

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

AMAZON.COM SERVICES, LLC

and

Case 04-CA-297653

AMAZONIANS UNITED SOUTH JERSEY

and

Case 05-CA-298743

AMAZONIANS UNITED

Case 29-CA-333263

and

AMAZON LABOR UNION

Case 18-CA-305076

and

DGE9 WORKERS UNION

Case 10-CA-305713

and

INLAND EMPIRE AMAZON WORKERS UNITED

Case 31-CA-306864

and

LUCAS A. KLEIN, an Individual

Case 14-CA-308419

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS (IBT) Case 07-CA-322295

and

DREW DUZINSKAS, an Individual

Case 13-CA-331873

Nicholas Allen, Esq., for the General Counsel.

Joseph Turner, Cary Burke and Matthew Sloan, Esqs. (Seyfarth Shaw LLP, Chicago, Illinois and Atlanta, Georgia) for the Respondent.

David Tykulska, Esq. (David Tykulska & Associates, Montclair, NJ) for Amazonians United South Jersey Chapter

Jeanne Mirer, Esq. (Julien, Mirer, Singla, & Goldstein, PLLC, Brooklyn, NY), for Amazonians United.

Linda Gomma, Esq. for Amazon Labor Union-IBT Local 1

Jason Wojciechowski, Esq. (Bush Gottlieb, Glendale, CA) for the International Brotherhood of Teamsters and Amazon United.,

Arturo Adame (DGE9 Workers Union, Gainesville, GA) for Charging Party in Case 10-CA-305713.

Lucas A. Klein, Esq. (Schuchat, Cook & Werner, St. Louis, MO) for Charging Party in Case 14-CA-308419

Drew Duzinkas (Joliet, IL) Charging Party, Case 13-CA-331873.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. Case 04-CA-297653 was tried in Philadelphia, Pennsylvania on May 7, 2024. Amazonians United South Jersey filed the initial charge in this matter on June 14, 2022. The General Counsel issued an amended complaint and notice of hearing on February 21, 2024. The other cases listed in the caption were consolidated with 04-CA-297653 because they concern the same issue, whether Respondent's UPT (Unpaid Time Off) Policy violates the Act.

JURISDICTION

Amazon.Com Services. LLC is a nationwide company selling and distributing consumer products. It derives gross revenues in excess of \$500,000 in many states and possibly in every state and purchases and receives goods valued in excess of \$5,000 at each of its facilities in the country from points located in states other than the one in which each facility is located. Respondent has admitted to the facts supporting the Board's jurisdiction and to the Board's jurisdiction in all the above listed cases.

Facts applicable to all cases listed in the caption

UPT Policy

At all times since at least December 1, 2021, Respondent implemented and maintained a process and policy to provide certain of its employees with unpaid time off (UPT).

This policy has been updated on the following dates:

Revision dated June 7, 2022

Revision dated November 4, 2022; and

5 Revision dated April 25, 2024.

Respondent posted its UPT policy, on Respondent's A to Z app.

10 Respondent notified its employees of the December 1, 2021, UPT system and its June 7, 2022, and November 4, 2022, revisions to the UPT policy by a formalized "push" notification that employees received on the A-to-Z app.

15 Respondent posted its April 2024 UPT policy revision on the A-to-Z app on April 25, 2024. Respondent did not send a formalized "push" notification to its employees regarding Respondent's April 2024 revision of its UPT policy.

20 The UPT Policy as applied to employees, including all versions referenced in this case, states that the UPT Policy applies to all Worldwide Amazon Stores businesses, excluding Customer Service. This policy applies to "Core" hourly employees." Core" employees are on regular, recurring schedules, with limited ability to drop or change shifts.

25 Pursuant to Respondent's UPT policies, Respondent's timekeeping system automatically deducted and deducts UPT from employees' UPT balances for any absences from work, irrespective of the reasons, but not including excused absences under Respondent's leave of absence policy, such as leave taken under the Family and Medical Leave Act. An employee may substitute Paid Time Off or LOA (qualifying leave of absence) time for hours that are initially and automatically designated UPT.

30 Pursuant to Respondent's UPT system, Respondent automatically deducts UPT from employees with a low UPT balance, and the employee's UPT balance may become negative.

35 Pursuant to Respondent's UPT policies employees with a negative UPT balance were and are subject to review by Respondent for termination.

40 The cases covered by this decision do not involve the termination of any employee pursuant to the UPT policy for engaging in protected walkouts. The complaints in these cases do not allege that any such termination occurred.

45 Since December 1, 2021, Amazon's Human Resources Business Partners have had the capability to manually remove a UPT deduction from an employee's UPT balance by recoding the employee's missed work time in Amazon's time and attendance system from UPT to another type of leave time. When a UPT deduction is manually removed in this manner, the employee's UPT balance is automatically recalculated as if the deduction never occurred, Case 04-CA-297653, Jt. Exh.7, page 3.

Since December 1, 2021, certain of Respondent's employees who had UPT deducted from their UPT balances, requested that Respondent restore their UPT hours. In some cases, Respondent reviewed the employees' UPT hours and the reasons for the employees' absences. In some cases, Respondent restored those employees' UPT hours, in others it did not because the employees' UPT balances were not yet negative or because the employees' absences were not excused under Respondent's leave of absence policy.

None of the versions of Respondent's UPT policy expressly address strikes or other protected activity. The manner in which they have been addressed is as follows:

December 1, 2021, version: "UPT deductions do not apply when absences are covered by one of leave of absence (LOA) policies, Accommodations Policy, or applicable law." (Stipulation Exh. A, p. 3).

□ Revision dated June 7, 2022: "This policy will be applied in a way that is consistent with applicable laws, including those laws that pertain to leave and accommodation." (Stipulation Exh. B, p. 3).

□ Revision dated November 4, 2022: "This policy will be applied in a way that is consistent with applicable laws, including those laws that pertain to leave and accommodation." (Stipulation Exh. C, p. 1).

□ Revision dated April 25, 2024 (Stipulation Exh. D, p. 6): "This policy will be applied in a way that is consistent with applicable laws, including those laws that pertain to sick and safe time, leave of absence, and accommodation. This policy may change from time to time, with or without advance notice. Amazon reserves the right to depart from the policy when deemed appropriate.

Findings of Fact Case 04-CA-297653

In December 2021 Respondent implemented an Unpaid Time policy (UPT) nationwide. The policy objective is to give employees a bank of hours to be used for unanticipated absences. Respondent has maintained this policy to the present day, albeit with some modifications. The essence of the policy is as follows.

UPT can cover unexpected absences and is applied in x-minute increments.¹ UPT is used automatically when you miss any part of your scheduled shift, unless you have already applied another time off....

If you use more UPT than you have, your UPT balance will be negative. If "US Unpaid Time Overdraft" is on your pay record, you have a negative UPT balance. Amazon will automatically use your personal time off to cover your negative UPT balance. If you do not have UPT or other time off options to cover your missed shift, Amazon will review your employment in accordance with its attendance policies.

An employee starts with a balance or bank of UPT hours, and time is automatically deducted from that balance as the policy is applied to absences, not covered by other types of

¹ This number has varied since the policy was first adopted.

leave, such as approved vacation time. Under one early version of Respondent's UPT policy every quarter, an employee gained an additional 20 hours of UPT. Another later version had employees earning UPT as they worked. The maximum number of UPT hours an employee could accumulate was 80 hours.²

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Employees have had the UPT policy applied to absences due to protected activity, such as lawful strikes. However, no employee has been disciplined or discharged for a negative UPT balance that was due to such activity.

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An example of how the policy works is as follows. In June 2022, Respondent's facility in Bellmawr, New Jersey (DEW8) closed and the employees who worked there were transferred. Paul Blundell was transferred to the facility in Swedesboro, New Jersey (DJE3).

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Prior to the closure of the Bellmawr facility, James Phillips, the Delivery Station Manager, at that location and Bareeq Barqawi, a human resource official, met with employees. They advised employees they would be able to transfer and distributed a list of available nearby facilities. Phillips and Barqawi told employees they could list their preferred facility and shift. Barqawi assured employees that everyone who wanted to transfer to the nearest facility, in West Deptford, New Jersey (DEJ2) would be able to do so.

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Paul Blundell requested a transfer to the Amazon facility in southwest Philadelphia. Blundell and others were offered positions at facilities other than those they requested (Blundell was offered a job at Swedesboro). The transfers presented commuting difficulties for Blundell and other employees.

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On June 1, 2022, at about 6:30 a.m., about 10 employees, including Paul Blundell, Lauren Barry, Joe Natale and Brenda Stringer, walked off the job and participated in a rally that lasted about 2 hours. This strike was a protest against Respondent's decisions on transfers from Bellmawr to locations other than those requested by the employees.

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Blundell was scheduled to work his normal shift, 2:40 a.m. to 1:10 p.m. that day. After the rally Paul Blundell emailed Phillips and Barqawi informing them that the striking employees would be returning to work unconditionally the next day. Seven hours were automatically deducted from the UPT balance of Paul Blundell, Lauren Barry, Joe Natale and Brenda Stringer. As the result of Lauren Barry's participation in the strike her UPT balance became negative (from + 2 hours to minus 5 hours). No disciplinary action was taken against her, Jt. Exh. 7., p. 5.

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A few days later Blundell questioned James Phillips about the UPT deduction. Phillips told Blundell that the deduction would not be removed but that nobody would be terminated as a result of their UPT being negative due to the strike. Blundell asked for written assurance the UPT deductions due to the strike would not result in discipline. Phillips told him there would be no such written confirmation.

² Under the version, last revised on April 25, 2024, an employee starts out with 10 hours of UPT when hired and thereafter receives 5 minutes of UPT for every 1 hour worked,

Blundell had similar conversations with Bareeq Barqawi. She told him that she could not delete UPT, but there would be no adverse consequences due to UPT charged for protected activity. Blundell, nor any other Amazon employee, has ever received written assurances that UPT deducted for protected activity would not be used for disciplinary purposes, such as termination for poor attendance.

Findings of Fact-in Cases other than 04-CA-297653

Case 05-CA-298743.

On or about March 16, 2022, certain of Respondent's employees engaged in a protected walkout at Respondent's DMD9 facility in Upper Marlborough, Maryland.

On or about March 16, 2022, Respondent, pursuant to the application of its UPT Policy, automatically deducted UPT from the UPT balances of certain employees without their consent, for the period of time that each was absent from their scheduled shift, including the time that each employee was engaged in a protected walkout.

Case 18-CA-305076.

On about April 29, 2022, certain of Respondent's employees engaged in a protected walkout at Respondent's MSP1 facility in Shakopee, Minnesota.

On or about April 29, 2022, Respondent, pursuant to the application of its UPT Policy, automatically deducted UPT from the UPT balances of certain employees without their consent, for the period of time that each was absent from their scheduled shift, including the time that each employee was engaged in a protected walkout.

Case 10-CA-305713.

On or about October 11 and 12, 2022, certain of Respondent's employees engaged in a protected walkout at Respondent's DGE9 facility in Buford, Georgia.

On or about October 11 and 12, 2022, Respondent, pursuant to the application of its UPT Policy, automatically deducted UPT from the UPT balances of certain employees without their consent, for the period of time that each was absent from their scheduled shift, including the time that each employee was engaged in a protected walkout.

Case 31-CA-306864.

On about August 15, 2022, certain of Respondent's employees engaged in a protected walkout at Respondent's KSBD facility in San Bernadino, California.

On or about October 14, 2022, approximately 50-70 of Respondent's employees engaged in a protected walkout at Respondent's KSBD facility in San Bernadino, California.

Subsequent to August 15, 2022, and October 14, 2022, Respondent, pursuant to the application of its UPT Policy, automatically deducted UPT from the UPT balances of certain employees without their consent, for the period of time that each was absent from their scheduled shift, including the time that each employee was engaged in a protected walkout.

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Case 14-CA-308419.

On or about November 25, 2022, certain of Respondent's employees engaged in a protected walkout at Respondent's STL8 facility in St. Peters, Missouri.

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On or about November 25, 2022, Respondent, pursuant to the application of its UPT Policy, automatically deducted UPT from the UPT balances of certain employees without their consent, for the period of time that each was absent from their scheduled shift, including the time that each employee was engaged in a protected walkout.

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On or about November 25, 2022, certain of Respondent's flex employees engaged in a protected walkout at Respondent's STL8 facility in St. Peters, Missouri.

On or about November 25, 2022, Respondent, charged certain flex employees with attendance points, without their consent, for the period of time that each was absent from their scheduled shift, including the time that each employee was engaged in a protected walkout.

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Case 07-CA-322295.

On or about July 14, 2022, certain of Respondent's employees engaged in a protected walkout at Respondent's DDT6 facility in Pontiac, Michigan.

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On or about July 14, 2022, Respondent, pursuant to the application of its UPT Policy, automatically deducted UPT from the UPT balances of certain employees without their consent, for the period of time that each was absent from their scheduled shift, including the time that each employee was engaged in a protected walkout.

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Case 13-CA-331873.

On or about November 23, 2023, Charging Party Employee Drew Duzinkas notified Respondent that employees at its MDW4 facility would be participating in a protected walkout at Respondent's MDW4 facility in Joliet, Illinois, and requested that Respondent not deduct UPT from employees' UPT balance for the time that employees participated in the protected walkout.

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On or about November 24, 2023, certain of Respondent's employees engaged in a protected walkout at Respondent's MDW4 facility in Joliet, Illinois.

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On or about November 24, 2022, Respondent, pursuant to the application of its UPT Policy, automatically deducted UPT from the UPT balances of certain employees without their consent, for the period of time that each was absent from their scheduled shift, including the time that each employee was engaged in a protected walkout.

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Case 29-CA-333263.

On or about December 9, 2023, certain of Respondent's employees engaged in a protected walkout at Respondent's Maspeth facility, or DBK4, located on Grand Avenue, Queens, New York.

On or about December 9, 2023, Respondent, pursuant to the application of its UPT Policy, automatically deducted UPT from the UPT balances of certain employees without their consent, for the period of time that each was absent from their scheduled shift, including the time that each employee was engaged in a protected walkout.

Analysis

I conclude that Respondent's UPT policy is not illegal under either the *Stericycle* (372 NLRB No. 113 (2023)) or *Boeing* (365 NLRB No. 154 (2017)) test. The policy is facially neutral. An employee would not, in the abstract, reasonably interpret the policy as prohibiting or interfering with Section 7 rights.

However, I find that Respondent's UPT policy violates Section 8(a)(1) and in at least some cases 8(a)(3) as applied. Respondent need not change its attendance system to avoid its automatic deduction of UPT. However, it violates the Act in not manually restoring UPT hours when those hours are deducted for Section 7 strike activity. The stipulations establish that Respondent does so in some instances not involving Section 7 conduct and in situations in which deduction for strike activity put an employee into negative UPT territory.

Respondent's refusal to treat absences due to strike activity in the same manner that it treats other absences exempt from the UPT policy is discriminatory and violates Section 8(a)(1) and also 8(a)(3) when the strike constitutes union activity. To comply with the Act, I find Respondent must manually restore UPT hours whenever it is aware that it was deducted for protected activity, as it does for other absences exempt from the UPT policy.

Similarly, I find that Respondent violates 8(a)(1) and possibly 8(a)(3) as well when it assesses attendance points or refuses to rescind attendance points when it becomes aware that an employee's absence was due to a legal strike or other protected activity.

In *Advance Pierre Foods, Inc.*, 366 NLRB No. 133 (2018) slip op. 1-2, fn. 4, 28-30, the employer assessed an employee an attendance point for a day on which she went on strike. Employees at Advanced Pierre received a written warning when accumulating 6 attendance points, a final written warning at 10 points and are potentially subject to termination beyond 10 points. The employee in question, Maldonado, went from 6 points to 7 points due to her strike activity. The Board found that the employer violated Section 8 (a)(1).

As in *Advance Pierre Foods, Inc.*, deduction of UPT hours makes an employee more vulnerable to termination even if they are not in negative territory. Failure to rescind the deduction is likely to make an employee more hesitant to engage in a strike or other protected activity or for using UPT hours for other reasons. If an employee uses Paid Time Off (PTO)

hours to cover the deduction for UPT hours, the employee has less ability to use PTO for other reasons.

Finally, while Respondent appears to restore UPT hours to employees whose strike activity put them in negative territory, it has not committed to do so as a matter of policy. Thus, employees may reasonably lack assurance that its current practice cannot change in the future. The UPT policy explicitly states that the UPT policy may change from time to time, with or without advance notice. It also provides that Amazon reserves the right to depart from the policy when deemed appropriate.

Conclusions of Law

Respondent, Amazon.com Services, LLC violated and is violating Section 8(a)(1) of the Act by not restoring UPT hours when it becomes aware that UPT hours were or are deducted due to an employee's participation in a strike or other protected activity.

Respondent, Amazon.com Services, LLC violated and is violating Section 8(a)(1) by assessing attendance points against employees due to their participation in a strike or other protected activity.

Respondent, Amazon Services, LLC, is violating Section 8 (a)(3) and (1) as alleged in paragraphs 9 and 14 of the complaint at its Maspeth, New York and Buford, GA facilities.³

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, Amazon.com Services, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing to restore UPT hours whenever it becomes aware that UPT hours were deducted from an employee's UPT bank of hours due to participation in a strike or other Section 7 Activity.
- (b) Assessing attendance points to any employee who is absent from their work shift due to their participation in a legal strike or other protected activity
- (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.

³ It is not clear to me why an 8(a)(3) violation is alleged at only these 2 facilities. However, to treat strike activity differently than other reasons for restoring UPT points is discriminatory and violates Section 8(a)(3).

⁴ 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.

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

- (a) Restore the UPT hours of every employee from whom UPT hours were deducted due to a strike or other protected activity and notify the employee in writing that the UPT hours have been restored.
- (b) Rescind any attendance points assessed for the period an employee was engaged in a legal strike or walkout and notify such employees in writing that the attendance points have been rescinded.
- (c) Reinstate any employee who was discharged as a result of the employee's UPT hours falling below zero due to their participation in protected activity or was discharged due to accumulating excessive attendance points as the result of their participation in protected activity.
- (d) Make whole any employee who suffered adverse consequences from either having UPT hours deducted on account of protected activity or had attendance points assessed as a result of such activity.
- (e) Notify all its employees in writing that whenever respondent is aware that UPT has been deducted from an employee's UPT bank due to the employee's participation in a legal strike or another protected activity, that it will restore those UPT hours, regardless of whether the employee requests that it do so.
- (f) Notify all Respondent's employees in writing that it will rescind any attendance points that have been assessed against any employee because of his or her participation in a legal strike or other protected conduct and that attendance points will not be assessed for absences due to a legal strike or other protected conduct in the future.
- (g) 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 number of UPT hours that must be restored, attendance points that must be rescinded, and/or backpay due.
- (h) Within 14 days after service by the Region, post at all its facilities in the United States copies of the attached notice marked "Appendix."⁵ These notices shall be in English and any other language which is the first language of a significant number of employees at a facility. Copies of the notice, on forms provided by the Regional Director for one of the following NLRB Regions: 4, 5, 7, 10, 13, 14, 18, 29 and 31 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.

⁵ 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."

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 a 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 that site at any time since December 1, 2021.

- (i) Within 21 days after service by the Region, file with the Regional Director of one of the following NLRB Regions: 4, 5, 7, 10, 13, 14, 18, 29 and 31 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. February 12, 2025



Arthur J. Amchan
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 fail to restore your UPT hours whenever we become aware that such hours were deducted from your bank of UPT hours due to a legal strike or other activity protected by the National Labor Relations Act.

WE WILL NOT issue you attendance points because you are absent from work while participating in a lawful walkout or strike

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 restore the UPT hours of any employee who had UPT hours deducted from his or her bank of UPT hours due to participation in a legal strike or other activity protected by the National Labor Relations Act.

WE WILL rescind any attendance points issued to you as the result of your absence from work due to a legal strike or other protected activity

WE WILL reinstate any employee who was discharged as a result of the employee's UPT hours falling below zero due to their participation in protected activity or was discharged due to accumulating excessive attendance points as the result of their participation in protected activity.

WE WILL make whole any employee who suffered adverse consequences from either having UPT hours deducted on account of protected activity or had attendance points assessed as a result of such activity.

WE WILL notify all our employees in writing that whenever we are aware that UPT has been deducted from an employee's UPT bank due to the employee's participation in a legal strike or another protected activity, we will restore those UPT hours, regardless of whether the employee requests that we do so.

WE WILL notify all our employees in writing that we will rescind any attendance points we have assessed against any employee because of his or her participation in a legal strike or other protected conduct.

AMAZON.COM SERVICES, LLC

(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.nlr.gov

100 E Penn Square Suite 403
Philadelphia, PA 19107
Telephone: **(215) 597-7601**
Fax: **(215) 597-7658**
Hours of Operation: 8:30.a.m – 5 p.m. ET

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/04-CA-297653> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



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 (215) 597-5354.