JD(SF)–19–15
Missoula, MT

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

ROCKY MOUNTAIN EYE CENTER,
P.C.

and

Cases 19–CA–134567
19–CA–137315

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 400

Adam D. Morrison, Esq.,
for the General Counsel.
Daniel D. Johns, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried in Missoula, Montana on March 10, 2015. The International Union of Operating Engineers (Charging Party or Union) filed the original charge in Case 19–CA–134567 on August 11, 2014, and the original charge in Case 19–CA–137315 on September 23, 2014.[1] The General Counsel consolidated the charges and issued a consolidated complaint on December 5, 2014, and an amended consolidated complaint on February 6, 2015. The Respondent filed timely answers, denying all material allegations and setting forth its affirmative defenses.

The complaint alleges that Rocky Mountain Eye Center, P.C. (the Respondent or RMEC) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by maintaining an overly-broad confidentiality rule. The complaint further alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Britta Brown for assisting the Union and engaging in concerted activities.

[1] All dates are 2014 unless otherwise indicated.

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

I. JURISDICTION

The Respondent, a Montana corporation with an office and place of business in Missoula, Montana, operates medical clinics providing ophthalmology and optometry services. 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. FINDINGS OF FACT

A. Background and the Respondent's Operations

Rocky Mountain Eye Center provides medical and surgical treatment of all forms of eye disease in the State of Montana. Their services range from routine eye exams to orbital reconstruction. RMEC's main office is in Missoula, with satellite offices in Hamilton and Butte, and access to satellite offices in Helena, Ronan, and Bozeman.

RMEC employs a total of roughly 120 employees. Their practice includes seven ophthalmologists, six of whom work in Missoula and one of whom works in Butte. There are six optometrists: four in Missoula, one in Hamilton, and one in Butte. Support staff includes administrative assistants, billing specialists, transcriptionists, surgical assistants, nurses, ophthalmic assistants, and ophthalmic technicians. The administrative and management arm of RMEC is called Northstar Medical Management (Northstar). RMEC owns Northstar, which manages other entities in addition to RMEC. Ophthalmologist Michael Peterson is RMEC's managing partner, and serves as the liaison between the administrative staff and the physicians.

The ophthalmic assistants report to Supervisor Jodi Keating.[2] Keating reports to Jane Swartz, the human resources (HR) director. Swartz reports to Chief Executive Officer (CEO) Darlene Timmerhoff. Michelle Winstone serves as the "front office float" and human resources assistant.[3] Lead ophthalmic assistant Kerry Waldbillig provides training on both technical and administrative matters to new ophthalmic assistants.

Charging Party Britta Brown worked as an ophthalmic assistant for the Respondent from March 7, 2011, until her termination on August 11, 2014.[4] Brown interviewed for her position with a panel, including Swartz, Keating, and Waldbillig. She was then sent for a pre-employment assessment called caliper to determine if her skill set matched RMEC's needs. She met with Swartz again and was offered the job. Brown's interview process was in line with how RMEC interviews and hires its ophthalmic assistants.

[2] The Respondent admits, and I find, that Keating performed one or more of the duties set forth in Sec. 2(11) of the Act, and is therefore a statutory supervisor.

[3] Timmerhoff, Swartz, and Winstone work for Northstar Medical Management, but, as Peterson testified, RMEC and Northstar are one in the same.

[4] Brown's maiden name, Clark, appears on some documents.

B. HIPAA and Use of Patient Record System

RMEC is bound by the Health Information Portability and Accountability Act (HIPAA), a federal law designed to protect patient privacy. Any potential violations of HIPAA must be reported to the U.S. Department of Health and Human Services, and the Government can impose substantial fines and penalties if it finds a violation.

During orientation, employees watch two videos, one about HIPAA privacy and another about HIPAA security. Booklets that accompany the videos and cover the same content are also available for employees to read at their convenience. (R Exhs. 8–9.)[5] After the videos, employees take tests about each topic.[6] (R Exh. 1–2, 4–9.)

The HIPAA privacy booklet defines protected health information (PHI) as "[a]ny health information or patient information used or disclosed by a covered entity in any form—oral, recorded on paper, or sent electronically, or: Any personal health information that contains information that connects the patient to the information." (R Exh. 8.) It provides the following examples of information that might connect personal health information to the individual patient: "The individual's name or address; Social Security or other identification numbers; Physician's personal notes; Billing information." (Id.) The HIPAA security booklet provides that "health information is protected when it contains personal information that connects the patient to the information, such as: Patient's name and address; Social Security number; Billing information; Physician's notes." (R Exh. 9.)

According to Timmerhoff and Swartz, patient health information protected from disclosure includes personally identifiable information (PII) including name, phone number address, and social security number.

Patient accounts at RMEC are maintained on a computerized system called Centricity. Any RMEC employee can access information in Centricity. RMEC has a policy in place which states, in relevant part, "Your access to information within Centricity will be limited to what you need to do your job and you are prohibited from looking at any protected health information (PHI) other than what you need to do your job." (R Exh. 10.)

During the time period at issue, personal contact information for the employees was stored in Centricity, whether or not the employee was also a patient at RMEC. To access an account, an employee pulls up Centricity and types the individual's name into the initial screen. A screen then opens with the individual's name, social security number, address, phone number, and insurance

[5] Abbreviations used in this decision are as follows: "Tr." for transcript; "R Exh." for the Respondent's exhibit; "GC Exh." for the General Counsel's exhibit; "GC Br." for the General Counsel's brief; and "R Br." for the Respondent's brief. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited but rather are based my review and consideration of the entire record.

[6] Brown took the HIPAA quizzes on March 11, 2011. (R Exhs. 1–2.)

information.[7] There is no way to tell, on this screen, if an employee is a patient at RMEC.[8] (R Exh. 15.)

Waldbillig, the lead ophthalmic assistant, trained employees on the Centricity system.[9] During Brown's training session, Waldbillig pulled up her own personal account and walked through, step-by-step, where certain information should be entered. She then instructed Brown to input her date of birth to see if she had been a patient at RMEC. Because Brown had been a patient years ago, her name was in the system, but her contact information was not current. At Waldbillig's request, Brown updated her contact information and it was retained in the system in case anyone needed to contact her.

Heather Wilson, another ophthalmic assistant, had a similar orientation when she started, which was roughly 2–½ years prior to the hearing. While learning how to schedule and cancel patient appointments, Waldbillig instructed Wilson to enter her contact information into Centricity. Wilson was not a patient at the time, so she created a mock account. As part of her orientation, Wilson made mock entries into her account to learn how to use the system. Mock appointments and other entries were later canceled, with the notation "operator error cancelled." (Tr. 82.) Though Wilson was not a patient at the time, Waldbillig told her, "This information will be in here from now on, just in case anybody—any other employees might need to get a hold of you, the phone number would be in there." (Tr. 77.)

Jaclyn DeGroot, who was also not a patient at the time of her orientation, entered her contact information into Centricity in the same manner as Wilson. Waldbillig told her that "it would help us get familiar with the computer system and that if anyone needed to contact us for any reason they can just look us up." (Tr. 99.)

It was generally known that coworkers and supervisors accessed the Centricity system to get employee contact information. Employees accessed each others' contact information for work-related purposes, primarily involving last-minute schedule changes. If there was an after-work gathering or an event such as a baby shower, employees would find each others' contact information in Centricity. During the relevant time period, employees' contact information was not stored anywhere at the Missoula facility other than in Centricity.

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[7] This screen that opens up when the individual's name is typed in is referred to as the "first screen" in this decision.

[8] By clicking on tabs at the top of this screen, it is possible to access a variety of health information about the individual if he or she is a patient.

[9] I find Waldbillig was an agent of the Respondent. Under Sec. 2(13) of the Act, "[i]n determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." Waldbillig at the very least had apparent authority to train the ophthalmic assistants in both the technical aspects of their work and on how to operate Centricity. See *Mastec North America, Inc*., 356 NLRB No. 110, slip op. at 1-2 (2011)("Apparent authority results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe the principal has authorized the alleged agent to perform the acts in question." As Wilson stated, "she was my trainer and so at the time of orientation, I would have definitely looked at her as management . . . ." (Tr. 89.)

At one point, Wilson had a day off, but had been put back on the schedule. DeGroot accessed Centricity to look up Wilson's phone number so she could call her and let her know she had been put back on the schedule. DeGroot did not know whether or not Wilson was a patient at the time. On another occasion, Keating called DeGroot on a snow day to let her know she could use leave. DeGroot had not given Keating her personal contact information, so she assumed Keating got it from Centricity.

Employee personnel files are maintained in a separate software system called Great Plains. Only Timmerhoff and Swartz have access to Great Plains.

C. The Confidentiality Agreement

At the time of the charge and complaint, the Respondent maintained a confidentiality agreement containing the following provision:

> Likewise, information about physicians, other employees, and the internal affairs of Rocky Mountain Eye Center, P.C., are considered confidential as well. . . . . Breach of either patient or facility confidentiality is considered gross misconduct and may lead to immediate dismissal.

(GC Exh. 6.) In its opening paragraph, the agreement broadly defines "confidential information" as including, but not limited to, "patient information, physician information, personnel information, billing, purchasing and financial information."

Wilson perceived the rule as general, and would take it to mean "anything and everything." (Tr. 75.) The entire agreement was rescinded in or around October 2014, and has not been replaced. (Tr. 185–186.)

D. The Union Organizing Campaign

Craig Davis is a business agent with the Union. He resides in Kalispell, Montana. Brown contacted Davis in late March 2014, and told him some of the employees wanted to meet with him to discuss organizing with the Union. The proposed bargaining unit was to consist of ophthalmic technicians and ophthalmic assistants at the Missoula facility, which encompassed about 25 employees.

Brown and some other employees met with Davis during the first week of April. They discussed the pros and cons of a union and the steps necessary to obtain union representation. After the meeting, Brown told many of her coworkers that a group was looking into the Union. Some employees asked her to relay questions they had about the Union to Davis.

Brown and some other employees attended a second meeting with Davis on June 26. Brown relayed to Davis some of the employees' questions. Union authorization cards were passed out and discussed. Brown expressed concern that some employees might run to management if they knew about the organizing. At the time, 17 employees, including Supervisor Keating, had not been

contacted about the Union.[10] Davis agreed to contact these individuals if Brown would provide him with their phone numbers.

On July 14, while on a break at work, Brown went into the computer system and accessed the names and numbers of the 17 employees she wanted Davis to contact. She wrote down only their first names and phone numbers, and did not know whether the employees were RMEC patients. During the next week, she was able to speak with five of the employees. On July 22, Brown sent an email to Davis with the 12 remaining employees' first names and phone numbers. In the email, Brown expressed her belief that four specific employees, Kristie, Kayleigh, Courtney, and Sandee were most likely to "tattle" to the doctors.[11] (GC Exh. 2.) Neither Davis nor Brown knew whether these employees were also patients of the clinic. Brown did not have the employees' permission to distribute their numbers to Davis.

Toward the end of July, Brown told Keating that she had been meeting with the Union and said she would like to have Keating on board.

On Friday August 8, Davis sent a text message to the employees stating, "Getting to wear blue jeans on Friday is not a benefit! I am Craig Davis and I work for the Operators Union. You need representation to negotiate real benefits and wage increases! Call me anytime." The text concluded with Davis' phone number. (GC Exh. 3; Tr. 24–25.) Employee Sierra responded, "Where did you get this number from?" Davies responded that his methods of gathering contact information were confidential, and said he would not release any information about her if she chose to call him. (GC Exhs. 3–4.)

E. Complaints to Management and Brown's Termination

Sierra reported the text to Winstone and questioned whether someone had hacked into the computer system. She was concerned about someone accessing her bank account because she was purchasing a house. Winstone relayed Sierra's concerns to Swartz, who called their attorneys. Based on the legal advice she received, Swartz instructed Winstone to audit the Centricity system. RMEC's IT support service, First Call, came in and ran a report to determine which computers had been logged into on August 8. Each login showed access only to the initial Centricity screen for a few seconds. (R Exh. 14; Tr. 174–175.) By cross checking Centricity access with the phone numbers on the text, Winstone narrowed the list of responsible individuals down to Brown and Sierra. She turned over her findings to Swartz and Timmerhoff.

Also on August 8, Courtney Boggs accessed Wilson's Centricity patient account to get her phone number in order to tell her about a schedule change.[12] She texted her the information about

[10] Brown included Supervisor Keating in this group because she understood that the bargaining-unit would consist of all ophthalmic assistants and ophthalmic technicians, and Keating was an ophthalmic technician. There is nothing in the record to show that this was anything other than a lack of knowledge on Brown's part that supervisors may not be in a bargaining-unit.

[11] For most of the employees, only their first names are part of the record.

[12] Though not a patient during her orientation session when she created her mock Centricity account, Wilson had since become a patient.

the schedule change and also expressed interest in seeing a tattoo Wilson was getting that day after work.

Around lunchtime on August 11, Swartz and Timmerhoff met with Sierra and questioned her about whether she accessed the Centricity system the prior Friday. It was clear to Timmerhoff that Sierra had no knowledge about the matter.

In the early afternoon, Swartz asked Brown to come with her to Timmerhoff's office. Timmerhoff told Brown that a couple people had come to her concerned about a text message they had received. Brown admitted she accessed the Centricity system to get employee contact information. Timmerhoff asked Brown if she had looked up any medical information, and Brown responded she had not. Timmerhoff told Brown she had committed a HIPAA violation, it was very serious, and RMEC was required to report it. Brown was terminated and Swartz escorted her off the property. The real violation was that Brown provided the information to a third party. (Tr. 153.)

On October 12, Timmerhoff hand-delivered letters to the employees whose Centricity accounts Brown accessed to obtain their contact information, notifying them about the unauthorized access to their personal accounts. The letter informed the individuals that, to the best of RMEC's knowledge, no medical information was accessed. It informed the employees that the individual responsible for the breach was identified and had been terminated. Finally, the letter gave instructions about steps to protect against misuse of personal information. (R Exh. 16.)

In contesting Brown's claim for unemployment compensation, one of the questions was whether the individual was discharged for violating a company rule or policy. Swartz responded on August 20 that Brown was fired for violating the confidentiality agreement, and noted that Brown had signed that she received handbook provisions on "rules of conduct" and "confidentiality." Swartz attached the confidentiality agreement as part of RMEC's response. (GC Exhs. 6, 8.)

Prior to her discharge, Brown had received no formal discipline. On Brown's April 8, 2014, performance review, Keating gave her high scores on all job elements and commented that Brown was an asset to RMEC. (GC Exh. 5.)

On October 13, Wilson expressed concern to Peterson about Boggs accessing her account. At Peterson's direction, Wilson took the concern to Swartz. Human resources conducted an investigation and determined Boggs had accessed two employees' Centricity accounts to get their phone number to notify them about a schedule change. This was, in Swartz's estimation, a violation of HIPAA. The proper procedure was for Boggs to get the telephone numbers she needed from human resources. Boggs received a corrective counseling on October 27. (R Exh. 12.) Swartz's reason for giving Boggs a lesser penalty than Brown was that Boggs retrieved the phone numbers for business reasons.

On October 20, Timmerhoff sent Wilson a letter notifying her about unauthorized access to her personal account on August 8. The letter informed her that no medical information was accessed, and told her what steps she could take to protect herself from misuse of her personal information. (GC Exh. 7.)

Brown's unemployment claim was denied on November 14. The reason for the denial stated:

> You were discharged for violating a known employer policy. You accessed confidential employee contact information to assist in a union organizing effort. You were not authorized to access contact information for that purpose. . . . The trainer states all employees are instructed not access (sic) patient information for any "outside" use.[13] Only medical related access is permissible under HIPAA. Some of the employees are also patients of the employer and your actions could subject the employer to sanctions under the HIPAA regulations.

(GC Exh. 9.)

Swartz self-reported the alleged HIPAA violations by both Brown and Boggs to the Department of Health and Human Services, Office of Civil Rights, on December 29, 2014. (R Exhs. 11, 13.) Because the breaches involved less than 500 employees, the self-report was due at the end of the year, December 31.

Waldbillig was told to stop the practice of having new employees enter their contact information into Centricity, and the receptionist now trains new ophthalmic assistants on how to use Centricity. In addition, RMEC implemented a training module that is not patient-based. Contact information currently resides in Swartz's office. The supervisor may also have some employee contact information in her office. Keating takes care of last minute schedule changes, or if she does not have time, she calls Swartz.

III. Decision and Analysis

A. The Confidentiality Agreement

Complaint paragraphs 5 and 7 allege that the Respondent violated Section 8(a)(1) of the Act by maintaining the following provision as part of its confidentiality agreement:

> Likewise, information about physicians, other employees, and the internal affairs of Rocky Mountain Eye Center, P.C., are considered confidential as well. . . . . Breach of either patient or facility confidentiality is considered gross misconduct and may lead to immediate dismissal.

Section 8(a)(1) of the Act provides that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act. The rights guaranteed in Section 7 include the right "to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage

[13] This comment attributable to the trainer, Waldbillig, is hearsay, and, as articulated below, I find it is contradicted by reliable, corroborative testimony from witnesses Wilson, DeGroot, and Brown. Waldbillig, was not called to testify.

in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .”

The General Counsel has the burden to prove that a rule or policy violates the Act. In determining whether a work rule violates Section 8(a)(1), the appropriate inquiry is whether the rule would reasonably tend to chill employees in the exercise of their Section 7 rights. *Lafayette Park Hotel,* 326 NLRB 824, 825 (1998), enfd 203 F.3d 52 (D.C. Cir. 1999).

Under the test enunciated in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), if the rule explicitly restricts Section 7 rights, it is unlawful. 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. A rule does not violate the Act if a reasonable employee merely *could* conceivably read it as barring Section 7 activity. Rather, the inquiry is whether a reasonable employee *would* read the rule as prohibiting Section 7 activity. Id. In other words, the relevant inquiry under Section 8(a)(1) is an objective one which examines whether the employer's actions would tend to coerce a reasonable employee. *Affiliated Foods, Inc.*, 328 NLRB 1107 (1999); *Wyman-Gordon Co. v. NLRB*, 654 F.2d 134, 145 (1st Cir. 1981). The Board must give the rule under consideration a reasonable reading and ambiguities are construed against its promulgator. *Lutheran Heritage*, supra at 647; *Lafayette Park Hotel*, 326 NLRB at 828; and *Cintas Corp. v. NLRB*, 482 F.3d 463, 467–470 (D.C. Cir. 2007). Moreover, the Board must “refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights.” *Lutheran Heritage* supra at 646.

For reasons discussed below, I find the rule in the instant case does not expressly restrict Section 7 rights. The rule was in effect prior to any union activity, and therefore was not promulgated in response to it. I find, however, that employees would reasonably construe the confidentiality agreement as prohibiting Section 7 activity.

Because the employees are prohibited from discussing information about other employees, and there is no provision exempting discussions about wages, hours and other working conditions, I find the rule is overly broad. See *U.S. DirecTV Holdings, LLC*, 359 NLRB No. 54, slip op. at 3 (2013). The rule does not explicitly reference wage or salary information. The provision, however, still prohibits employees from disclosing confidential information about other employees. In its opening paragraph, the agreement broadly defines “confidential information” as including, but not limited to, “patient information, physician information, personnel information, billing, purchasing and financial information.” In line with this broad definition, current employee Wilson construed the rule as general, and would take it to mean “anything and everything.” (Tr. 75.) Furthermore, the rule does not state that it will not be used to restrict Section 7 activity. I therefore find that it violates the Act as alleged because a reasonable employee would construe it as interfering with protected rights.[14]

[14] Timmerhoff testified the rule has been rescinded, and there had been no replacement at the time of the hearing. This testimony is undisputed and I credit it. Evidence was not presented, however, regarding how it was rescinded, including whether or how any rescission was communicated to employees. See *Boch Imports, Inc.*, 362 NLRB No. 83, slip op. at fn. 2 (2015.)

The General Counsel asserts that the agreement explicitly restricts Section 7 rights, citing to *IRIS USA, Inc*., 336 NLRB 1013, 1018 (2001). In that case, the rule at issue stated that unauthorized use of confidential information about employees may result in discipline, including discharge. The Board affirmed the administrative law judge's finding that these provisions compelled a "reasonable understanding of Respondent's rule to prohibit employees from discussing their wages, hours, and terms and conditions of employment with other employees." Id. As such, I do not find the Board construed this language as an explicit restriction when it affirmed this portion the administrative law judge's decision, but rather found employees would reasonably construe the rule as restricting Section 7 rights. Likewise, in *The NLS Group*, 352 NLRB 744, 745 (2008), reaffirmed upon remand, 355 NLRB 1154 (2010), to which the General Counsel also cites, the Board found Respondent's the confidentiality provision, which explicitly referenced the confidentiality of "terms and conditions of employment, including compensation, was unlawful "because employees reasonably would construe it to prohibit activity protected by Section 7." Id. I therefore do not concur that this case supports a reading of the instant provision as an explicit restriction of Section 7 rights.

The last case to which the Respondent cites in support of its argument that the confidentiality agreement here expressly restricts Section 7 activity is *Hyundai U.S.A.*, 357 NLRB No. 80 (2012). The provision at issue concerned the employer's electronic communication system, and concluded by stating, "Finally, employees should only disclose information or messages from theses [sic] systems to authorized persons." The administrative law judge found that the rule, as written, prohibited:

> employees' disclosure of any information exchanged on company email, instant messages, and phone systems, which could reasonably include discussions of wage and salary information, disciplinary actions, performance evaluations, and other kinds of information that are of common concern among employees, and which they are entitled to know and to discuss with each other.

Id. slip op. at 20. The administrative law judge found that the provision was unlawful on its face. The *Hyundai* decision certainly lends support to the General Counsel's position. I find, nonetheless, that the weight of authority establishes the proper analysis for provisions like the one at issue here, which do not expressly preclude discussions about wages, hours, and working conditions, as falling within the first *Lutheran Heritage Village-Livonia* criterion, i.e., employees would reasonably construe the language to prohibit Section 7 activity.

The General Counsel also argues that the rule has been applied to restrict Section 7 activity. It is undisputed that the Respondent, in response to Brown's claim for unemployment compensation, stated she was terminated for violating the Respondent's confidentiality agreement. In this context, I find the rule was applied to restrict Brown's right to share information about employees with the Union.[15]

[15] The analysis of the protected nature of Brown's actions appears below in the discussion of her termination.

The Respondent asserts that the confidentiality agreement was promulgated to comply with HIPAA, and it was not enforced to restrict Section 7 rights. The Board has consistently held that a confidentiality provision which prohibit employees "from discussing among themselves, or sharing with others, information relating to wages, hours, or working conditions, or other terms and conditions of employment" violates Section 8(a)(1) even if it was never enforced and was not unlawfully motivated. *Lutheran Heritage Village-Livonia*, supra, see also *Waco, Inc*, 273 NLRB 746, 748 (1984); *Double Eagle Hotel & Casino*, 341 NLRB 112, 115 (2004); Cintas Corp., 482 F.3d 463, enfg. 344 NLRB 943 (2005). Moreover, much of the confidentiality agreement has nothing to do with protected HIPAA information. The laundry list of items deemed to be "confidential information" in the agreement's opening paragraph broadens the rule beyond the scope of HIPAA under any reasonable reading, particularly considering ambiguities are resolved against the Respondent. As such, I find the rule was unlawful under *Lutheran Heritage*.

*B. Britta Brown's Termina*tion

Complaint paragraphs 6–8 allege that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Brown for assisting the Union and engaging in protected concerted activities, and to discourage other employees from doing the same.

1. Credibility legal standards and general findings

A credibility determination may rest on various factors, including "the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole." *Hills & Dales General Hospital*, 360 NLRB No. 70, slip op at 7 (2014), citing *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness's testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950).

The Board has agreed that "when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge." *International Automated Machines,* 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d (6th Cir. 1988). This is particularly true where the witness is the Respondent's agent. *Roosevelt Memorial Medical Center,* 348 NLRB 1016, 1022 (2006).

The facts surrounding Brown's termination are mostly undisputed. Where there is inconsistent evidence on a relevant point, my credibility findings are incorporated into my legal analysis below. My general observation, however, was that Britta Brown, Heather Wilson, and Jaclyn DeGroot were all credible witnesses. They testified openly and appeared to be honest and forthright, without embellishing their testimony. As current employees testifying against their own pecuniary interests, I find Wilson and DeGroot's testimony to be particularly reliable *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304, 1304 fn. 2 (1961); *Gateway Transportation Co.*, 193 NLRB 47, 48 (1971); *Federal Stainless Sink Div. of Unarco Industries*, 197 NLRB 489, 491 (1972). In particular, all three witnesses provided

consistent, corroborative testimony regarding the maintenance of employee contact information within Centricity, discussed in more detail infra.

I found Swartz and Timmerhoff to be generally credible witnesses.[16] I note, however, that Swartz needed prompting to provide specific answers to questions regarding the practice of storing employee contact information in Centricity. I also do not credit her testimony that when she saw the text message on Sierra's phone, she did not know it was from the Union. The text message's second sentence states, "I am Craig Davis and I work for the Operators Union." It then discusses the employees' need for representation to negotiate benefits and wage increases. Swartz admitted to reading the text, and it therefore follows that she knew it concerned union activity. To find otherwise defies basic common sense. To this point, Timmerhoff testified that it was obvious to her, when she read the text on August 11, that it involved the Operators Union. (Tr. 201.) Moreover, the evidence shows the Respondent's position, in the context of Brown's unemployment compensation hearing, was that Brown was not authorized to access confidential employee contact information for the purpose of assisting in a union organizing effort. (GC Exh. 9; Tr. 160–161.)

2. Analysis and findings

In closing briefs, the General Counsel applies Board caselaw applicable to disciplinary actions that result directly from protected activities. The General Counsel expressed doubt regarding the applicability of *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989, approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983), but provided an alternative analysis applying it. The Respondent contends that Brown's actions were not protected by the Act, and also analyzes the allegations under *Wright Line.* For the reasons articulated below, I find *Wright Line* does not apply to the instant case, and that Brown's discharge violated the Act.[17]

It is first necessary to determine whether Brown's dissemination of employee first names and phone numbers to the Union was protected activity. "[T]he applicable rule is that employees are entitled to use for organizational purposes information and knowledge that comes to their attention in the normal course of their work activity but are not entitled to their employer's private

[16] The Respondent asserts that I am bound to believe Timmerhoff's testimony that Brown was not discharged for her union activity, citing to *Transp. Co. of Texas,* 115 NLRB 681, 697 (1956), and *Gross Telecasting, Inc.*, 129 NLRB 490, 501 (1960). However, her testimony on this point goes to the ultimate legal issue before me, which I have decided based on careful analysis of the full record and applicable legal precedent.

[17] In my view, there was not a mixed motive—Brown was terminated for the very conduct comprising her protected union organizing activity. Assuming *Wright Line* governs, however, I find the General Counsel has met its initial burden by a preponderance of the evidence, that Brown's disclosure to Davis of employee names and numbers was a motivating factor in her discharge by virtue of timing, disparate treatment of other employees who accessed Centricity for employee contact information, the haste with which Brown was terminated, including lack of meaningful investigation into why two employees had accessed Centricity for employee contact information, and the pretextual nature of the HIPAA defense. I find the Respondent has not met its burden of persuasion to prove it would have taken the same action even in the absence of the protected conduct. I reject the HIPAA defense for the reasons stated herein, and find that even if HIPAA serves as a legitimate defense despite the Respondent's own shortcomings in training and enforcement, Brown was treated more harshly than any other employee because of her Union activities.

or confidential records." *Ridgeley Manufacturing Co*., 207 NLRB 193, 196–197 (1973), enfd. 510 F.2d 185 (D.C. Cir. 1975); see also *W.R. Grace & Co.*, 240 NLRB 813, 820 (1979). This rule has engendered caselaw that is highly fact-specific, with the line between confidential information and information that comes to an employee's attention in the normal course of work not always clear.

The General Counsel relies on *Costco Wholesale Corp.*, 358 NLRB No. 106, slip op. at 28–29 (2012), and *Albertson's, Inc*., 351 NLRB 254, 259, 366 (2007) (disclosure of work schedule and list of employees' names to the union protected), to support its contention that employees have a Section 7 right to provide employee information, including phone numbers, to the union. In similar cases, the Board has found that providing information about employees to union organizers is protected activity unless the information was obtained surreptitiously or the employee was not authorized to obtain it. *Ridgely Mfg. Co*. supra. (obtaining names of employees on timecards protected); *Anserphone of Michigan*, 184 NLRB 305, 306 (1970) (obtaining names and addresses of employees from office manager protected).

By contrast, an employee's removal of confidential business records from an employer's file not in the normal course of work activity is not protected. The Respondent cites to *Roadway Express*, 271 NLRB 1238, 1239–1240 (1984) (bargaining-unit employee taking bills of lading from employer's files, copying them, and providing them to the Union not protected); and *W.R. Grace*, supra (disclosure of confidential information about raises not announced to employees and only known by 2 management officials not protected).[18] The Respondent also cites to *Bullock's*, 251 NLRB 425, 426 (1990)(coworker surreptitiously copied performance reviews), and *Macomb Daily*, 260 NLRB 983, 985(1982) (employee asked bookkeeper to divulge percentage wage increase for management personnel), where the Board found copying and requesting confidential information to be unprotected.

Similarly, in *International Business Machines. Corp*., 265 NLRB 638 (1982), the Board found that unauthorized dissemination of internal confidential wage information was not protected. The Board noted, however, "This is not to say that the Respondent would be entitled to enforce its confidentiality policy by discharging any employee who disseminates its confidential wage information regardless of the circumstances." In *IBM*, the Board agreed with the administrative law judge that the employee who disseminated the wage information knew it was confidential and that he was not authorized to obtain it.

[18] The Respondent also cites to cases from the Court of appeals for the Fifth Circuit. In *NLRB v. Berkshire Grocery Co*., 919 F.2d 359, 363 (5th Cir. 1990), an employee entered his supervisor's office and stole confidential information about some coworkers from his supervisor's desk, and disclosed confidential wage information. Denying enforcement of the Board's order to reinstate the employee, the Fifth Circuit found the employee's activity was not protected. In *NLRB v. Florida Steel C*orp., 544 F.2d 896 (5th Cir. 1977), an employee was terminated for asking a clerical worker to obtain a list of names and phone numbers of production employees for the union to use in its organizing activities. In denying enforcement of the Board's order to reinstate the employee, the Fifth Circuit, unlike the Board, found the evidence showed the employee was attempting to gain this information from company records. I note that I am bound to follow the Board unless the Supreme Court dictates otherwise. *Manor West, Inc.*, 311 NLRB 655, 667 fn. 43 (1993); *see also Waco, Inc.*, 273 NLRB 746, 749 n.14 (1984) ("We emphasize that it is a judge's duty to apply established Board precedent which the Supreme Court has not reversed. It is for the Board, not the judge, to determine whether precedent should be varied.").

In *Ridgely,* supra, at 197, the protection for obtaining information from employee timecards, which were located by the time clock, turned on whether the timecards were private or confidential employer records or information available to all employees in the course of their normal work relationship. The administrative law judge, with Board approval, found they fell within "the latter category as a source through which any employee may learn the names of his fellow employees as rightfully as through personal in-plant contact." Id.

In *Gray Flooring*, 212 NLRB 668 (1974), the Board, reversing the administrative law judge, found unlawful the discharge of an employee for copying names and telephone numbers of employees from the employer's records. In that case, the workplace contained a warehouse office that housed the supervisors' desks. Employees regularly went into the office to get coffee, look at maps, get work assignments and timecards, and visit with the supervisors. At the request of a union organizer, employee Kelly went to look at a list of names from a schedule roster hanging by the supervisor's desk. While there, another employee, Griffin, asked Kelly whether he wanted employee phone numbers. When Kelly responded that the numbers would be helpful, Griffin handed him some index cards with employee names and phone numbers that he had obtained from the supervisor's desk. The Board found that the names and numbers were not "in any meaningful sense, 'private records."' 212 NLRB at 669. Important in the Board's analysis was the fact that the employer did not treat the information as confidential and unavailable to employees, and the employees had openly used the information before.

The instant case presents a unique situation, requiring careful and fact-intensive analysis. The first question is whether Brown had access to employee contact information in the ordinary course of her work activity and association. She and her coworkers were able to log into the Centricity system and were trained on how to do so. Employees utilized the system for work and when they needed to get each others' telephone numbers. I therefore find that Brown clearly had access to Centricity in the ordinary course of her work activity and association. *Ridgely*, supra.

The more difficult question is whether the employee contact information formerly housed within Centricity was confidential. Given the manner in which employees were trained during orientation, along with past use of the Centricity system to obtain phone numbers to contact employees for scheduling and other purposes, I find it was not. Most of the information in Centricity quite obviously qualifies as confidential PHI under HIPAA. The information on the first screen, however, was not limited to patients, but also included employees who were not patients. The first screen contained no health information, and did not state whether or not the individual was a patient. Indeed, Brown provided unrefuted testimony that she did not know whether the individuals whose names and numbers she provided to the Union were patients.

On the set for facts before me, it was the Respondent that failed to put proper safeguards in place by empowering its trainer, Waldbillig, to instruct employees to place their contact information in the Centricity system, regardless of whether or not they were patients. Waldbillig did not testify.[19] Significantly, DeGroot and Wilson, neither of whom were patients at the time of

[19] There is no dispute about how Waldbillig trained the employees in Centricity. The Respondent acknowledged that employee contact information should never have been stored in Centricity, and made changes to this practice. I infer that Waldbillig's testimony would have corroborated DeGroot, Brown, and

their respective orientations, provided unrefuted and corroborative testimony that they were told to put their contact information into Centricity in case anyone needed to contact them. As current employees testifying against their own pecuniary interests, I find their testimony to be particularly reliable. *Gold Standard Enterprises*, supra; Georgia Rug Mill, supra; *Gateway Transportation Co*., supra; *Federal Stainless Sink Div. of Unarco Industries*, supra.

Though the RMEC maintained a policy limiting use of Centricity to "what you need to do your job," the message conveyed to employees, both during orientation and as a matter of practice, was that the system was also the place to access employees' contact information. As Wilson testified, "generally it was well known knowledge that anybody's phone number was in Centricity and if we needed to access that for any reason, we could, because that's where employee phone numbers were kept." (Tr. 94.) DeGroot was similarly instructed to put her information into Centricity to "get familiar with the computer system and that if anyone needed to contact us for any reason they can just look us up." (Tr. 99.) What Brown provided to the Union was nothing more than first names and phone numbers, with no indication of whether the individuals were patients. She did not sneak onto the system to get the information, nor did she try to conceal it in any way, either while she was obtaining the numbers, or later when she was questioned about her activities. She "did not sneak into the office and the office was not one where he had no right to be," and her conduct was, "throughout the incident, open and frank." *Gray Flooring*, 212 NLRB at 669. Absent circumstances not present here, both the gathering of employee first names and phone numbers and disclosure of the information to the union agent for organizing purposes fall within Section 7 protected conduct.

The Respondent's argument that use of Centricity for contacting employees served a business purpose does not square with its simultaneous contention that access and use of the information for any reason other than confidential patient concerns violates HIPAA. The discipline meted out to Boggs, who accessed Centricity to contact a worker about a schedule change (and to inquire about a tattoo), underscores this. The change to where contact information is now stored in the wake of the instant complaint is also telling. Simply put, there was no legitimate business reason to house employee contact information within the patient database, with no other place for anyone on site to access it. As the General Counsel points out, permitting use of a patient records system to store non-medical information about employees, whether patients or not, would permit HIPAA-covered employers to thwart the Act in the guise of HIPAA compliance.[20]

I find the Respondent's comingling of employee and patient data in Centricity, along with its training instructions to employees and its practices, detailed above, preclude any legitimate defense that Brown's accessing the system to obtain employee phone numbers warranted discipline as a HIPAA violation.[21] While the Respondent's general concerns about HIPAA compliance are

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Wilson's. See *Roosevelt Memorial Medical Center*, supra.

[20] I do not find that was the case here. Instead, the comingling of employee and patient records appears to have been an egregious lapse in judgment on the part of RMEC's trainer that was capitalized on to stop Brown's union efforts.

[21] I am not vested with jurisdiction over HIPAA. I have considered both the Respondent's arguments that Brown violated HIPAA, and the General Counsel's arguments that she did not. I need not resolve the matter, however, to find that the Respondent violated the Act as alleged because I find it cannot escape liability when, through its actions, it leads and/or sanctions an employee to take actions it later alleges

unquestionably legitimate, the circumstances here lead me to conclude they were seized upon to stop Brown's union activity. Aside from Boggs, no other employees were disciplined for conduct similar to that for which Brown was terminated.[22] (Tr. 156.) Waldbillig, an agent of the Respondent who told employees to store information in Centricity in case anyone needed to contact them, was not disciplined. If Brown's actions were a HIPAA violation, they were at Waldbillig's direction, and therefore the Respondent's failure to discipline Waldbillig is mysterious.

Here, the Respondent held Brown accountable for causing a HIPAA violation. Regardless of whether a HIPAA violation actually occurred, it is clear from the evidence presented that in accessing Centricity for coworker phone numbers, Brown was only acting in line with instructions and practices the Respondent had promulgated and established. After looking into the incidents involving Brown and Boggs, the Respondent learned that employees had been told to store their contact information in Centricity, and nowhere else, so that they could be contacted if needed. This discovery generated changes to the Respondent's practices to correct the very problems that RMEC's trainer, and not Brown, had created. Brown's access of her coworkers' names and phone numbers in Centricity, therefore, cannot reasonably be considered misconduct on her part. The only discernible "misconduct" not of the Respondent's own making, therefore, is Brown's dissemination of the employee names and numbers to the Union, which is the crux of her protected activity.

Based on the foregoing, I find that because the very conduct for which Brown was terminated was union organizing activity protected by the Act, the General Counsel has met its burden to prove that Brown's termination violated Section 8(a)(3) and (1). See *Parkview Hospital, Inc*., 343 NLRB 76, 81(2004).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

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

3. By maintaining a overly-broad confidentiality agreement, by enforcing the confidentiality agreement to restrict Section 7 activity, the Respondent has violated Section 8(a)(1) of the Act.

4. By terminating employee Britta Brown, the Respondent has violated Section 8(a)(3) and (1) of the Act.

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violate HIPAA or any other law.

I note that in the quiz Brown took regarding HIPAA privacy, the correct answer was "True" to the statement, "Protected Health Information is anything that connects a patient to his or her health information." (R. Exh. 1.) The names and phone numbers of employees from a comingled database, not tied to health information, would not seem to qualify as PHI by this definition.

[22] I note Boggs received less discipline, and am persuaded that the only reason she received a warning was because the Respondent was boxed in by the juxtaposition of Wilson's calculated complaint to management to the events that were unfolding with Brown and the Union.

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.

Having unlawfully promulgated and maintained overly-broad confidentiality agreement that employees would reasonably construe as infringing on their rights guaranteed under Section 7 of the Act, and that has been applied to restrict Section 7 activity, the Respondent will be ordered to cease and desist from maintaining this agreement, if it has not done so already, and will be ordered to notify employees of the agreement's rescission, if it has not done so already.

The Respondent, having discriminatorily discharged Britta Brown, must offer her reinstatement and make her whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010). The Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate the discriminatees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year. *Latino Express, Inc*., 359 NLRB No. 44 (2012).

The General Counsel argues that I should order reimbursement of expenses related to Brown's search for work and work-related expenses. Specifically, the General Counsel argues that the Board's current approach of considering these expenses as an offset to earnings does not make the employee whole, and can unduly limit reimbursement for such expenses. (GC Br. 18–21.) Awarding such expenses would require a change in Board law, which is solely in the Board's province.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The Respondent, Rocky Mountain Eye Center, Missoula, Montana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and/or enforcing its rule known as the Confidentiality Agreement that prohibits employees from discussing and disclosing information other employees, or the internal affairs of Respondent

[23] 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) Discharging or otherwise discriminating against employees because they support a union or engage in protected concerted activities, such as providing the names and phone numbers of employees to a union for purposes of union organizing.

(c) 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) Rescind or modify the Confidentiality Agreement, if it has not already done so, to the extent it prohibits employees from discussing and disclosing information about other employees or the internal affairs of Respondent.

(b) Furnish all current employees with notification that:

1. advises that the unlawful provisions of the Confidentiality Agreement have been rescinded; or

2. provides the language of lawful provisions or publish and distribute a revised Confidentiality Agreement that:

a. does not contain the unlawful provisions; or

b. provides the language of lawful provisions.

(c) Within 14 days from the date of the Board's Order, offer Britta Brown full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(d) Make Britta Brown whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

(e) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against her in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

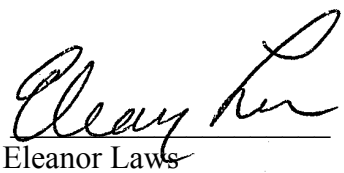
(g) Within 14 days after service by the Region, post at its facility in Missoula, Montana, copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places

24 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."

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 (first ULP).

(h) 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.

Dated, Washington, D.C. May 6, 2015



Eleanor Laws
Administrative Law Judge

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 do anything to prevent you from exercising the above rights.

WE WILL NOT stop you from disclosing information about other employees or the internal affairs of Rocky Mountain Eye Center and **WE WILL** repeal the rule in our handbook on that subject.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the International Union of Operating Engineers or any other union.

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

WE WILL immediately rescind our rule that prohibits your from discussing or disclosing information about other employees or the internal affairs of Rocky Mountain Eye Center. If the rule has been rescinded already, **WE WILL** notify employees that it has been rescinded.

WE WILL, within 14 days from the date of this Order, offer Britta Brown full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Britta Brown whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest compounded daily.

WE WILL file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

WE WILL compensate Britta Brown for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Britta Brown, and **WE WILL**, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

ROCKY MOUNTAIN EYE CENTER, P.C.
(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.
915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-134567 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

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, (206) 220-6284.