.* sub nom. *CWA, Local 1051 v. NLRB,* 644 F.2d 923 (1st Cir. 1981).

Under the circumstances, the Company's refusal to provide the Union with a copy of Ebola training provided to unit employees, as requested by the Union on November 13 and 18, and December 1, violated Section 8(a)(5) and (1) of the Act.

4. The December 2014 Employee Handbook

The complaint alleges the Company ignored the Union's request on December 1 for a copy of the employee handbook then in effect. On November 25, Fox vaguely referred to the existence of employee handbooks governing employee conduct. On December 1, Dagle requested a copy of that employee handbook. Fox ignored Dagle's request, although she eventually provided him on March 2, 2015 with a copy of the recently issued 2015 version of the handbook.

The employee handbook in effect on December 1 was presumptively relevant to the Union's obligations under the CBA as it undoubtedly contained employees' terms and conditions of employment. While Fox eventually provided the Union with the newly issued employee handbook on March 2, 2015, she never provided a copy of the version in effect on December 1. The failure to provide a copy of that handbook impeded the Union's ability to effectively represent the interests of unit employees at the Morgantown facility in violation of Section 8(a)(5) and (1) of the Act.

5. Vehicle backing program

The complaint alleges that the Company unlawfully delayed from November 24 until March 2, 2015, in providing the Union with a copy of its vehicle backing program. On November 24, the Union's requested a copy of the Company's vehicle backing program. The request was triggered by the discipline of employee James Clay for violating the vehicle backing program after he was involved in a vehicular accident.

During their meeting regarding Clay's discipline, Shoennagle provided with documents in response to the November 24 request. However, the documents did not include a copy of the vehicle backing program. Dagle reminded Shoennagle of this when they met again on November 28. At that time, Schoennagle said he would look into it. Two months passed until late January 2015, when Dagle inquired again. Schoennagle responded that the program was proprietary and would not be provided. On January 30, 2015, the Union filed a charge alleging the Company's unlawful refusal to provide a copy of the program. On March 2, 2015, the Company reconsidered and provided a copy of a PowerPoint presentation and website link where the Union could purchase a copy of the video.

The Company's 3-month delay in providing information about its vehicle backing program was unreasonable. The information reflected the basis for Clay's discipline and was relevant

to the Union's obligation to determine whether there was an adequate justification for the discipline. The Company's delay in providing the information, however, prevented the Union from effectively representing Clay's interests when he was disciplined. *Good Life Beverage Co.,* 312 NLRB 1060, 1062 fn. 9 (1993); *Postal Service,* 308 NLRB 547, 547 fn. 1 (1992).

6. The Soubra grievance

The complaint alleges that the Company unlawfully refused to provide information requested by the Union on December 11 relating to a grievance over the Company's response to an altercation between Supervisor Ron Lobb and unit employee Ryan Soubra. The Company provided the Union with video tapes of the incident and permitted it to view the disciplinary action issued to Lobb. However, the Company denied the request for the remaining items on the grounds that they were not presumptively relevant and there was no justification for production: witness information; all documents, reports, notes and emails relating to the ensuing investigation; and any such documents of similar incidents between Lobb and other employees. The Union replied that the documentation was necessary to enable it to evaluate whether Lobb's discipline was "sufficient to deter future misconduct against bargaining unit members."

Had the information related to the discipline of a unit employee, the information requested would have been relevant and subject to disclosure. The requested information, however, was not presumptively relevant as it concerned investigative, disciplinary and personnel records of a supervisor, not a bargaining unit employee. See *F.A. Bartlett Tree Expert Co.,* 316 NLRB 1312, 1313 (1995). Accordingly, the Union was required to demonstrate a special need for the information under the circumstances. *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 314–315 (1979).

The Union has a legitimate interest in protecting unit employees from misconduct by persons outside the bargaining unit. However, its need, as established in this record, for the outstanding information outweighed by the fact that it encompasses the disciplinary and personnel information of a nonunit supervisor. Those are matters over which the Union does not have a right to bargain. The Company provided Dagle with video tapes of the incident, permitted him to read the disciplinary action issued to Lobb, and provided the names of the two witnesses to the statement, including the written statement of one of them. Moreover, having read the disciplinary action, the Union was aware of the discipline issued to Lobb, but did not articulate it in the record.

Under the circumstances, the Company's refusal to provide the additional information requested in the Union's letter of December 11 was not unreasonable under the circumstances. This allegation is dismissed.

7. Code of Conduct and Harassment Training

The complaint alleges that the Company refused the Union's request on December 30 for a copy the Code of Conduct and Harassment Training video shown to unit employees. The Company refused to provide a copy of the video because it was "proprietary" but offered to let Dagle view it. Dagle declined the offer.

Employee training information is presumptively relevant. *Hospital of Bartow, Inc.,*supra. The Company now concedes that the training video was a relevant request by the Union. However, relying on *Cincinnati Steel Castings Co.,* 86 NLRB 592, 593 (1949), it contends that it was under no obligation to furnish the requested "information in the exact form" requested by the Union.

The Company's refusal to provide the Union with a copy of the training video shown to unit employees was unreasonable under the circumstances. Permitting the Union to merely view the video is not the same as producing the video. The training video contained information conveyed to employees that related to their terms and conditions of employment. As such, the Union would have an interest referring to it during future bargaining or grievance matters.

Moreover, the Company provides no precedent to support its contention that a training video created by it and shown to employees for training purposes may be shielded from disclosure to its bargaining partner on the grounds that it is "proprietary." At the very least, the Company could have insisted on a nondisclosure agreement from the Union.

Under the circumstances, the Company's refusal to provide the code of conduct and harassment training video requested by the Union on December 30 violated Section 8(a)(5) and (1) of the Act.

8. The TMX survey

In response to the Union's July 15, 2015 request for copies of documents relating TMX meetings with Morgantown employees, the Company provided a redacted copy of a PowerPoint presentation of an employee survey. The dispute is over the omitted portions, which consisted of slides containing "comparative data" with the Company's other facilities.

Since the information sought related to facilities and employees not represented by the Union, the burden was on the Union to assert a special need. The Union contends that the information shown to Morgantown employees compared their satisfaction with their terms and conditions of employment with those of employees at the Company's other facilities. However, there is no showing that the information contained in surveys of employees at other Company facilities not represented by the Union had any bearing on the actual terms and conditions of the Morgantown facility's unit employees. This allegation is dismissed.

CONCLUSIONS OF LAW

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

2. The Union, Teamsters Local 628 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times since September 1, 2006, the Union has been the exclusive collective-bargaining representative of the following unit of employees at its Southampton facility (the Southampton unit), which unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time drivers, driver techs, in house techs, helpers, dockworkers and long haul drivers of the Company at its Southampton, Pennsylvania location; but excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

4. At all times since September 1, 2011, the Union has been the exclusive collective-bargaining representative of the following unit of employees at its Morgantown facility (the Morgantown unit), which unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time regulated medical waste (RMW) plant workers, sharps plan workers, RMW Shift Supervisors, Sharps Shift Supervisors/quality control representatives, drivers, dispatchers, yard jockey, maintenance mechanics, Maintenance Supervisor and painters employed by Respondent at its Morgantown, Pennsylvania facility; but excluding all office employees, confidential employees, guards and supervisors as defined in the Act.

5. The Respondent failed to provide the Union with an opportunity to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by making unilateral changes to Morgantown facility employees' terms and conditions of employment by implementing an employee handbook in February 2015.

6. The Respondent failed to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by refusing the Union's requests on September 11 and 26, 2014, for a copy of information concerning the Respondent's recoupment of employee healthcare deductions from Southampton unit employees.

7. The Respondent failed to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by refusing the Union's request on September 5 and 18, 2014, for a copy of the Respondent's internal communications, meeting notes and bargaining documents relating to the Union's grievance over the 401(k) provision in the Southampton unit employees' collective-bargaining agreement.

8. The Respondent failed to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by refusing the Union's request on November 13 and 18, and December 1, 2014, for a copy of the Respondent's EBOLA training provided to Morgantown unit employees.

9. The Respondent failed to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by refusing or failing to provide the Union with a copy of the Morgantown employee handbook then in effect and requested by the Union on December 1, 2014.

10. The Respondent failed to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by unreasonably delaying in providing the Union with information it requested on November 24, 2014 about the Vehicle Backing Program.

11. The Respondent failed to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by refusing to provide the Union with a copy of the Code of Conduct and Harassment Training video shown to Morgantown unit employee.

12. The Respondent violated Section 8(a)(1) of the Act by maintaining a personal conduct work rule at page 30 of the Team Member Handbook which could be understood to prohibit employees from engaging in activities protected under Section 7 of the Act and states, in pertinent part, that "[c]onduct that maliciously harms or intends to harm the business reputation of Stericycle will not be tolerated. You are expected to conduct yourself and behave in a manner conducive to efficient operations. Failure to conduct yourself in an appropriate manner can lead to corrective action up to and including termination . . . Engaging in behavior that is harmful to Stericycle's reputation."

13. The Respondent violated Section 8(a)(1) of the Act by maintaining a conflict of interest work rule at page 33 of the Team Member Handbook which could be understood to prohibit employees from engaging in activities protected under Section 7 of the Act and states, in pertinent part, that "Stericycle will not retain a team member who directly or indirectly engages in the following: . . . An activity that constitutes a conflict of interest or adversely reflects upon the integrity of the Company or its management."

14. The Respondent violated Section 8(a)(1) of the Act by maintaining a retaliation work rule at page 10 of the Team Member Handbook which could be understood to prohibit employees from engaging in activities protected under Section 7 of the Act and states, in pertinent part, that "[a]ll parties involved in the investigation will keep complaints and the terms of their resolution confidential to the fullest extent practicable."

15. The Respondent violated Section 8(a)(1) of the Act by maintaining a camera and video use policy in the Respondent's policy manual since January 1, 2012, which could be understood to prohibit employees from engaging in activities protected under Section 7 of the Act.

16. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

17. The Respondent has not violated the Act except as set forth above.

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. Moreover, as one or more of the challenged policies have been determined to be overly broad and violate Section 8(a)(1), a nationwide posting by the Company is appropriate since the record establishes that the unlawful rules or policies are maintained or in effect at all of the Company's facilities within the United States. See *Mastec Advance Technologies,* 357 NLRB 103 (2011), enfd. sub nom. *DIRECTV v. NLRB,*___ F.3d___(D.C. Cir. 2016); *Guardsmark, LLC,* 344 NLRB 809, 812 (2005).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[74]

ORDER

The Respondent, Stericycle, Inc., Morgantown and Southampton, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the Teamsters Local 628 (the Union) as the exclusive representative of employees in the following appropriate unit at the Respondent's Southampton facility:

[74] 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.

> All full-time and regular part-time drivers, driver techs, in house techs, helpers, dockworkers and long haul drivers of the Company at its Southampton, Pennsylvania location; but excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

(b) Refusing to bargain in good faith with the Teamsters Local 628 (the Union) as the exclusive representative of employees in the following appropriate unit at the Respondent's Morgantown facility:

> All full-time and regular part-time regulated medical waste (RMW) plant workers, sharps plan workers, RMW Shift Supervisors, Sharps Shift Supervisors/quality control representatives, drivers, dispatchers, yard jockey, maintenance mechanics, Maintenance Supervisor and painters employed by Respondent at its Morgantown, Pennsylvania facility; but excluding all office employees, confidential employees, guards and supervisors as defined in the Act.

(c) Refusing to bargain collectively with the Union by distributing a Team Member Handbook to bargaining unit employees that unilaterally changes their terms and conditions of employment.

(d) Unreasonably delaying in providing the Union with information that is relevant and necessary to its role as unit employees' bargaining representative.

(e) Refusing to provide the Union with requested information that is relevant and necessary to its role as unit employees' bargaining representative.

(f) Maintaining a personal conduct rule in the Team Member Handbook that prohibits unit employees from engaging in conduct that maliciously harms or intends to harm the Respondent's business reputation, expects employees to conduct themselves and behave in a manner conducive to efficient operations, threatens employees with corrective action including termination for failing to conduct themselves in an appropriate manner or engaging in behavior that is harmful to the Respondent's reputation.

(g) Maintaining a work rule in the Team Member Handbook prohibiting conflicts of interest that threatens adverse action if an employee directly or indirectly engages in an activity that adversely reflects upon the integrity of the Company or its management.

(h) Maintaining a retaliation work rule that requires unit employees involved in harassment investigations to keep harassment complaints and the terms of their resolution confidential to the fullest extent practicable.

(i) Maintaining a camera and video use policy in Respondent's policy manual which could be construed as prohibiting employees from using personal cameras or video equipment in break areas during break time.

(j) 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 actions necessary to effectuate the policies of the Act.

(a) Rescind the entire Team Member Handbook provided to Morgantown bargaining unit employees that unilaterally changed their terms and conditions of employment.

(b) Before implementing any changes in wages, hours, or other terms and conditions of employment of Southampton and Morgantown unit employees, notify and on request, bargain with the Union as their exclusive bargaining representative.

(c) Provide the Union with the vehicle backing program information it requested on November 24, 2014.

(d) Provide the Union with information it requested on September 5 and 18, 2014, regarding the Respondent's internal communications, meeting notes and bargaining documents relating to the Union's grievance over the 401(k) provision in the Southampton unit employees' collective-bargaining agreement.

(e) Provide the Union with the information it requested on November 13 and 18, and December 1, 2014, regarding the Respondent's EBOLA training provided to Morgantown unit employees.

(f) Provide the Union with the information it requested on December 1, 2014, regarding the Morgantown facility employee handbook then in effect.

(g) Provide the Union with the information it requested on December 30, 2014, regarding Code of Conduct and Harassment Training provided to employees.

(h) Within 14 days after service by the Region, post at its facilities in Morgantown and Southampton, Pennsylvania, copies of the attached notice marked "Appendix A and at all of its facilities within the United States and its territories, copies of Appendix B."[75] Copies of the notices, on forms provided by the Regional Director for Region 4, 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 proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 5, 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 the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. November 10, 2016

APPENDIX A

[75] 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."

(Postings at Southampton and Morgantown Facilities)

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 at our Southampton and Morgantown facilities.

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 refuse to bargain in good faith with Teamsters Union Local 628 (the Union) as the exclusive collective-bargaining representative for those of you in the following appropriate unit ("the Southampton Unit"):

All full-time and regular part-time drivers, driver techs, in house techs, helpers, dockworkers and long haul drivers of Respondent at its Southampton, Pennsylvania location, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain in good faith with Teamsters Union Local 628 (the Union) as the exclusive collective-bargaining representative for those of you in the following unit (the Morgantown Unit):

All full-time and regular part-time regulated medical waste (RMW) plant workers, sharps plant workers, RMW Shift Supervisors, Sharps Shift Supervisors/quality control representatives, drivers, dispatchers, yard jockey, maintenance mechanics, Maintenance Supervisor and painters employed by Respondent at its Morgantown, Pennsylvania facility; but excluding all office employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively with the Union by distributing a Team Member Handbook to our bargaining unit employees that unilaterally changed your terms and conditions of employment.

WE WILL NOT unreasonably delay in providing the Union with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT refuse to provide the Union with requested information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind the entire Team Member Handbook provided to Morgantown bargaining unit employees that unilaterally changed their terms and conditions of employment.

WE WILL, upon request, bargain in good faith with the Union as the exclusive bargaining representative of our Southampton unit employees and our Morgantown unit employees.

WE HAVE provided the Union with a copy of the vehicle backing program it requested on November 24, 2014.

WE HAVE provided the Union with a copy of the information that it requested in its letters dated September 5 and 18, 2014, including internal communications, meeting notes and bargaining documents relating to its grievance over the 401(k) provision in the Southampton unit.

WE WILL provide the Union with a copy of information concerning Respondent's recoupment of employee healthcare deductions in the Southampton unit that it requested in its letters dated September 11 and 26, 2014.

WE WILL provide the Union with a copy of the Ebola presentation for the Morgantown unit that it requested through in e-mails, dated November 13 and 18, 2014, and December 1, 2014.

WE WILL provide the Union with a copy of the employee handbook that it requested in its email dated December 1, 2014.

WE WILL provide the Union with a copy of the Code of Conduct and Harassment Training that shown to Morgantown unit employees and requested in an email dated December 30, 2014.

STERICYCLE, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-137660 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.

APPENDIX B

(Nationwide Notice)
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 at all of our facilities in the United States.

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 do anything to prevent you from exercising the above rights.

WE WILL NOT maintain the following work rules in our Camera

and Video Use Policy which could be understood to prohibit you from engaging in activities protected under Section 7 of the Act:

> 3.1 Team members are prohibited from taking pictures with a personal or company- issued camera or cell phone camera of any Stericycle property, operation, or equipment without the permission of their supervisor/manager.
>
> 4.1 Team members are prohibited from taking video or audio recordings with a personal or company camera, camcorder, or other device of any Stericycle property, operation, or equipment without the permission of their supervisor/manager.

WE WILL NOT maintain the following "Personal Conduct" work rule at page 30 in our Team Member Handbook which could be understood to prohibit you from engaging in activities protected under Section 7 of the Act:

> In order to protect everyone's rights and safety, it is the Company's policy to implement certain rules and regulations regarding your behavior as a team member. Conduct that maliciously harms or intends to harm the business reputation of Stericycle will not be tolerated. You are expected to conduct yourself and behave in a manner conducive to efficient operations. Failure to conduct yourself in an appropriate manner can lead to corrective action up to and including termination.
>
> . . .
>
> Engaging in behavior that is harmful to Stericycle's reputation.

WE WILL NOT maintain the following Conflict of Interest work rule at page 33 in our Team Member Handbook which could be understood to prohibit you from engaging in activities protected under Section 7 of the Act:

> Stericycle will not retain a team member who directly or indirectly engages in the following: . . . An activity that constitutes a conflict of interest or adversely reflects upon the integrity of the Company of its management.

WE WILL NOT maintain the following "Retaliation" work rule at page 10 in our Team Member Handbook which could be understood to prohibit you from engaging in activities protected under Section 7 of the Act:

> All parties involved in the investigation will keep complaints and the terms of their resolution confidential to the fullest extent practicable.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL modify our Camera and Video Use Policy, and our "Personal Conduct," "Conflict of Interest" and "Retaliation" work rules contained in our Team Member Handbook so those policies and work rules will not abridge your Section 7 rights or activities, and WE WILL advise you in writing that the rules have been amended.

WE WILL furnish all employees at our facilities nationwide with (1) inserts for the current employee handbook that advise that the unlawful rules have been rescinded, or (2) the language of lawful rules on adhesive backing that will cover or correct the unlawful rules, or (3) publish and distribute revised handbooks that do not contain the unlawful rules.

STERICYCLE, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-137660 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.