UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AMERICAN RED CROSS BLOOD SERVICES,
WESTERN LAKE ERIE REGION

and Case 08-CA-090132

THE UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 75

Gina Fraternali, Esq.,
for the Acting General Counsel.
Steven Suflas, Esq.,
for the Respondent.
John Roca, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARK CARISSIMI, Administrative Law Judge. This case was tried in Toledo, Ohio, on February 4, 2013. The United Food and Commercial Workers Union, Local 75 (the Union), filed the charge on September 27, 2012, and an amended charge on November 29, 2012. The Acting General Counsel issued the complaint on November 30, 2012.[1] The complaint alleges that the Respondent has violated Section 8(a)(1) of the Act by maintaining various rules and policies which will be discussed in detail herein.

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

[1] On November 30, 2012, the Acting General Counsel issued a second order consolidating cases, amended consolidated complaint and notice of hearing (the complaint) in Cases 08-CA-086902, 08-CA-086929 and 08-CA-090132. Afterwards, Cases 08-CA-086902 and 08-CA-086929 were settled. On February 1, 2013, the Regional Director for Region 8 issued an order severing those cases and withdrawing the portions of the complaint relating to those cases from the complaint. Accordingly, only the allegations in the complaint relating to Case 08-CA-090132 went to trial.

[2] Although at the trial I indicated that I expected the brief filed by the Acting General Counsel, as the proponent of the complaint, to set forth a recommended order and notice for my consideration (Tr. 170), the brief that was filed did not contain such a provision.

FINDINGS OF FACT

I. JURISDICTION

The Respondent is an unincorporated chartered unit of the American National Red Cross, a Federally chartered corporation, with an office and facility located in Toledo, Ohio, where it is engaged in the collection, processing and distribution of blood and blood-related materials. Annually, the Respondent derives revenues in excess of $250,000 and purchases and receives products valued in excess of $50,000 directly from points located outside the State of Ohio. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Background

The Respondent is the primary supplier of blood and plasma to hospitals in 11 counties in northwestern Ohio and southeastern Michigan. Since the 1970s the Union has represented a unit of all full-time and part-time blood service employees. There are approximately 150 employees in the bargaining unit. The current collective-bargaining agreement is effective from June 26, 2012 through June 25, 2015 (GC Exh. 14). The Respondent also employs employees who are not represented by the Union, but the record does not indicate the number of such employees. (Tr. 110.)

Kathryn Smith has been the Respondent's interim CEO since June 2012. Previous to that she served as the Respondent's director of blood collections. Judith Leach is the Respondent's human resource manager.

Procedural Issues

The Board's Authority to Decide This Case

As a threshold matter, the Respondent contends that the Board as presently constituted lacks the necessary quorum to exercise jurisdiction over this case. The Respondent further contends that the Acting General Counsel lacks the authority to prosecute the complaint and that I lack the authority to issue a decision. In *ORNI 8, LLC*, 359 NLRB No. 87 (2013), the Board indicated that while it recognized that in *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013) the court concluded that the President's recess appointments to the Board were not valid, the court itself acknowledged that its decision conflicts with rulings of at least three other courts of appeals. See *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied 544 U.S 942 (2005).; *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Allocco*, 305 F.2d 704 (2d Cir. 1962). In *ORNI 8 LLC*, supra, the Board indicated that while the question regarding the validity of the recess appointments remains in litigation and pending a definitive resolution, it will continue to fulfill its responsibilities under the Act. Accordingly, I reject the Respondent's

argument that the Board lacks the authority to decide this case and will proceed to issue a decision in this matter.

The Amendments to the Complaint

At the commencement of the trial, counsel for the Acting General Counsel moved to amend the complaint to allege that portions of a brochure maintained by the Respondent entitled "You Request Our Mission . . . Please Respect Our Trademark" (GC Exh. 16) violates Section 8(a)(1) of the Act. Counsel for the Acting General Counsel also moved to amend the complaint to allege that portions of the Respondent's current "Code of Business Ethics and Conduct" (the code of conduct), promulgated in 2007 (GC Exh. 18) and its current "Confidential Information and Intellectual Property Agreement" (CIIPA), promulgated in 2005 (GC Exh. 19) also violated Section 8(a)(1). Counsel for the Acting General Counsel indicated she had received these documents from the Respondent the evening before or the morning of the trial. The Respondent opposed the complaint amendments.

At the trial I granted the amendments to the complaint. As noted by the Acting General Counsel, the complaint amendment with respect to the Respondent's trademark brochure (GC Exh. 16) is related to the existing complaint allegation in paragraph 8(a)(i)[a] which alleges that a provision of the Respondent's "The American Red Cross Employee Handbook for Western Lake Erie Region (the employee handbook), effective April 30, 2010, regarding the personal use of the Red Cross emblem was a violation of Section 8(a)(1). Similarly, the amendment based on GC Exh. 18, the Respondent's current version of its code of conduct is obviously related to the current employee handbook's reference to the code of conduct in paragraph 8 of the complaint. The complaint amendment based on, the current version of the Respondent's CIIPA, GC Exh. 19, is directly related to paragraph 7 of the complaint that alleges that certain aspects of the previous 2002 version of the Respondent's CIIPA is violative of Section 8(a)(1).

Section 102.17 of the Board's Rules and Regulations permits complaint amendments upon terms that may be just. The amendments to the complaint sought by the Acting General Counsel were made at the commencement of the hearing and are sufficiently related to the existing allegations so that the Respondent was not prejudiced by permitting the amendments. I specifically indicated that the hearing when I granted the Acting General Counsel's motion that I would give the Respondent's counsel additional time to prepare to respond to these allegations if necessary. I find that it is the Board's policy to permit complaint amendments under these circumstances. See *Payless Drug Stores*, 313 NLRB 1220 (1994).

The Respondent's Due Process Claim

The Respondent contends that it was denied due process because the Acting General Counsel has not provided adequate notice of the unfair labor practices alleged to have been committed in this case.

The complaint alleges in paragraphs 6 through 9 that since at least March 28, 2012, the Respondent has maintained specifically identified rules and policies, which are alleged to violate Section 8(a)(1) of the Act. The amendments to the complaint made at trial also make specific reference to newly discovered evidence of rules and policies maintained by the Respondent

during the period noted above, which the Acting General Counsel alleges to violate Section 8(a)(1) of the Act.

Section 102.15 of the Board's Rules and Regulations requires that a complaint contain "a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or their representatives by whom committed." In *Artesia Ready Concrete, Inc*. 339 NLRB 1224 (2003), the Board noted that it has long held, with court approval, that the only requisite of a complaint is that it contain a plain statement of the acts constituting an unfair labor practice sufficient to allow a respondent an opportunity to present a defense. The Board specifically noted that the complaint did not need to include a legal theory or plead matters of evidence. Id. at 1226 fn. 3.

Despite the clear sufficiency of the complaint and its amendments, the Respondent nonetheless claims that it was denied due process because counsel for the Acting General Counsel declined at the hearing to shed additional light on the Acting General Counsel's theory regarding the allegations of the complaint. Counsel for the Acting General Counsel indicated that the complaint clearly stated that the rules and policies, on their face, violated Section 8(a)(1) of the Act and that the specific legal theories relied on to support the allegations of the complaint would be set forth in a brief.

I do not find, under the circumstances of this case, that the Respondent was denied due process. At the commencement of the hearing, the Respondent's counsel indicated his familiarity with *Costco Wholesale Corp*., 358 NLRB No. 106 (2012) and *DirectTV U.S. DirecTV Holdings, LLC*, 359 NLRB No. 54 (2013), recent Board decisions involving the lawfulness of work rules. (Tr. 11.) In its 41-page brief, the Respondent fully and cogently addresses all of the issues raised by the complaint. The circumstances present in this case are far different from those present in *Lamar Advertising of Hartford*, 343 NLRB 261 (2004), which the Respondent relies on to support its position.[3] In *Lamar Advertising*, an administrative law judge dismissed the portion of the complaint alleging that the employer violated Section 8(a)(4) and (1) of the Act by discharging an employee. The General Counsel argued in his exceptions to the Board a theory of an alleged violation of Section 8(a)(4) and (1) beyond what was alleged in the complaint and litigated at the hearing. The Board indicated that to find a violation based on that theory at that advanced point in the proceeding would violate due process. Id. at 265. As noted above, in the instant case, the complaint allegations are clear and the Respondent's counsel was aware of the legal issues presented by the complaint at the time of the hearing and expanded on those issues in his brief. The Respondent clearly had an opportunity to fully and fairly defend itself against the complaint allegations. Accordingly, I do not agree with the Respondent's argument that the complaint should be dismissed because it was denied due process.

[3] The Respondent also relies on *New York Post.,* 353 NLRB 343 (2008) in support of its position. In that case the Board's decision was issued by a two-Member panel. In *New Process Steel, L. P. v. NLRB*, 130.S. Ct. 2635 (2010) the Supreme Court held that the two-Member Board lacked the authority to issue its decision in that case. Accordingly, based on the Supreme Court's decision in *New Process Steel* and *Sheraton Anchorage*, 359 NLRB No. 95 slip op. at 3 fn. 8 (2013), I do not accord precedential value to *New York Post*., supra.

Whether the Respondent Maintains Rules that Violate Section 8(a)(1) of the Act

The Confidentiality Rules and Policies

It is undisputed that the Respondent has maintained during the 10(b) period[4] rules and policies that address the issue of confidentiality in its CIIPA issued in 2005 (GC Exh. 19), the current employee handbook (GC Exh. 8), and the code of conduct (GC Exh. 18). The Acting General Counsel and the Charging Party contend that specifically identified rules and policies contained within those documents are overbroad and facially violative of Section 8(a)(1) of the Act. The Respondent contends that all of its challenged policies are facially lawful.

The Acting General Counsel also alleges that the Respondent maintained, during the 10(b) period, a confidentiality policy issued in July 1993 (GC Exh. 3) and a 2002 version of the CIIPA (GC Exh. 5). The Respondent contends, however, that the 1993 confidentiality policy and the 2002 CIIPA were not maintained during the 10(b) period.

I will first address the confidentiality policies and rules which were undisputedly maintained during the 10(b) period. In March 2005, the Respondent promulgated a CIIPA (GC Exh. 19), which all employees hired after that date are required to execute. This document provides in relevant part:

> I desire to be employed or to continue to be employed by Red Cross. I acknowledge that I may, in the course of my employment with Red Cross ("Employment"), have access to or create (alone or with others) confidential and/or proprietary information and intellectual property that is of value to Red Cross. I understand that this makes my position one of trust and confidence. I understand Red Cross' need to limit disclosure and use of confidential and/or proprietary information and intellectual property. I understand that all restrictions are for the purpose of enabling Red Cross to fill its humanitarian mission, to maintain donors, customers and clients, to develop and maintain new or unique products and processes, to protect the integrity and future of the Red Cross and to protect the employment opportunities of my fellow employees. THEREFORE, I agree to the following:
>
> Confidential information shall include but not be limited to:
>
> (i) information relating to Red Cross' financial, regulatory, personnel or operational matters,
>
> (ii) information relating to Red Cross clients, customers, beneficiaries, suppliers, donors (blood and financial), employees, volunteers, sponsors or business associates and partners,

[4] Section 10(b) of the Act provides that no complaint shall issue based on any unfair labor practice occurring more than 6 months prior to the filing and service of a charge. The charge in this case was filed on September 27, 2012, and served on the Respondent on September 28, 2012. Accordingly, the 10(b) period in this case began on March 28, 2012.

> (v) all information not generally known outside of Red Cross regarding Red Cross and its business, regardless of whether such information is written, oral, or electronic, digital or other form and regardless of whether the information originates from Red Cross or Red Cross' agents.
>
> Obligation of confidentiality. Except as may be required for the performance of my duties during Employment, unless specifically authorized in writing by Red Cross, I shall not use or disclose, for my or others benefit, either during or after Employment any Confidential Information. I acknowledge and agree that this Agreement does not deny any rights provided under the National Labor Relations Act to engage in concerted activity, including but not limited to collective bargaining.
>
> Survival of Obligations and Enforcement. The obligations that I have under this Agreement shall survive the termination of Employment, regardless of the reasons for methods of termination. I agree that Red Cross shall be entitled to recover from me all the attorneys fees incurred in enforcing Red Cross' rights under this Agreement.

The Respondent's current employee handbook became effective on April 30, 2012 (GC Exh. 8). All employees receive the handbook when they are hired and must sign an acknowledgment form indicating they are bound by the terms and conditions set forth in it. The Respondent reaffirmed the code of conduct and the 2005 CIIPA during the 10(b) period. In this connection, the unit employees were on strike from the end of March 2012 until approximately June 26, 2012. When striking employees returned to work the Respondent held a reorientation meeting with them. At this meeting, Smith read the March 2005 CIIPA and the code of conduct to employees and the employees were required to sign both documents.

Both the employee handbook and the code of conduct contain identical language with respect to confidentiality generally (GC Exhs. 18 and 8, p. 36). Both documents provide that no employee shall:

> Disclose any confidential American Red Cross information that is available solely as a result of an employee's or volunteer' s affiliation with the American Red Cross to any person not authorized to receive such information, or use to the disadvantage of the American Red Cross any such confidential information, without the express authorization of the American Red Cross.

The employee handbook, however, also contains a specific work rule that prohibits the "Release of confidential . . . employee information without authorization." (GC Exh. 8, p. 47.)

The employee handbook further provides the following regarding the use of the Respondent's communication systems:

> Employees must be mindful that their association with Western Lake Erie Region and the Red Cross will be visible to any recipient of electronic communication, and assure that their communications are consistent with the Red Cross Mission

> and accepted community standards. Prohibited uses of Western Lake Erie Region communication systems include, but not limited to:
>
> 3. Distributing sensitive, proprietary, confidential, or private information of the Western Lake Erie Region and/or the Red Cross without appropriate authorization. (GC Exh. 8, p. 41.)

The employee handbook provides for a progressive disciplinary policy, but it reserves the right of the Respondent to immediately terminate employees for violation of its rules (GC Exh. 8, pp. 40-41).

The Acting General Counsel contends that the 2005 CIIPA defines confidential information to include "personnel information" without further specifying what "personnel information" includes. The Acting General Counsel contends that employees can reasonably interpret the term "personnel information" to include wages, benefits and other working conditions. The Acting General Counsel argues that, under these circumstances, the rules noted above are facially overbroad, since they do not restrict the definition of confidential information to exclude terms and conditions of employment. In support of his position the Acting General Counsel relies on, inter alia, *Costco Wholesale Corp*., 358 NLRB No. 106 (2012); *Security Walls, LLC,* 356 NLRB No. 87 (2011); and *University Medical Center*, 335 NLRB No. 87 (2001). The Charging Party similarly argues that the use of the term confidential in the rules noted above, without further definition, is facially overbroad and it would reasonably be read to encompass a prohibition of disclosure of personnel information such as wages and terms and conditions of employment.

The Respondent contends that, when the CIIPA, the employee handbook, and the code of conduct are considered in context, the Respondent's rules and policies regarding confidentiality are not unlawful under the Act. The Respondent asserts that the overall thrust of the CIIPA focuses on the ownership and disclosure of intellectual property. The Respondent further contends that the Board's decision in *Lafayette Park Hotel*, 326 NLRB 824 (1998), requires that the language of the confidentiality rules be considered as a whole, rather than focusing on certain words or phrases. The Respondent also points to the section in the CIIPA that indicates that it is not intended to deprive employees of rights under the Act.

In determining whether the maintenance of a work rule violates Section 8(a)(1) of the Act the Board determines whether it reasonably tends to chill employees in the exercise of their Section 7 rights. *Lafayette Park Hotel*, supra, enfd. mem. 203 F.3d 52 (D.C. Cir. 1999). In *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004), the Board indicated that if a rule explicitly restricts Section 7 rights, it is unlawful. The Board further noted that if it does not, "the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." Id. at 647. *In Lutheran Heritage Village*, the Board further indicated that in determining whether a challenged rule is unlawful it must give the rule a reasonable reading. Id. at 646. The Board has also held, however, that "ambiguous employer rules-rules that reasonably could be read to have a coercive meaning-are construed against the employer. This principle follows from the Acts' goal of preventing employees from being chilled in the exercise of their Section 7 rights-whether or

not that is the intent of the employer-instead of waiting until the chill is manifest, when the Board must undertake the difficult task of dispelling it." *Flex Frac Logistics, LLC*, 358 NLRB No. 127 slip op. at 2 (2012).

In the instant case, the confidentiality rules and policies referred to above do not explicitly restrict Section 7 rights, nor is there evidence that they were promulgated in response to union activity or were applied to restrict the exercise of Section 7 rights. Thus, the issue here is whether employees would reasonably construe the language of the rules and policies noted above to prohibit Section 7 activity. A fair reading of the CIIPA provides that confidential information includes information relating to the Respondent's "personnel" or "employees" and that such information cannot be disclosed either during or after an employee's employment. The CIIPA indicates that the Respondent is entitled to recover from an employee attorney's fees incurred in enforcing the agreement. In addition, both the code of conduct and the employee handbook prohibit the disclosure of confidential information without the authorization of the Respondent. As noted above, the employee handbook provides for discipline, up to and including discharge, for a violation of the provisions of the handbook. By defining confidential information as including information regarding "personnel" and "employees" the CIIPA would be reasonably understood by employees to prohibit the disclosure of information including wages and terms of conditions of employment to other employees or to nonemployees, such as union representatives. It is, of course, clearly established that employees have a Section 7 right to discuss wages and terms and conditions of employment among themselves and with individuals outside of their employer. *Flex Frac Logistics*, *LLC,* supra, slip op. at 1.

The Board has consistently held that broadly defined confidentiality rules prohibiting the dissemination of information similar to the rules involved here violate Section 8(a)(1) of the Act. In *Costco,* supra, the Board found that the employer's rule prohibiting employees from discussing "private matters of members and other employees . . . includ[ing] topics such as, but not limited to, sick calls, leaves of absence, FMLA call-outs, ADA accommodations, Worker's Compensation injuries, personal health information, etc." to be overbroad and violative of Section 8(a)(1). The Board found that the "private matters" referred to in the rule are terms and conditions of employment and that the prohibition of employees discussing these matters with anyone, which would include other employees and union representatives, was overbroad and unlawful. 358 NLRB No. 106, slip op. at 10.[5]

The Board also found in *Costco* that the employer's rule in its "Electronic Communications and Technology Policy" that provided "[s]ensitive information such as membership, payroll, confidential financial, credit card numbers, social security number or

[5]In support of its position that the Respondent's communication systems policy, which prohibits the distribution of "confidential and private" information "without appropriate authorization," does not violate the Act, the Respondent relies on *Windstream Corp*., 352 NLRB 510 (2008) (Respondent's brief, pp. 28-30) a decision issued by a two-Member panel. As I have indicated earlier in fn. 2 of this decision, such decisions are not accorded precedential value. *New Process Steel, L. P. v. NLRB,* supra, and *Sheraton Anchorage*, supra. In addition, in *Windstream Corp*., supra, no exceptions were filed to the administrative law judge's findings with respect to the complaint allegations. Id. at fn. 2. When the Board adopts a portion of an administrative law judge's decision to which no exceptions were filed, that portion of the decision is not binding precedent. *California Gas Transportation, Inc*., 352 NLRB 246 fn. 3 (2008). Accordingly, I have not accorded precedential value to *Windstream Corp*.

employee personal health information may not be shared, transmitted or stored for personal or public use without prior management approval" to be similarly overbroad and violative of Section 8(a)(1). The Board determined that employees would construe the rule as prohibiting the sharing of payroll information with other employees or a union. In so finding, the Board addressed the employer's argument that considering the rule in its entirety establishes that Section 7 rights are not restricted by the rule's prohibition on any discussion regarding payroll. The Board noted that while the rule referred to certain items that do not involve Section 7 rights such as "confidential financial," "credit card numbers," "social security numbers," or "employee personal health" in the same sentence as "payroll," when the rule was considered as a whole, employees would reasonably construe the reference to "payroll" as prohibiting Section 7 activity such as sharing wage information among employees and between employees and the union. In this connection, the Board noted that any ambiguity in the rule must be construed against its promulgator, the employer. Id. slip op. at 12, fn. 19.

Finally, in *Costco*, the Board also found a rule prohibiting employees "from sharing 'confidential information' such as employees' names, addresses, telephone numbers and email addresses" as violative of Section 8(a)(1). The Board noted that employees are permitted to use for organizational purposes information that comes to their attention in the normal course of their work duties but are not entitled to their employer's private records. The Board found that the employer's rule was overbroad since it did not distinguish between information obtained by employees from discussions with other employees and information obtained from the employer's files. Id. slip op. at 15.

In *DirecTV U.S. DirecTV Holdings, LLC*, 359 NLRB No. 54 (2013), the employer's handbook contained a provision entitled "confidentiality" which instructed employees to "[n]ever discuss details about your job, company business or work projects with anyone outside the company" and "[n]ever give out information about customers or DIRECTV employees." In addition, the rule included "employee records" as one of the categories of "company information" that must be held confidential. In finding that the rule violated Section 8(a)(1), the Board noted "the explicit prohibition on releasing information concerning the 'job' or fellow 'DIRECTV employees' as well as 'employee records' would reasonably be understood by employees to restrict discussion of their wages and other terms and conditions of employment." The Board also found that "because the rule does not exempt protected communications with third parties such as union representatives, Board agents, or other governmental agencies concerned with workplace matters, employees would reasonably interpret the rule as prohibiting such communications, making the rule unlawful for that reason as well." Id., slip. op. at 3.

Further examples of confidentiality rules similar to those in the instant case that the Board has found to be facially overbroad and violative of Section 8(a)(1) are found in *Sheraton Anchorage*, 359 NLRB No. 59, slip op. at 3-4 (2013) (finding a rule unlawful as facially overbroad that provided "[a]ssociates are not to disclose any [ ] confidential or proprietary information except as required solely for the benefit of the Company in the course of performing duties as an associate of the Company . . . examples of confidential and proprietary information include . . . personnel file information . . . [and] labor relations [information] . . ."; *Hyundai America Shipping Agency, Inc.*, 357 NLRB No. 80, slip op. at 12 (2011) (finding a rule unlawful that prohibited "[a]ny unauthorized disclosure from an employee's personnel file"*); Cintas Corp*., 344 NLRB 943 (2005) enfd. 42 F.3d 463 (D.C. Cir. 2007) (unlawful rule required

employees to maintain "confidentiality of any information concerning the Company, its business plans, its partners (employees), new business efforts, customers, accounting and financial matters."); *IRIS U.S.A. Inc*., 336 NLRB 1013, 1013 fn. 1, 1015, 1018 (2001) (finding a rule unlawful that stated all information about "employees is strictly confidential" and defined "personnel records" as confidential); *University Medical Center*, 335 NLRB 1318 (2001) (finding unlawful a rule prohibiting "release or disclosure of confidential information concerning patients or employees."); and *Flamingo Hilton-Laughlin*, 330 NLRB 287 (1999) (finding unlawful a code of conduct that prohibited employees from revealing confidential information about customers, hotel business, or "fellow employees.")

On the basis of the foregoing, I find that the confidentiality provision of the Respondent's 2005 CIPAA to be facially overbroad. I find the confidentiality policy in the instant case distinguishable from the code of conduct found lawful in *Lafayette Park Hotel*, supra. In that case, the employer's statement of conduct 17 prohibited employees from "[d]ivulging Hotel-private information) but contained no provision concerning the disclosure of information about fellow employees. I also find the instant case to be distinguishable from *Super K-Mart*, 330 NLRB 263 (1999). In that case, the employer's provided "company business and documents are confidential. Disclosure of such information is prohibited." As in *Lafayette Park*, the rule in *Super K-Mart* contained no provision regarding disclosure of information about fellow employees.

I do not agree with the Respondent's argument that the 2005 CIIPA cannot reasonably be read to restrict Section 7 activity because of the language contained in it that provides: "[T]his Agreement does not deny any rights provided under the National Labor Relations Act to engage in concerted activity, including but not limited to collective bargaining." As the Charging Party correctly noted in its brief, under Board law, such a disclaimer does not make lawful the content of a provision that unlawfully prohibits Section 7 activity. As I have found above, a fair reading of the language of the CIIPA unlawfully restricts the right of employees to discuss information regarding wages and other terms and conditions of employment with other employees and union representatives. The "savings clause" noted above arguably would cancel the unlawfully broad language, but only if employees are knowledgeable enough to know that the Act permits employees to discuss terms and conditions of employment with each other and individuals outside of their employer. I find that employees would decide to comply with the Respondent's unlawfully broad restriction on their Section 7 rights, rather than undertaking the task of determining the exact nature of those rights and then attempting to assert those rights under the savings clause. In *Allied Mechanical*, 349 NLRB 1077, 1084 (2007), the Board found "an employer may not specifically prohibit employee activity protected by the Act and then seek to escape the consequences of the specific prohibition by a general reference to rights protected by law." Accord *Ingram Book Co*., 315 NLRB 515, 516 (1994); *McDonnell Douglas* Corp., 240 NLRB 794, 802 (1979). On the basis of all of the foregoing, I find that the Respondent violated Section 8(a)(1) of the Act by maintaining the facially overbroad confidentiality provisions discussed above in the 2005 CIIPA

As noted above, in arguing that the identical general confidentiality provision contained in the code of conduct and the employee handbook is not facially unlawful, the Respondent correctly notes that there is no mention of "employees" or "personnel" in that provision. It is clear, however, that the 2005 CIIPA, the code of conduct and employee handbook are

overlapping in that all three govern the disclosure of "confidential" information and that the 2005 CIIPA defines the nature of what the Respondent considers to be confidential information. The code of conduct and employee handbook do not further explain or limit the term "confidential." Thus, employees who read the three documents would understand that the handbook and code of conduct prohibit the disclosure of information regarding personnel or employees. Therefore, the general confidentiality provision in the code of conduct and employee handbook, since it does not define confidential differently than the CIIPA, is also facially overbroad. To the extent there is any ambiguity in the general confidentiality provision contained in the code of conduct and the employee handbook, the Board has recognized that "employees should not have to decide at their own peril what information is not lawfully subject to such a prohibition." *DIRECTV*, supra, slip op. at 3; *Hyundai America Shipping Agency*, supra, slip op. at 12. Accordingly, I find that the general confidentiality provision contained in the code of conduct in the employee handbook is facially overbroad and violates Section 8(a)(1) of the Act.

The specific employee handbook provision that prohibits the release of confidential employee information without authorization is clearly facially overbroad, based on the cases cited above, in that such a rule would reasonably be understood by employees to prohibit the disclosure of information regarding wages and terms and conditions of employment to other employees or to union representatives.

With respect to the 1993 confidentiality policy, employee Amanda Lucinici signed a copy of that policy on September 10, 2001 (GC Exh. 3).[6] Smith testified that the 1993 confidentiality policy was superseded by later policies but that the 1993 confidentiality policy was not rescinded (Tr. 38). Laursen was terminated on May 24, 2012, for violating the "American Red Cross Code of Business Ethics and Conduct"; "Confidentiality Policy"; and "Confidential Information and Intellectual Property Agreement" (GC Exh. 21).[7] The record does not contain any other confidentiality policy signed by Laursen, other than the 1993 policy. On this record, the evidence establishes that the Respondent maintained the 1993 confidentiality policy during the 10(b) period by making reference to it as a basis for the discharge of Laursen on May 24, 2012.

The 1993 confidentiality policy provides, in relevant part:

> All information obtained by virtue of employment with the American Red Cross Blood Services is to be held in the strictest confidence. This includes all information in donor, patient, personnel, and financial records.
>
> The following are some examples of confidential information:
>
> > Donor/patient health history
> > Donor Patient test results (blood type, anti-body screening and viral and other testings)

[6] Lucinici later married and took the last name Laursen.

[7] The allegations in the complaint regarding Laursen's discharge, pursuant to the charge that she filed in Case 08-CA-086929, were withdrawn prior to the trial on the basis of the non-Board settlement between Laursen and the Respondent (GC Exh. 1G).

All donor referral information
All call "look-back" information
All information on investigation of transfusion transmissible diseases
All information on litigation
All documents marked "Confidential"
All Financial Information

According to the 1993 confidentiality policy, a violation of its terms subjects an employee to disciplinary action up to discharge.

Consistent with the analysis set forth above, I find that the 1993 confidentiality policy is overbroad in that it prohibits the disclosure of all information in personnel records, all information on litigation and all financial information. It is clear, based on the cases noted above, that prohibiting the disclosure of all personnel and financial information unlawfully restricts employees from discussing with other employees and the union information about terms and conditions of employment, including wage information that an employee gained in the normal course of their duties or from discussions with other employees. I also find that the prohibition against disclosing all information regarding litigation is overbroad and restrains Section 7 rights. On its face, this prohibition would preclude employees from discussing NLRB and EEOC litigation and arbitrations and thus is an overly broad restriction on Section 7 rights. The Respondent did not produce any evidence to establish that there was a legitimate business justification for the prohibition of disclosing all information on litigation. In *Banner Estrella Medical Center*, 358 NLRB No. 93 (2012), the Board found that an employer's rule prohibiting employees from discussing ongoing investigations of employee misconduct violated Section 8(a)(1) of the Act. There, the Board found that in order to justify such a prohibition on employee discussion of ongoing investigations, an employer had to establish a legitimate business justification that outweighs employees Section 7 rights. Id. slip op. at 2. See also *All American Gourmet,* 292 NLRB 1111, 1129-1130 (1989). I find that the Board's policy regarding internal investigations would apply with equal force to matters that are at the litigation stage. Accordingly, for the reasons expressed above, I find that the Respondent's 1993 confidentiality policy is overbroad and violates Section 8(a)(1) of the Act.

On September 26, 2002, employee Heidi Coutchure signed the Respondent's 2002 CIIPA (GC Exh. 5). On May 24, 2012, Coutchure was discharged for violating the Respondent's "Confidential Information and Intellectual Property Agreement," confidentiality policy, and code of conduct.[8] The Respondent never rescinded the 2002 CIIPA. There is no evidence that Coutchure ever signed the 2005 CIIPA agreement and Smith testified that only employees hired after 2005 signed that agreement. Again, on the basis of the record evidence, it appears that the Respondent maintained the 2002 confidentiality agreement during the 10(b) period by making reference to it in Coutchure's discharge in May 2012.

The Respondent's 2002 CIIPA prohibits employees from disclosing to persons outside of the Red Cross any information that the Red Cross considers "confidential, proprietary, and/or a

[8] The allegations in the complaint regarding Coutchure's discharge, pursuant to the charge that she filed in Case 08-CA-086902, were withdrawn prior to the trial on the basis of an informal settlement agreement between the parties (GC Exh. 1G).

trade secret, including, but not limited to, (i) information relating to Red Cross financial, regulatory, operational, benefits, compensation, equal employment opportunity matters, or (ii) information relating to Red Cross clients, customers, beneficiaries, suppliers, donors, employees, volunteers or donor sponsors unless authorized . . . by the President of the Red Cross or his/her designee."

Again consistent with the analysis and cases set forth above, I find that by prohibiting employees from disclosing to "persons outside of the Red Cross," i.e. union representatives, any information relating to "benefits, compensation equal employment opportunity matters or employees," unless authorized, the 2002 CIIPA is an overly broad restriction of employees Section 7 rights. On the basis of the foregoing I find that by maintaining, during the 10(b) period, the 2002 CIIPA the Respondent has violated Section 8(a)(1) of the Act.

The No-Solicitation/Distribution Rule and Work Rule Regarding the Posting of Information

Paragraphs 8(A)(v) and (B) of the complaint allege that the Respondent's maintenance of the following rule in the employee handbook (GC Exh. 8, p. 44) violates Section 8(a)(1) of the Act:

> Non-Solicitation/Distribution of Literature
>
> Approaching fellow employees in the workplace regarding personal activities, organizations or causes, regardless of how worthwhile, important or benevolent, can create unnecessary apprehension and pressures for fellow colleagues.
>
> In the interest of maintaining a proper business environment and preventing interference with work and inconvenience to others, employees may not distribute literature or printed materials of any kind, sell merchandise, solicit financial contributions, or solicit for any other cause in the workplace during working time. The workplace includes Western Lake Erie Region offices, vehicles, the laboratory and production area, the distribution area, the loading dock and any space where work is performed, such as blood collection operations in the facility of another organization. This policy prohibits solicitations via the Western Lake Erie Region E-mail and other telephonic communication systems.
>
> Solicitation and distribution by non-staff is prohibited on any Western Lake Erie Region property, including buildings and surrounding parking, patio, and driveway areas. Any requests from outside persons or organizations to sell merchandise, solicit contributions, distribute literature, arrange displays or utilize Western Lake Erie Region facilities are to be referred to the Human Resources Department.

The complaint also alleges in paragraphs 8(A)(vii) and (B) that the following rule in the employee handbook (GC Exh. 8, p. 48) violates Section 8(a)(1) of the Act:

> Western Lake Erie Specific Work Rules

> Unauthorized placement or posting of information in break rooms, or in common areas.

With respect to the work rule, the Respondent's handbook provides that a violation of a work rule may result in discipline, which can include termination (GC Exh. 8, p. 47).

I will first address the complaint allegation regarding the Respondent's maintenance of its no-solicitation/distribution rule. The Acting General Counsel and the Charging Party contend that the rule is overbroad, while the Respondent contends it is facially lawful. The Respondent's rule prohibits solicitation and distribution in "the workplace during working time" and defines "workplace" as the Respondent's" offices, vehicles, the laboratory and production area, the distribution area, the loading dock and any space where work is performed, such as blood collection operations in the facility of another organization." There is no evidence in the manner in which the Respondent enforced this rule.

Our Way, Inc., 268 NLRB 394 (1983), indicates "[T]he Board has held that rules prohibiting solicitation during working time are presumptively lawful because such rules imply that solicitation is permitted during nonworking time, a term that refers to the employees' own time." In addition, it is equally well established that an employer may lawfully prohibit employees from distributing literature in work areas. *United Parcel Service*, 327 NLRB 295 (1998); *Stoddard Quirk Mfg. Co*., 138 NLRB 615 (1962). Thus, it is clear that the Respondent's solicitation and distribution rule is facially valid and I will dismiss this allegation in the complaint.

Turning to the work rule regarding the unauthorized posting of information, the Acting General Counsel and the Charging Party allege that the provision is overly broad and restricts Section 7 activity. In support of their position, they rely on the Board's decision in *Costco*, supra. The Respondent contends, however, that the handbook provision must be read in conjunction with the collective-bargaining agreement between the Respondent and the Union. The current collective bargaining agreement, which is effective by its terms from June 26, 2012, to June 25, 2015, provides in article 24B (GC Exh. 14, pp. 29-30) that the Respondent "will provide union bulletin boards at each of its locations for the posting of notices pertaining to union business in connection with employees covered by this agreement." The bulletin board notices are subject to review by the Respondent but "Approval will not be withheld without good cause . . . ." There is no evidence that any grievances were filed under this contract provision. The Respondent contends that, given these circumstances, its policies regarding the posting of information do not infringe upon the Section 7 rights of employees.

On its face, the Respondent's work rule prohibits the unauthorized posting of information in break rooms or common areas. A break room by definition is not a work area. The Board has long held that rules prohibiting the distribution of literature in nonwork areas are unlawful. *Costco*, supra, slip op. at 9; *Stoddard Quirk*, supra. In *Mid-Mountain Foods, Inc*., 332 NLRB 229 (2000), the Board succinctly stated "Simply put, employees have the right to distribute literature in nonworking areas." See also *Superior Emerald Park Landfill*, *LLC,* 340 NLRB 449, 456 (2003). Since the Respondent's rule also is not limited to prohibiting distribution only during working time, it is also facially invalid under *Our Way*, supra. While there is no evidence

establishing what a "common area" is, that is not important considering the other impairments on the face of the Respondent's rule. The Board has indicated that when an employer's rule ". . .is presumptively unlawful on its face, the employer has the burden to show that it communicated or applied the rule in a way that conveyed a clear intent to permit distribution in nonworking areas during nonworking time." *Costco,* supra, slip op. at 9.

I do not think that the right to post union related material set forth in the collective bargaining agreement and the fact that that no grievances have been filed over this contract provision establishes that the Respondent has met that burden. An employee reading the Respondent's work rule would reasonably conclude that he or she is not permitted to post information regarding union or protected concerted activity in employee break rooms. The fact that there is a provision in the collective-bargaining agreement providing for a limited right to post union related material on designated bulletin boards, with the Respondent's approval, does not ameliorate the unlawful effect of the Respondent's work rule prohibiting the clear right to post information regarding union and protected concerted activities in break rooms. Accordingly, I find that by maintaining an overly broad work rule prohibiting the posting of information in break rooms and common areas the Respondent has violated Section 8(a)(1) of the Act.

The Conflict of Interest and Unsatisfactory Conduct Allegations

Paragraph 8 of the complaint alleges that the Respondent has maintained the following rules in its employee handbook in violation of Section 8(a)(1) of the Act:

> Code of Business and Ethics. No employee or volunteer shall engage in the following actions:
>
> Operate or act in any manner that is contrary to the best interest of the American Red Cross.
>
> Respondent's work rules. Violation of the work rules may result in discipline which may include termination of employment. Behaviors that constitute an infraction, are as follows:
>
> Willfully allowing a "conflict of interest," such as financial, personal or otherwise.
>
> Unsatisfactory conduct.

Paragraph 9 of the complaint alleges that the Respondent has maintained the following code of conduct certification in violation of Section 8(a)(1) of the Act:

> I affirm that, except as listed below, I have no financial interest or affiliation with any organization which may have an interest that conflicts with, or appears to conflict with, the best interests of the American Red Cross. Should such conflict or apparent conflicts of interest arise in connection with the affiliations listed below, I agree to refrain from participating in any deliberations, decisions or voting related to the matter.

> I also agree, during the term of my affiliation with the American Red Cross, to report promptly to the Chairman of my unit, or his/her designee, any future situation involves, or might appear to involve, me in any conflict with the best interests of the American Red Cross.

The Acting General Counsel also amended the complaint at the trial to allege the following provisions of the Respondent's code of conduct (GC Exh. 18) violates Section 8(a)(1):

> c. **Red Cross Affiliation**. Publicly use any American Red Cross affiliation in connection with promotion of partisan politics, religious matters or positions on any issue not in conformity with the official position of the Red Cross.
>
> e. **Improper Influence**. Knowingly take any action or make any statement intended to influence the conduct of the American Red Cross in such a way as to confer any financial benefit on the person, corporation or entity in which the individual has a significant interest or affiliation.
>
> f. **Conflict of Interest**. Operate or act in a manner that creates a conflict or appears to create a conflict with the interests of the American Red Cross and any organization in which the individual has a personal, business or financial interest. In the event there is a conflict, the American Red Cross has a structured conflict of interest process. First, the individual shall disclose such conflict of interest to the chairman of the board or the chief executive officer of the individual's Red Cross unit or the General Counsel of the American Red Cross, as applicable. Next, a decision will be made about the conflict of interest, and, where required, the individual may be required to recuse or absent himself or herself during deliberations, decisions and/or voting in connection with the matter.

The Acting General Counsel and the Charging Party contend that the rules and policies set forth above are unlawfully overbroad because employees would reasonably construe them to prohibit protected criticism of the Respondent's labor policies or treatment of employees. They also argue that the broad and indistinct language used could mean that discussions with other employees or the union could be considered unsatisfactory conduct, a conflict of interest or conduct contrary to the best interest of the Red Cross.

The Respondent contends that neutrality is a fundamental principle of the international Red Cross movement and is vital to the ability of the Red Cross to provide assistance in often volatile areas. The Respondent contends that the complaint allegations regarding the above provisions must be considered in the context of the entire document in which they appear and with awareness of the circumstances surrounding the Respondent's mission. The Respondent asserts that the mere maintenance of these provisions would not reasonably chill employees in the exercise of Section 7 rights.

As set forth above in *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998) and *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), in determining whether the code of conduct and handbook policies referred to in this section of the decision are unlawful, I must consider

whether they would reasonably tend to chill employees in the exercise of their Section 7 rights. In making this determination, however, I must give the rule a reasonable reading, and refrain from reading particular phrases in isolation or presuming interference with employee rights. *Lutheran Heritage Village*, supra at 646.

I first consider the complaint allegations referring to the prohibition on acting in a manner contrary to the best interests of the Red Cross and "willfully allowing a 'conflict of interest,' such as financial, personal or otherwise."

The first paragraph of the Respondent's code of conduct (GC Exh. 18) indicates that the Red Cross has "traditionally demanded and received the highest ethical performance from its employees and volunteers." It further indicates that Respondent operates under the code of conduct in order to "maintain the high standard of conduct expected and deserved by the American public . . . ." As further evidence of the context in which the rules and policies set forth in the complaint are maintained, the Respondent points to its compliance and ethics handbook. This document contains the following information in further explanation of the Respondent's position on this issue (R. Exh. 7, pp. 17-18);

> Conflicts of Interest. It is your responsibility to be aware of situations where your personal interests, or the interests of a family member, may compete with the Red Cross's interests. A conflict of interest arises when an employee or volunteer has a personal, business or financial interest in conflict with the interest of the Red Cross. A conflict of interest may also arise when employees or volunteers use their position for personal gain or compete with the Red Cross directly or indirectly without prior Red Cross approval.
>
> The following are examples of types of conflicts of interest:
>
> Personal or family relationships-if any member of your immediate family or anyone else with whom you have a close relationship owns or works for a competitor, vendor contractor, partner or supplier of the Red Cross, you should be particularly careful with security, confidentiality and potential conflicts of interest.
>
> Financial interests or investments-Owning financial interest in a company that does business with the Red Cross may create a conflict of interest.
>
> Affiliation with businesses or organizations doing business with the Red Cross-Serving as a director or officer of an organization that is a supplier, purchaser or competitor of the Red Cross may create potential conflicts of interest.
>
> Working with a spouse, partner or family member-You may not supervise or be in a position to influence the hiring, work assignments or assessment of someone in your family or with whom you have a close personal relationship.
>
> Many conflicts of interest can be resolved in a simple mutually acceptable way. For example, you own a business that sells equipment to the Red Cross, you may

> not be involved in the decision to purchase equipment or negotiate a contract for the purchase of equipment, and you must not pressure or influence anyone in the Red Cross to purchase equipment from your company.

When the complaint allegations regarding the Respondent's rules and policies regarding conflicts of interest and acting in a manner contrary to the Red Cross are considered in context, and not in isolation, I find that employees would not reasonably construe the challenged language to refer to union or protected concerted activity. The illustrative examples contained in the Respondent's compliance and ethics handbook establish that the Respondent is directing its employees to avoid conflicts of interest involving possible personal or financial gain. It also cautions employees against acting in competition with the interests of the Respondent.

.

Further evidence of the fact that the maintenance of these provisions does not restrict Section 7 rights is the approximately 40-year history of collective bargaining at the Respondent's facility. In addition, the Respondent has a labor liaison representative who coordinates the Respondent's activities with that of the labor community to engage in blood drives and other aspects of the Respondent's humanitarian mission. Given the Respondent's long history of collective bargaining with the Union and its cooperative efforts with the labor community in the Toledo area, it is very unlikely that employees would perceive the challenged provisions as interfering with their Section 7 rights.

I find that the Board's decision in *Lafayette Park Hotel,* supra, is supportive of my decision in this case. In that case the Board found lawful the employer's rule providing that the following conduct is unacceptable:

> Being uncooperative with supervisors, employees, guests and/or regulatory agencies or otherwise engaging in conduct that does not support the Lafayette Park Hotel's goals and objectives.

The Board found that the mere maintenance of this rule would not reasonably tend to chill employees in the exercise of their Section 7 rights. The Board noted that the rule provided that it is unacceptable for employees to engage in conduct that did not support the employer's "goals and objectives" and addressed legitimate business concerns. The Board found there was no ambiguity in the rule and that any ambiguity arose only by viewing the phrase "goals and objectives" in isolation and attributing to the employer in intent to interfere with employee rights. The Board found such a construction to be strained and found that employees would not reasonably conclude that the rule prohibited Section 7 activity. Id. at 825.

In the instant case, the challenged policies and rules merely direct employees to avoid conflicts of interests and to not act contrary to the best interests of the Red Cross, clearly legitimate concerns. The context in which these policies and rules are set forth make it even clearer that they serve a legitimate business interest and do not interfere with Section 7 rights.

I find that the instant case is distinguishable from *Costco*, supra, which is relied on by the Acting General Counsel in support of his position. In that case, the Board found that the employer's rule prohibiting statements that "damage the Company, deframe any individual or damage any person's reputation" violated Section 8(a)(1). In so finding the Board noted that

there was "nothing in the rule that even arguably suggests that protected communications are excluded from the broad parameters of the rule." Id. slip op at 2.

In the instant case, when the challenged rules and policies are considered in context, it is clear that they are directed to legitimate business-related concerns and would not chill Section 7 rights. As noted above, the Respondent has a long history of collective-bargaining with the Union and has engaged in cooperative ventures with labor organizations. Its compliance and ethics handbook gives specific examples of what the Respondent considers to be a conflict of interest. Under the circumstances present here, I do not believe that a reasonable employee reading the challenged provisions would conclude that they prohibited his or her right to engage in union or protected concerted activity.

It is for the same reason that I find that the instant case to be distinguishable from *Roomstore*, 357 NLRB No. 143 (2011), relied on by the Charging Party. There, the Board found that the employer's maintenance and enforcement of its handbook rule prohibiting "[a]ny type of negative energy or attitudes" violated Section 8(a)(1). The Board emphasized that in the context of the employer's repeated warnings linking "negativity" to the employee's protected discussions concerning commission discounts, employees would reasonably interpret the "negativity" rule as applying to protected activity. Id., slip op. at 1 fn. 2. In the instant case there is no evidence indicating the manner in which the Respondent has applied the challenged rules and policies.

On the basis of the foregoing, I find that the Acting General Counsel has not met his burden of showing that the maintenance of the rules and policies regarding conflicts of interest and not acting in the best interest of the Red Cross would reasonably chill employees in the exercise of their Section 7 rights. Accordingly, I find that the Respondent's maintenance of these policies and rules does not violate Section 8(a)(1) of the Act and I shall dismiss these allegations in the complaint.

As noted above, the Acting General Counsel contends that the Respondent's maintenance of a rule in its employee handbook providing that employees may be disciplined for "unsatisfactory conduct," is overly broad and violative of Section 8(a)(1). Relying on *Lutheran Heritage Village*, supra, the Respondent contends that such a rule does not restrain employees in the exercise of Section 7 rights.

In *Lutheran Heritage Village*, the Board found that the mere maintenance of rules prohibiting "abusive or profane language" and "harassment" to be lawful. The Board concluded that "work rules are necessarily general in nature and are typically drafted by and for laymen, not experts in the field of labor law. We will not require employers to anticipate and catalogue in the work rules every instance in which, for example the use of abusive or profane language might conceivably be protected by (or exempted from the protection of) Section 7." Id. at 648. This analysis applies to the instant case. There is no evidence in this case to indicate that the Respondent has disciplined employees for "unsatisfactory conduct" in order to restrain the Section 7 rights of employees. In addition, the collective-bargaining agreement between the Respondent and the Union provides that the employer must have "just cause" to discharge or suspend an employee, and contains a grievance-arbitration provision to ensure that employee's rights under the collective-bargaining agreement are protected. Under these circumstances, I find that a reasonable employee would not read the handbook provision providing for discipline for

"unsatisfactory conduct" to chill Section 7 rights. Accordingly, I shall dismiss this allegation in the complaint.

The Allegations Regarding the Red Cross Trademark

As amended at the trial, the complaint alleges that the following provisions of the Respondent's trademark brochure (GC Exh. 16) violate Section 8(a)(1):

> Who May Use the Red Cross Symbol?
>
> We often see the Red Cross symbol used as a decorative symbol on signs, in advertising or to indicate first-aid stations, ambulances, emergency, health care or medical products, services or personnel. Using the Red Cross symbol in such a way is wrong-and illegal.
>
> Only the American Red Cross and the medical corps of the Armed Forces during times of armed conflict may use the Red Cross emblem in the United States. A few U. S. Companies that were already using the Red Cross symbol before 1905 are entitled to continue using it. One well-known example is Johnson & Johnson. Its use by anyone else is prohibited and unlawful.
>
> What Legal Restrictions Exist in the United States?
>
> Congress understood the importance of protecting the Red Cross emblem from unauthorized use and made unauthorized use a crime.
>
> > Whoever wears or displays the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or agent of the American National Red Cross; or
> >
> > Whoever, whether corporation, association or person, other than the American National Red Cross and its duly authorized employees and agents and the sanitary and hospital authorities of the armed forces of the United States, uses the emblem of the Greek red cross on a white ground, or any sign or insignia made or colored in imitation thereof or the words "Red Cross" or "Geneva Cross" or any combination of these words-
> >
> > Shall be fined under this title or imprisoned not more than 6 months, or both. (18 U.S.C. Section 706)
>
> Please note that while the first paragraph of the statute requires fraudulent intent, the second paragraph does not. In addition, the statute prohibits red crosses on white backgrounds or any sign or insignia made or colored in imitation thereof. An imitation of the Red Cross emblem, such as a Red Cross on any color background, is considered illegal

The Red Cross emblem is also a famous trademark and service mark. The U.S. Patent and Trademark Office recognizes the extraordinary rights of the American Red Cross in the red cross symbol (Trademark Manual of Examining Procedure, section 1205.01). The Red Cross emblem is aggressively protected just like any other famous trademark. In addition to violating federal criminal law, unauthorized use of the red cross symbol violates federal and state trademark law, anti-dilution law and unfair competition law.

You would not use The Golden Arches Logo without obtaining permission from McDonald's Corporation, and you would not use the Olympic Symbol (Olympic Rings) without obtaining permission from the International Olympic Committee. Please do not use the Red Cross symbol without permission from the American Red Cross.

What Is a Misuse?

A "misuse" is another word for "infringement," and it describes instances in which an unauthorized party is using the Red Cross emblem without permission from the American Red Cross. Often misuses occurred when people incorrectly treat the Red Cross emblem as a generic symbol for first-aid stations, ambulances, emergency, health care or medical products, services or personnel. A misuse can occur when an authorized party uses the Red Cross emblem incorrectly.
A misuse or infringement of the Red Cross emblem is any cross of equal or substantially equal vertical and horizontal "legs" that are colored red or a shade of red. Misuses include red Crosses that are:

Slanted or italicized

Thin or thick

Outlined in the color other than red

On a background other than white

Included with a figure, symbol or word superimposed on it

Included as an element of a logo

No misuse is too small to mention, because its timely correction may literally save a life. To report a misuse of the Red Cross emblem, please email us at *Trademarks @ USA. Red Cross.org.*

The Acting General Counsel and the Charging Party contend that the Respondent's policy regarding the use of the Red Cross emblem and trademark are facially overbroad and violate Section 8(a)(1) of the Act. The Acting General Counsel concedes that the Respondent has the ability to restrict its trademark use for commercial purposes and to preclude individuals, including employees, from misusing the emblem, such as falsely identifying themselves as relief

workers during a disaster. The Acting General Counsel and the Charging Party contend, however, that employees have the right to use their employer's name and logo in conjunction with protected concerted activity and that the Respondent's rule interferes with this Section 7 right.

The Respondent contends, in the first instance, that the trademark policy informs individuals, including employees, that it is a crime to display the insignia or use the words "Red Cross" to fraudulently create the appearance of an endorsement by the American Red Cross and that the Acting General Counsel is unwarranted in claiming that informing employees of this chills Section 7 rights and violates Section 8(a)(1).

The Respondent further contends that its prohibition on the unauthorized use of the Red Cross emblem and trademark is supported by legitimate business justifications. Respondent notes its failure to properly limit the use of the American Red Cross trademark would contravene the "Regulations on the use of the Emblem of the Red Cross or the Red Crescent by the National Societies," issued in 1991 by the International Red Cross (GC Exh. 17). In addition, the Respondent asserts the policy helps ensure that competitors in the blood collection business do not make it appear that they are actually performing a Red Cross blood drive. Given the well-known mission of the Red Cross, the Respondent contends that no reasonable employee would fail to understand the legitimate reasons for the Red Cross trademark policies.

As I have previously indicated, when the issue is whether the mere maintenance of a policy violates Section 8(a)(1), the Board instructs that I must give the policy a reasonable reading, and refrain from reading particular phrases in isolation or presuming interference with employee rights. *Lutheran Village Heritage*, supra at 646.

I find that when the Respondent's trademark policy is read as whole, employees would reasonably understand that it is designed to protect the Respondent's legitimate right to safeguard one of the most famous symbols in the world, rather than to interfere with Section 7 rights. There is no evidence in the record to indicate that the Respondent's trademark policy has been applied, in any way, to limit the rights of employees to engage in union or protected concerted activity. Under the circumstances present here, I do not find that the mere maintenance of the trademark policy chills the Section 7 rights of employees.

I find the cases relied on by the Acting General Counsel and the Charging Party in support of their position to be distinguishable.[9] In *Pepsi-Cola Bottling Co*., 301 NLRB 1008 (1991), the union resumed an organizing campaign to represent the employer's employees on February 16, 1986. In late February or early March 1986, the employer, for the first time, posted regulations regarding the wearing of uniforms bearing product logos and trademarks. A portion of the regulation prohibited employees from wearing uniforms bearing logos and trademarks of

[9] I find the Acting General Counsel's reliance on *Local 248, Meat & Allied Workers (Milwaukee Independent Meat Packers Assn.)*, 230 NLRB 189 (1977) to be misplaced as that case is inapposite to the present one. There, the principal issue involved the Board's finding that the respondent union's picketing violated Section 8(b)(4)(ii)(B) of the Act because the signs used did not adequately identify the struck product or the primary employer.

the employer's products while engaging in union activity during nonworking time, outside the plant. In finding that the employer's rule was an "excessive impediment to employee union activity" and that the promulgation of this rule violated Section 8(a)(1). The Board found that the employer had not provided any business reason that would outweigh the Section 7 right of employees to engage in union activity in a uniform bearing product identification. In *Pepsi-Cola*, it is clear that the rule was promulgated in response to the union activity of employees and was specifically designed to restrict their Section 7 rights. As I have indicated above, there is no such evidence in the instant case. Rather, in the instant case the issue is the facial validity of the trademark policy in the context of a 40-year history of collective bargaining.

In *Boise Cascade Corp*., 300 NLRB 80 (1990), a case relied on by the Charging Party, the employer prohibited an employee from wearing a "slashed IP" pin that was obtained from a sister local which was on strike against International Paper, another paper manufacturer located near the employer. The employer also prohibited employees from wearing T-shirts protesting the subcontractors who were utilized by International Paper during the strike. The T-shirts had the name of the offending employers on them. The Board found that the employer violated Section 8(a)(1) by banning the wearing of the T-shirts and the pins. In so finding, the Board found that the employer had not shown special circumstances sufficient to support the ban. The instant case is clearly distinguishable in that the issue here is whether the Respondent's trademark policy is facially unlawful. *Boise Cascade* dealt with an employer's reactive prohibition of employees wearing insignia identifying other employers with whom a sister local was involved in a labor dispute and did not involve the facial validity of a rule similar to the one at issue here.

On the basis of the foregoing, I find that the Respondent's maintenance of its trademark policy does not violate Section 8(a)(1) of the Act and I shall dismiss that allegation in the complaint.

The Respondent's Work Stoppage Rule

Paragraphs 8(A)(vi) and (B) of the complaint allege that the Respondent violated Section 8(a)(1) by maintaining a work rule in its employee handbook prohibiting employees from "participating in a deliberate slowdown or work stoppage." (GC Exh. 8, p. 48)

The Respondent contends that the collective-bargaining agreement between the Respondent and the Union contains a no-strike clause and that the work rule is in accordance with the collective-bargaining agreement and therefore does not have a chilling effect on Section 7 rights. The Acting General Counsel and the Charging Party contend that the rule is overbroad in that it explicitly restricts employees from engaging in a work stoppage, a protected Section 7 right. The Acting General Counsel contends that the existence of a no-strike clause in a collective-bargaining agreement does not govern the matter as that provision of the collective-bargaining agreement would not be in existence during the period after the contract has expired and a new one has not yet succeeded it. The Charging Party contends that the provisions of the handbook would apply to the nonunit employees employed by the Respondent at all times.

The current collective-bargaining agreement between the parties contains a no-strike clause in article 9 (GC Exh. 14, p. 9) providing, in relevant part:

> A. During the life of this Agreement, the Union will not condone or permit its members to cause nor shall any employee participate in any strikes, picketing, work stoppages, disruption of work or other concerted activity for any reason. The Union agrees to take reasonable means to prevent or terminate any such activity. There shall be no lockout by the Employer.
>
> B. While the Union shall take every reasonable means to induce such employees to return to their jobs during any such activity described in paragraph A, it is specifically understood and agreed that any employee engaged in such activity shall be subject to discipline up to and including discharge . . . .

The Board held in *Odyssey Capital Group, L.P., III*, 337 NLRB 1110, 1111 (2002) "it is well established that employees who concertedly refuse to work in protest over wages, hours, or other working conditions, including unsafe or unhealthy workplace conditions are engaged in 'concerted activities' for 'mutual aid or protection' within the meaning of Section 7 of the Act." In addition, Section 13 of the Act establishes a statutory right for employees to engage in a strike. There are, however, limitations on the exercise of that statutory right. Broad no-strike clauses such as the one contained in the collective-bargaining agreement between the parties are generally given effect by the Board and the courts. *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956); *Molders & Allied Workers Local 164 (Pacific Steel Casting Company*), 270 NLRB 1105 (1984),enfd. 765 F. 2d 858, (9th Cir. 1985). There are, however, exceptions to that policy as the Board has found a broad no strike clause did not bar a strike over serious unfair labor practices *Dow Chemical Co*., 244 NLRB 1060 (1979), enf. denied 636 F.2d 1352 (3d Cir. 1980); or because the waiver of the right to strike over a particular subject was not established by evidence establishing a clear and unmistakable waiver. *Pacemaker Yacht Co*. 253 NLRB 828 (1980 enf. denied 663 F. 2d 455 (3d Cir. 1981).

With regard to the portion of the Respondent's rule prohibiting "slowdowns," it well settled that "employees who engage in deliberate 'slowdowns' of work or encourage others to do so are engaged in activities not protected by the Act and that discipline for such activity does not violate the Act." *Daimler Chrysler Corp*. 344 NLRB 1324, 1325 (2005).

As these principles apply to the Respondent's work stoppage rule contained in its handbook, the portion of the rule precluding employees from engaging in a "deliberate slowdown" is a lawful restriction. However, the provision prohibiting a work stoppage is a more complicated matter. During the term of the contract in the instant case, the no-strike clause generally constitutes a waiver by the Union on behalf of unit employees of the statutory right to engage in a strike. As the Acting General Counsel contends, however, the no-strike clause is only effective during the term of the agreement. Thus, to the extent that the handbook precludes employees from engaging in a "work stoppage" without limiting it to the term of the collective bargaining agreement's no-strike clause, it is an overbroad restriction of employees' statutory right to engage in a strike. As noted above, in certain limited instances even a strike occurring during the term of a collective-bargaining agreement with a broad no-strike clause may be protected. In addition, the record establishes that the Respondent employs nonunit employees, although there is no indication as to the number of such employees. (Tr. 112; 128.) Nonunit employees would, of course, not be subject to the no-strike provisions in the collective bargaining agreement. In this connection, Smith testified that the work stoppage provision in the

handbook applied to the nonunit employees (Tr. 112). Thus, the Respondent's work stoppage rule contained in the handbook prohibits employees from engaging in a work stoppage at times when they have a statutory right to do so.

In *Labor Ready, Inc*. 331 NLRB 1656 (2000) the Board found that the employer's rule stating that "employees who walk off the job will be discharged" was an overbroad restriction of the Section 7 rights of employees and violated Section 8(a)(1) of the Act. Id., at 1656 fn. 1, 1657. On the basis of the foregoing, I find that the Respondent's handbook rule, to the extent it provides that employees can be disciplined for engaging in a "work stoppage", without further limitation, is an overbroad restriction on employees' Section 7 rights and violates Section 8(a)(1).

The Allegations Regarding the Respondent's Enforcement Policies

Paragraphs 8(A)(ii) and (B) allege that the following provision of the Respondent's handbook violates Section 8(a)(1) of the Act:

> **Investigations, Compliance and Ethics-Formal Dispute Resolution.** Distinguishing from the actions of the ombudsman, the Office of the General Counsel and the Office of Investigations, Compliance and Ethics (IC&E) conduct formal investigations into allegations of fraud, waste, abuse, Red Cross policy violations, illegal or unethical conduct or other improprieties regarding the Red Cross. Usually the allegations arise from whistleblower complaints of Red Cross employees and volunteers seeking formal review or investigations of the allegations of wrongdoing.

Paragraphs 8(A (iii) and (B) allege that the Respondent's progressive discipline policy contained in the handbook and the code of conduct also violates Section 8(a)(1) of the Act. At the trial, the Acting General Counsel amended the complaint to also allege that the following provision in the code of conduct violates Section 8(a)(1) of the Act:

> **Whistleblower Hotline Programs**. If an employee or volunteer suspects or knows about misappropriation, fraud, waste, abuse, Red Cross policy violations, illegal or unethical conduct, unsafe conduct or any other misconduct by the organization or its employees or volunteers, that individual should alert his or her supervisor or other member of local management. In those cases where an employee or volunteer is not comfortable telling his or her supervisor or local management, the employer volunteer may contact the Concern Connection Line at 1-888-309-9679.

The Acting General Counsel and Charging Party contend, in essence, that by using the enforcement policies to enforce the previously discussed policies which they contend to be overbroad and unlawful, the enforcement policies themselves are facially violative of Section 8(a)(1).

The Acting General Counsel and the Charging Party argue that the enforcement provisions are facially coercive because they contain an implied threat of investigation or discipline for what could be protected concerted activity. The Respondent asserts that the challenged enforcement policies are facially neutral and there is no evidence that any of them were designed or utilized in a way to restrict Section 7 rights. Accordingly, the Respondent contends they are lawful policies.

In relevant part, the investigation, compliance, and ethics provision of the code of conduct and handbook provides that the Respondent will conduct formal investigations into "allegations of fraud, waste, abuse, Red Cross policy violations, illegal or unethical conduct, unsafe conduct or any other misconduct by the organization or its employees or volunteers." The whistleblower hot line provision merely encourages employees to report to management instances of such misconduct. The progressive disciplinary policy maintained by the Respondent in the handbook is typical of such policies in that it provides for a series of disciplinary steps progressing from verbal warning to termination, but reserving the right to discipline as appropriate.

On their face, these policies do not in any way explicitly touch upon Section 7 activity. There is no evidence to indicate that these policies were designed to restrict Section 7 activity or that they were, in any way, applied to do so. Certainly, there are legitimate business reasons to conduct formal investigations into misconduct, to encourage employees to report misconduct, and to utilize a progressive disciplinary system with regard to misconduct. The theory of the Acting General Counsel and the Charging Party is that because some of the Respondent's rules and policies are overbroad and violate Section 8(a)(1), the enforcement policies could be used to enforce those policies and thus interfere with Section 7 rights. I do not agree with this theory. As the Board noted in *Palms Hotel & Casino* 344 NLRB 1363, 1368 (2005) when a rule does not address explicitly restrict Section 7 activity the mere fact that it could be read in such a fashion does not establish its illegality.

As noted above, I have found some of the Respondent's rules and policies to be facially unlawful and violate Section 8(a)(1). The remedy I will provide for those violations prohibits the Respondent from enforcing those unlawful rules and policies and requires it to rescind them. With regard to the contention that I should find the enforcement policies overbroad and facially unlawful, certainly the Respondent has a right to encourage employees to report misconduct, to formally investigate misconduct and to apply a progressive disciplinary policy to misconduct. To find the enforcement policies to be facially unlawful would, in my view, require attributing to the Respondent an intent to interfere with employee rights by the use of those policies, without there being any evidence that is the case. As noted above*, Lutheran Heritage Village* precludes such an analysis. Accordingly, on the basis of the foregoing, I find that the Respondent has not violated Section 8(a)(1) of the Act by maintaining its enforcement policies and I shall dismiss those allegations in the complaint

CONCLUSIONS OF LAW

1. The Respondent has violated Section 8(a)(1) of the Act by engaging in the following conduct:

(a) Maintaining the provisions in its 2005 Confidential Information and Intellectual

Property Agreement (CIIPA) that provide "Confidential information shall include but not be limited to: information relating to Red Cross' . . . (i) personnel . . . (ii) employees … [and] (v) all information not generally known outside of Red Cross regarding Red Cross and its business, regardless of whether such information is written, oral, electronic, digital or other form and regardless of whether the information originates from Red Cross or Red Cross' agents."

(b) Maintaining the provision in the employee handbook and code of conduct that provides that no employee shall: "Disclose any confidential American Red Cross information that is available solely as a result of an employee's . . . affiliation with the American Red Cross to any person not authorized to receive such information, or use to the disadvantage of the American Red Cross any such confidential information, without the express authorization of the American Red Cross."

(c) Maintaining the provision in the employee handbook that provides: "Prohibited uses of Western Lake Erie Region communication systems include, but are not limited to:

> 3. Distributing . . . confidential . . . information of the Western Lake Erie Region and/or the Red Cross without appropriate authorization."

(d) Maintaining the provision in the employee handbook that prohibits the release of confidential employee information without authorization.

(e) Maintaining the provision in the 1993 confidentiality agreement that provides that "all information obtained by virtue of employment with the American Red Cross is to be held in the strictest confidence. This includes all information in . . . personnel and financial records. The following are some examples of confidential information: All information on litigation; all documents marked "confidential"; and All Financial Information."

(f) Maintaining the provision in the 2002 CIIPA that provides: "I will not during or after my Red Cross affiliation disclose to persons outside of the Red Cross information that the Red Cross considers confidential . . . including, but not limited to (i) information relating to Red Cross … benefits, compensation, equal employment opportunity matters, or (ii) information relating to Red Cross . . . employees . . . unless authorized by the President of the Red Cross or his/her designee."

(g) Maintaining the provision in the employee handbook that prohibits the "Unauthorized placement or posting of information in break rooms, or in common areas."

(h) Maintaining the provision in the employee handbook that prohibits employees from participating in a work stoppage.

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

3. The Respondent has not otherwise violated the Act.

REMEDY

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

The standard remedy for an unlawful work rule is immediate rescission of the rule as this insures that employees may engage in protected activity without fear of being subjected to the unlawful rule. *DirecTV U.S. DirecTV Holdings, LLC*, 359 NLRB No. 54, slip op. at 5 (2013); *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007). Pursuant to *DirecTV U.S.* and *Guardsmark*, supra, the Respondent may comply with the order of rescission by rescinding the unlawful provisions in the applicable documents and republishing those documents without them. In recognition of the fact, however, that republishing the documents could be costly, the Respondent may supply the employees either with inserts stating that the unlawful rules have been rescinded, or with new and lawfully worded rules on adhesive backing that will correct or cover the unlawfully broad rules, until the Respondent publishes the applicable documents without the unlawful provisions. Any copies of the applicable documents that include the unlawful rules must include the inserts before being distributed to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, American Red Cross Blood Services, Western Lake Erie Region, Toledo, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining the provisions in its 2005 Confidential Information and Intellectual Property Agreement (CIIPA) that provide "Confidential information shall include but not be limited to: information relating to Red Cross' . . . (i) personnel . . . (ii) employees … [and] (v) all information not generally known outside of Red Cross regarding Red Cross and its business, regardless of whether such information is written, oral, electronic, digital or other form and regardless of whether the information originates from Red Cross or Red Cross' agents."

[10] 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.

(b) Maintaining the provision in the employee handbook and code of conduct that provides that no employee shall: "Disclose any confidential American Red Cross information that is available solely as a result of an employee's . . . affiliation with the American Red Cross to any person not authorized to receive such information, or use to the disadvantage of the American Red Cross any such confidential information, without the express authorization of the American Red Cross."

(c) Maintaining the provision in the employee handbook that provides: "Prohibited uses of Western Lake Erie Region communication systems include, but are not limited to:

> 3. Distributing . . . confidential . . . information of the Western Lake Erie Region and/or the Red Cross without appropriate authorization."

(d) Maintaining the provision in the employee handbook that prohibits the release of confidential employee information without authorization.

(e) Maintaining the provision in the 1993 confidentiality agreement that provides that "all information obtained by virtue of employment with the American Red Cross is to be held in the strictest confidence. This includes all information in . . . personnel and financial records. The following are some examples of confidential information: All information on litigation; all documents marked "confidential"; and All Financial Information."

(f) Maintaining the provision in the 2002 CIIPA that provides: "I will not during or after my Red Cross affiliation disclose to persons outside of the Red Cross information that the Red Cross considers confidential . . . including, but not limited to (i) information relating to Red Cross … benefits, compensation, equal employment opportunity matters, or (ii) information relating to Red Cross . . . employees . . . unless authorized by the President of the Red Cross or his/her designee."

(g) Maintaining the provision in the employee handbook that prohibits the "Unauthorized placement or posting of information in break rooms, or in common areas."

(h) Maintaining the provision in the employee handbook that prohibits employees from participating in a work stoppage.

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

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

(a) Within 14 days of the Board's order rescind the following provisions:

(1) The provisions in its 2005 Confidential Information and Intellectual Property Agreement (CIIPA) that provide "Confidential information shall include but not be limited to: information relating to Red Cross' . . . (i) personnel . . . (ii) employees … [and] (v) all information not generally known outside of Red Cross regarding Red Cross

and its business, regardless of whether such information is written, oral, electronic, digital or other form and regardless of whether the information originates from Red Cross or Red Cross' agents."

(2) The provision in the employee handbook and code of conduct that provides that no employee shall: "Disclose any confidential American Red Cross information that is available solely as a result of an employee's . . . affiliation with the American Red Cross to any person not authorized to receive such information, or use to the disadvantage of the American Red Cross any such confidential information, without the express authorization of the American Red Cross."

(3) The provision in the employee handbook that provides: "Prohibited uses of Western Lake Erie Region communication systems include, but are not limited to:

> 3. Distributing . . . confidential . . . information of the Western Lake Erie Region and/or the Red Cross without appropriate authorization."

(4) The provision in the employee handbook that prohibits the release of confidential employee information without authorization.

(5) The provision in the 1993 confidentiality agreement that provides that "all information obtained by virtue of employment with the American Red Cross is to be held in the strictest confidence. This includes all information in . . . personnel and financial records. The following are some examples of confidential information: All information on litigation; all documents marked "confidential"; and All Financial Information."

(6) The provision in the 2002 CIIPA that provides: "I will not during or after my Red Cross affiliation disclose to persons outside of the Red Cross information that the Red Cross considers confidential . . . including, but not limited to (i) information relating to Red Cross … benefits, compensation, equal employment opportunity matters, or (ii) information relating to Red Cross . . . employees . . . unless authorized by the President of the Red Cross or his/her designee."

(7) The provision in the employee handbook that prohibits the "Unauthorized placement or posting of information in break rooms, or in common areas."

(8) The provision in the employee handbook that prohibits employees from participating in a work stoppage.

(b) As more fully set out in the Remedy, furnish all employees with (1) inserts for the applicable documents that advise that the unlawful rules have been rescinded; or (2) the language of lawful rules upon adhesive backing that will cover or correct the unlawful rules; or (3) publish and distribute the applicable documents that do not contain the unlawful rules.

(c) Within 14 days after service by the Region, post at its facility in Toledo, Ohio, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 8, 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 March 28, 2012.

(d) 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., June 4, 2013.

_____
Mark Carissimi
Administrative Law Judge

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

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT maintain the following provisions in the applicable documents:

(1) The provisions in our 2005 Confidential Information and Intellectual Property Agreement (CIIPA) that provide "Confidential information shall include but not be limited to: information relating to Red Cross' . . . (i) personnel . . . (ii) employees … [and] (v) all information not generally known outside of Red Cross regarding Red Cross and its business, regardless of whether such information is written, oral, electronic, digital or other form and regardless of whether the information originates from Red Cross or Red Cross' agents."

(2) The provision in the American Red Cross Employee Handbook for Western Lake Erie Region (the employee handbook) and Code of Business Ethics and Conduct (the code of conduct) that provides that no employee shall: "Disclose any confidential American Red Cross information that is available solely as a result of an employee's . . . affiliation with the American Red Cross to any person not authorized to receive such information, or use to the disadvantage of the American Red Cross any such confidential information, without the express authorization of the American Red Cross."

(3) The provision in the employee handbook that provides: "Prohibited uses of Western Lake Erie Region communication systems include, but are not limited to:

3. Distributing . . . confidential . . . information of the Western Lake Erie Region and/or the Red Cross without appropriate authorization."

(4) The provision in the employee handbook that prohibits the release of confidential employee information without authorization.

(5) The provision in the 1993 confidentiality agreement that provides that "all information obtained by virtue of employment with the American Red Cross is to be held in the strictest confidence. This includes all information in . . . personnel and financial records. The following are some examples of confidential information: All information on litigation; all documents marked "confidential"; and All Financial Information."

(6) The provision in the 2002 CIIPA that provides: "I will not during or after my Red Cross affiliation disclose to persons outside of the Red Cross information that the Red Cross considers confidential . . . including, but not limited to (i) information relating to Red Cross … benefits, compensation, equal employment opportunity matters, or (ii) information relating to Red Cross . . . employees . . . unless authorized by the President of the Red Cross or his/her designee."

(7) The provision in the employee handbook that prohibits the "Unauthorized placement or posting of information in break rooms, or in common areas."

(8) The provision in the employee handbook that prohibits employees from participating in a work stoppage.

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

WE WILL rescind the following provisions in the applicable documents:

(1) The provisions in the 2005 Confidential Information and Intellectual Property Agreement (CIIPA) that provide "Confidential information shall include but not be limited to: information relating to Red Cross' . . . (i) personnel . . . (ii) employees … [and] (v) all information not generally known outside of Red Cross regarding Red Cross and its business, regardless of whether such information is written, oral, electronic, digital or other form and regardless of whether the information originates from Red Cross or Red Cross' agents."

(2) The provision in the American Red Cross Employee Handbook for Western Lake Erie Region (the employee handbook) and Code of Business Ethics and Conduct (the code of conduct) that provides that no employee shall: "Disclose any confidential American Red Cross information that is available solely as a result of an employee's . . . affiliation with the American Red Cross to any person not authorized to receive such information, or use to the disadvantage of the American Red Cross any such confidential information, without the express authorization of the American Red Cross

(3) The provision in the employee handbook that provides: "Prohibited uses of Western Lake Erie Region communication systems include, but are not limited to:

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(4) The provision in the employee handbook that prohibits the release of confidential employee information without authorization.

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(6) The provision in the 2002 CIIPA that provides: "I will not during or after my Red Cross affiliation disclose to persons outside of the Red Cross information that the Red Cross considers confidential . . . including, but not limited to (i) information relating to Red Cross … benefits, compensation, equal employment opportunity matters, or (ii) information relating to Red Cross . . . employees . . . unless authorized by the President of the Red Cross or his/her designee."

(7) The provision in the employee handbook that prohibits the "Unauthorized placement or posting of information in break rooms, or in common areas."

(8) The provision in the employee handbook that prohibits employees from participating in a work stoppage.

WE WILL furnish all of you with (1) inserts for the applicable documents that advise you that the unlawful rules have been rescinded; or (2) the language of lawful rules upon adhesive backing that will cover or correct the unlawful rules; or (3) publish and distribute to all of you revised documents that do not contain the unlawful rules.

AMERICAN RED CROSS BLOOD SERVICES,
WESTERN LAKE ERIE REGION

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1240 East 9th Street, Room 1695, Cleveland, OH 44199-2086

(216) 522-3715, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (216) 522-3740.