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

INTERTAPE POLYMER CORP.

and Case No. 07-CA-291784

MATTHEW ROSE
An Individual

Dynn Nick, Esq.
for the General Counsel.
Alan I. Model, Esq. (Littler Mendelson, P.C., Newark, New Jersey)
for the Respondent.

DECISION AFTER REMAND

STATEMENT OF THE CASE
FINDINGS OF FACT[1]

Arthur J. Amchan, Administrative Law Judge. This case was tried in Detroit, Michigan on December 6-7, 2022. On August 23, 2024, The Board issued its decision in this case, 373 NLRB No. 82. The Board found that Respondent's rule No. 7, which prohibits unauthorized posting and which Intertape cited in its discharge of Matthew Rose, is unlawfully overbroad as to both distribution and posting and violates Section 8(a)(1) of the Act. The Board reversed me for deferring the alleged unlawful disciplines and discharge of Rose to arbitration.

I deferred the disciplines and discharge to arbitration because Respondent led me to believe that the arbitration would take place on February 1, 2023, Tr. of December 6, 2022, at 22, 26. Had I known that 2 years later, no arbitration would have taken place, I would not have granted Respondent's request for deferral.

The Board did not, so far as I can tell, determine that Rose's disciplines and discharge violated the Act. However, it stated:

> The Board has found discipline of an employee pursuant to an unlawfully overbroad rule for conduct short of protected concerted activity but that "touches the concerns animating Section 7" is unlawful absent a showing that the employee's conduct actually interfered with the employer's operations and that such interference was the basis for discipline.

[1] I have read and considered the post-trial briefs filed by the General Counsel and Respondent on April 8, 2025.

Continental Group, Inc., 357 NLRB 409, 412 (2011). We agree with the General Counsel that deferral is improper because Rose's alleged unlawful disciplines and discharge are inextricably intertwined with the alleged unlawful rule.

The remand directed me to consider Rose's discharge and discipline under applicable law, including reopening the record, if appropriate, and at a minimum in order to allow the Respondent to make out its rebuttal case under, *Continental Group, Inc.*, 357 NLRB 409, 412 (2011). From this, I conclude that unless Respondent meets its burden under *Continental Group*, Rose's January 12, 2022, March 1, 2022, disciplines and his March 3 discharge violate the Act.

The Board also remanded an illegal posting removal allegation and the allegations that the company violated the Act by maintaining work rules 5, 12 13, 19 and 21.

On February 4, 2025, I conducted a hearing pursuant to the Board's remand order. Respondent presented 3 witnesses: Steven Matthews, a manufacturing/production manager, Alexis Harmon, who was Respondent's human resources manager for the Marysville, Michigan facility, where the events in this case occurred in 2021-2022, and Richard Harter, Respondent's Director of Labor Relations. Matthews in 2021 and 2022 reported to Brian Newman, the Operations Manager at the time, who testified in 2022.

Jurisdiction

Respondent manufactures adhesive tapes at its Maryville, Michigan facility, as well as at other facilities. It purchases and receives goods at this facility which are valued in excess of $50,000 annually directly from points outside of Michigan. Respondent admits and I find that it is an employer within the meaning of the Act and that Local 1149 of the United Autoworkers, the Union which represents about 150 employees at Respondent's Marysville facility, including the Charging Party, when he was employed there, is a labor organization within the meaning of the Act.

Matthew Rose, a shipping clerk at Respondent's Marysville, Michigan facility, filed the initial charge giving rise to this matter on March 8, 2022. Respondent terminated Rose, who at the time was president of Local 1149, on March 3, 2022.

The basis of the charge as amended on June 15, 2022, was Respondent's alleged retaliation against Mr. Rose by issuing him a disciplinary warning on January 12, 2022, and March 1, 2002, and by discharging him on March 3, 2022. The amended charge also alleges that Respondent is maintaining overly broad work rules.

The General Counsel issued a complaint on September 14, 2022. The complaint alleges that Respondent violated Section 8(a)(3) and (1) in disciplining and terminating Matthew Rose and Section 8(a)(1) in maintaining overly broad work rules. It also alleges that Respondent violated Section 8(a)(1) by ordering employees to remove information from a union bulletin board and by a supervisor removing information posted on a union bulletin board.

On the second day of trial in this matter in December 2022, I granted Respondent's motion to defer the allegations relating to Mr. Rose's discipline and discharge to arbitration.

Respondent's 37 work rules are contained in G.C. Exh. 8. They have been in effect since 2008. The Board remanded the following rules to me

Work Rule 5: Unauthorized visiting in the plant, leaving the job or workstation during working hours without securing permission from your supervisor, or leaving the plant during working hours without first obtaining permission from your supervisor.

Work Rule 12: Engaging in inappropriate behavior while on company premises.

Work Rule 13: While on the premises engaging in or encouraging the following: "horseplay," scuffling, wrestling. Throwing things, practical jokes, distracting or startling others causing confusion, unnecessary noise, demonstrations of any kind or acting in a disorderly manner.

Work Rule 19: Bringing cameras or photographic equipment (including cell phones) without the company's authorization.

Work Rule 21: Indirect Insubordination: challenge and abuse of directions given by supervision or management.

These were remanded because I evaluated them pursuant to the *Boeing* decision (365 No. 154 (2017) rather than pursuant to *Stericycle,* (372 NLRB No. 113 (2023). Given the likelihood that *Boeing* will again be the controlling precedent when this case again comes before the Board, I reiterate the holdings I made 2 years ago.[2] Moreover, I would reach the same conclusions under *Stericycle* (whether an employee could reasonably interpret the rule to have a coercive meaning).

Work Rule 5: Unauthorized visiting in the plant, leaving the job or workstation during working hours without securing permission from your supervisor, or leaving the plant during working hours without first obtaining permission from your supervisor.

In *Our Way, Inc.,* 268 NLRB 394 (1983), relied upon by the General Counsel, the Board drew a distinction between rules that prohibited employees from distributing literature and soliciting during "working time" which are presumptively valid and those prohibiting such activity during "working hours" which are presumptively invalid because that would include periods when employees are not on the clock, such as during breaks.

[2] The Board in *Boeing* distinguished 3 categories of work rules: Category 1 rules that are lawful because when reasonably interpreted, they do not prohibit or interfere with the exercise of NLRA rights, impact on NLRA rights or the potential adverse impact is outweighed by justifications associated with the rule; Category 2: rules that warrant individualized scrutiny as to whether the rule would prohibit or interfere with NLRA rights, and if so…whether any adverse impact on NLRA protected conduct is outweighed by legitimate justifications; Category 3 rules prohibit or limit NLRA protected conduct and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule. Implicit in my original decision is that the rules I found legal are category 1 rules; those I found illegal are Category 2 or 3 rules, in which there is no justification that outweighs the potential adverse impact on NLRA rights.

I conclude that Rule 5 does not violate the Act. A reasonable employee would not construe this rule as prohibiting him or her from leaving their workstation at the end of their shift. Neither would a reasonable employee construe the rule as prohibiting the employee from going on a break, including restroom breaks, which assumedly have been previously approved by a supervisor. I do not conclude that an employee in a unionized workplace would reasonably interpret this rule as meaning Respondent could or would fire them if they participated in a legal strike.[3]

Work Rule 12: Engaging in inappropriate behavior while on company premises

I find this rule to be valid. The General Counsel has not established the criteria for finding it unlawful: 1) employees would reasonably construe the language to prohibit Section 7 activity, or 2) it was promulgated in response to union activity or 3) the rule has been applied to restrict Section 7 rights, *Hitachi Capital America Corp.,* 361 NLRB 123, 124 (2014).

Work Rule 13: While on the premises engaging in or encouraging the following: "horseplay," scuffling, wrestling. Throwing things, practical jokes, distracting or startling others causing confusion, unnecessary noise, demonstrations of any kind or acting in a disorderly manner. I find this rule to be valid for the reasons I have found Rule 12 valid.

Work Rule 19: Bringing cameras or photographic equipment (including cell phones) without the company's authorization.

I find this rule invalid for the same reason the Board found rule 7 illegal: the unfettered discretion it gives to Respondent to decide the conditions under which an employee may bring his or her cell phone, etc. to work. Unlike the situation in the cases cited by Respondent, *Argos USA, d/b/a. Argos Ready Mix, LLC,* 369 NLRB No. 26 (2019) and *Cott Beverages, Inc.* 369 NLRB No. 82 (2019), there is no limiting language to Respondent's rule.[4] It applies to all areas of Respondent's facility at all times. Thus, an employee would reasonably conclude that he or she cannot use a cell phone to engage in protected activity, such as calling his or her business representative, from any place or at any time while on Respondent's property. Also, unlike the cases cited by Respondent, it has not offered any legitimate justification for the breath of the rule.

Work Rule 21: Indirect Insubordination: challenge and abuse of directions given by supervision or management.

The General Counsel relies on the Board's decision in *Lytton Rancheria of California,* 361 NLRB 1350, 1352-53 (2014) for the proposition that any rule that prohibits conduct less than actual insubordination would be reasonably construed as prohibiting activities protected by

[3] *Labor Ready, Inc.,* 331 NLRB 1656 (2000) relied upon by the General Counsel is distinguishable in that there 2 unsophisticated employees of a temporary employment agency were terminated pursuant to that employer's rule for protected activity which was essentially a strike. The instant case involves a unionized workplace with a collective bargaining agreement in place that contains a no-strike, no lockout provision and other provisions protecting the rights of employees and the employer. The record establishes that the Union at Marysville is not passive.

[4] Also see *Union Tank Car Co.,* 369 NLRB No. 120 slip op. at 1, fn. 3 (2020)

Section 7. I agree. The Board in that case opined that a prohibition limited to insubordination would have been valid. The patent ambiguity of the rule would reasonably lead employees to believe the rule to prohibit protected conduct. Moreover, balancing the interests of employees and management overwhelmingly supports a finding that this rule is illegal. Respondent's Rule 29, "Direct insubordination: includes direct refusal of work and willful failure to perform duties," is not deemed invalid by the General Counsel. Given the ambiguity of Rule 21 and the adequacy of Rule 29 to protect Respondent's legitimate interests, I find Rule 21 to be invalid.

Discipline and Discharge of Matthew Rose

Matthew Rose worked for Respondent for 26 years prior to his termination on March 3, 2022. He was president of UAW Local 1149 in 2014-15 and then became president of the Local again in mid-2021. Operations Manager Brian Newman testified that the relationship between the company and the Union during Rose's first tenure as union president was "decent," Tr. 12/7/22 at 221.

In June 2021, Rose again became the local union president. In November 2021, Respondent hired Richard Harter to be its Director of Labor Relations. This was a newly created position. Harter is responsible for labor relations at Marysville and 4 other company facilities. The relationship between Rose and Harter appears to have been sour from the start.

A schedule for weekend work in the converting department on Saturday December 18, 2021, contained a typo which read November instead of December.[5] Respondent reposted the schedule with the typo corrected, but not within 48 hours of the start of the midnight shift in the converting department, as required by the parties' collective bargaining agreement.

At a monthly labor relations meeting[6] on December 16, Rose insisted that pursuant to the parties' collective bargaining agreement, employees on the midnight shift did not have to work the shift. Matthews, the production manager, consented, Tr. 40-42.

Labor Relations Manager Harter, Operations Manager Brian Newman, Matthews' boss, and Matthews apparently discussed the matter further. Harter informed Rose that employees would work the scheduled shift, Tr. 42.

Supervisors contacted the approximately 30 employees on the midnight shift in the converting department and advised them they must report to work. They did so, Tr. 46 (2/4/25). Respondent never accused Rose of trying to promote a work stoppage.

Harter also informed Rose that Respondent would be implementing a 2-2-3 work schedule, opposed by the Union.[7]

[5] This schedule pertained to employees in the converting department, where employees cut master rolls of adhesive paper into smaller rolls for customer use. It appears not to have pertained to employees in the other production departments, Adhesives (where Respondent makes the adhesive), Coating (where the adhesive is put onto paper), shipping (where Matthew Rose worked) and Maintenance.

[6] These monthly meetings were held to resolve grievances and discuss other work-related issues.

[7] 2 days on, 2 days off, 3 days on cycling 12-hour shifts with four crews.

Rose challenged Harter's authority to countermand the prior statement from a Marysville production manager, Matthews. Rose filed a grievance about this and taped the grievance form, whose contents are set forth below, to the glass of the union bulletin board in the converting department at the plant.[8]

Specific Grievance or Violation

A Human Resources Administrator, Richard Harter, later came on the floor, at approximately 12:30 p.m. on December 16, 2021, to say that Production Manager Steven Matthews was incorrect, and production would be run on the midnight shift for Saturday, December 18, 2021.

UAW Local 1149 does not recognize Richard Harter as anything other than Human Resources administrator who does not have the authority to schedule employees for work.

Steve Matthews stated work would not be required on 12/18/2021 for the midnight shift due to company error, we stand with his position.

Specific Adjustment or Remedy Requested

Stay within the guidelines of our contract and honor our contract. Contractually adequate notice was not given of work. Production Manager Steve Matthews stated no work would be required for the midnight shift in converting. No points/No discipline [9].

Respondent removed the posted grievance from the glass covering the bulletin board.

On January 11, 2022, Respondent issued Rose a documented "verbal" warning.

On 12/16 you repeatedly (sic) made the statement that employees you represent would not report for the scheduled Dec. 18th midnight shift. In addition, you posted a grievance related to the shifts in attention getting vivid color near the time clock with verbiage "NO points/NO discipline, implying to your membership that they were not required to report to work for the shift and would not receive any points or discipline if they failed to do so. In addition, management was required to notify each employee on the shift they [were] to report for the shift. These actions are a violation of Company Work Rules 7 and 13. Any further violations may lead to further discipline including and up to termination.

G.C. Exh. 7.

[8] There is a bulletin board for the Union's use outside each of Respondent's 5 departments. 4 of them are covered by glass and require a key to be accessed. One bulletin board, in the Adhesives Department that is used by Respondent and the Union, is not covered, Tr. 34, 150.

[9] The parties' collective bargaining agreement contains a "no-strike" provision, Article 4.10. This clause was not referenced in Rose's written warnings or termination.

Work Rule 7, which has been in effect for years, prohibits "Distributing literature or printed matter of any kind on Company premises, or the posting or removal of notices, signs or writing of any form anywhere on Company premises unless specifically authorized to do so by the Company."

Work Rule 13 prohibits "While on the premises engaging in or encouraging the following: "horseplay," scuffling, wrestling, throwing things, practical jokes, distracting or startling others, causing confusion, unnecessary noise, demonstrations of any kind or acting in a disorderly manner."

Violations of these rules are subject to progressive discipline.

Respondent proposed to pay certain employees holiday pay for New Years and New Years' eve, who apparently were not entitled to it pursuant to the collective bargaining agreement. These employees had missed work due to COVID-related reasons either the day before and/or the day after New Years. On February 2, 2022, Rose posted a flyer stating the reasons for the Union's opposition to this proposal on the bulletin boards, G.C. Exh. 10.. On February 11, 2022, Respondent posted its response, On February 15, Rose posted a reply to the company response.

On February 11, 2022, Respondent informed Rose that his posting of grievances on the union bulletin boards violated Section 18.4 of the collective bargaining agreement between Respondent and Local 1149.[10]

:

> Appropriate use of the Company supplied bulletin board would be for administrative purposes only as described in the CBA. Grievance or opinion letters would not be authorized and be subject to IPG Company Work Rules or relevant policies…
>
> 18.4. The Company will provide a bulletin board at a convenient place within the plant for the exclusive use of the Union. The Union may use such bulletin board for notices relating to Union business meetings, elections and similar activities, but shall not be used for political purposes.

Exh. R-7.

As noted by the Board at page 3 of its decision at footnote 3, prior to January 2022, the Union and rank and file employees had posted material on these bulletin boards or the glass covering them without seeking authorization. Employees posted notices about raffles, contests, bake sales and hunting tournaments. The Union posted information about contract negotiations, Tr. 34-39, 150-51 (2/6/22). Respondent had never objected to any such postings or disciplined an employee for posting anything on these bulletin boards or taken any action to remove them.

Respondent and the Union held monthly labor-management meetings. The collective bargaining agreement spells out who can participate in these meetings from the union side: the union president and one union committeemen from each shift and the committee chair. Despite

[10] G.C. Exh 2, effective May 4, 2021, through May 4, 2024.

this, the Union's recording secretary had been attending the meetings to take notes since December 2020, Tr. 196-97, (12/7/22). On February 11, 2022, Respondent advised Rose that any attendee, other than committeemen would have to be approved by Respondent in advance, R-Exh. 26. On February 15, 2022, Rose posted a letter on the union bulletin boards taking issue with the company's position on who could attend labor-management meetings.

The February 25, 2022, labor management meeting was virtual. When Respondent realized that Union Recording Secretary Mario Pruccoli was on the call, it insisted that he leave and return to work. When Pruccoli did not leave, Richard Harter ended the meeting. On March 4, 2022, Respondent terminated Pruccoli who was working overtime at the time of the meeting.

Rose posted a notice, G.C. Exh. 13, about what transpired at the February 25, meeting on the outside of the union bulletin boards. The posting objected to Respondent's refusal to conduct the February 25 labor-management meeting. Respondent removed the posted material from the outside glass of the bulletin board. Rose then posted the material inside the glass under lock and key.

Later on February 25, Respondent met with Rose about the postings. Rose admitted to the original posting of the summary of the February 25 meeting. He was asked if he had reposted the notice under the glass. Rose untruthfully denied doing so. He was asked if he had a key to get inside the glass and he untruthfully said he did not. Union representative James Grieg removed the posting at Respondent's direction.

On March 1, 2022, Respondent met with Rose and issued Rose a written warning. During this meeting, Rose again untruthfully denied posting the notice about the February 25 labor relations meeting under the glass of the bulletin boards.

> Re: Violation of Company Rule # 7. Distributing literature or printed matter of any kind on Company premises, or the posting or removal of notices, signs or writing of any form anywhere on Company premises unless specifically authorized to do so by the Company. Despite being instructed to comply with Work Rule #7 and receiving a verbal warning related to improperly posting material per the rule, you again posted material on 2/17(sic) in violation of the Rule. Any further violations may lead to further discipline including and up to termination. Any discipline related to the 2/25 posting is pending, subject to the result of an ongoing investigation.

G.C. Exh. 14.

On March 3, 2022, Respondent terminated Rose. The termination notice states:

> As a result of the IPG investigation, your employment is terminated effective immediately due to the following independent reasons:
>
> 1. Violations (2) of work rule #7. Posting on 2/25 and reposting the same day after earlier postings were removed. Progression levels "suspension and "Termination."
> 2. Direct insubordination. Repeated posting of materials when instructed not to do so.
> 3. Direct insubordination. Refusal to remove posting from display cabinet.

4. Dishonesty during an investigation. Repeated denial of having posted in the maintenance display cabinet and of not possessing a key to the cabinet.

G.C. Exh. 15.

The Union filed a grievance over Matthew Rose's termination. As stated before, on the second day of the December 2022 hearing, I granted Respondent's motion to defer consideration of the allegations relating to Rose's discharge and discipline to arbitration. I severed those allegations from complaint paragraph 7 which concerns only the facial legality of some of Respondent's work rules.

I granted this motion, over the objection of the General Counsel because I believed a determination as to whether Respondent violated the Act in disciplining and discharging Rose necessarily involves an interpretation of Section 18.4 of the collective bargaining agreement. Respondent represented that an arbitration hearing was scheduled for February 1, 2023. At a minimum, I believed if the arbitrator determined that Rose did not violate Section 18.4, the General Counsel would most likely prevail regarding its allegations regarding his discipline and discharge.

Analysis: Discipline and Discharge of Matthew Rose.

In order to establish a violation of Section 8(a) (3) and/or (1), the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1983); *American Gardens Management Co.,* 338 NLRB 644 (2002); *General Motors,* 369 NLRB No. 127 (2022).

Matthew Rose engaged in union activity that I find was protected as discussed below. There is no question that Respondent was aware of this activity, bore animus towards him as a result and disciplined and discharged him in retaliation for this activity.

Moreover, the Board has found discipline of an employee pursuant to an unlawfully overbroad rule for conduct short of protected concerted activity but that "touches the concerns animating Section 7" is unlawful absent a showing that the employee's conduct actually interfered with the employer's operations and that such interference was the basis for discipline. The Board also held that Rose's alleged unlawful disciplines and discharge are inextricably intertwined with the alleged unlawful rule.

The Board held that IPG work rule 7 violates Section 8(a)(1). Therefore, Matthew Rose's disciplines and discharge violated Section 8(a)(3) and (1) unless Respondent made out a defense pursuant to *Continental Group, Inc.,* 357 NLRB 409, 412 (2011). Despite the language of the written warning and termination notice, Respondent contends that it did not discipline and terminate Rose pursuant to Rule 7. I reject this argument because it is contrary to what Respondent's documents state on their face. I would note that former Operations Manager

Newman conceded that Respondent could not discipline or discharge Rose solely for violating Section 18.4 of the collective bargaining agreement, Tr. 203 (12/7/22).

Respondent violated the Act in disciplining and discharging Matthew Rose for posting material on the Union bulletin boards and in removing the materials he posted.

Respondent violated the Act in directing the Union to remove its postings and then by removing the postings from the bulletin boards

Section 18.4. of the parties' collective bargaining agreement provided: The Company will provide a bulletin board at a convenient place within the plant for the exclusive use of the Union. The Union may use such bulletin board for notices relating to Union business meetings, elections and similar activities, but shall not be used for political purposes.

Prior to January 2022, Respondent had never disciplined anyone for violating this provision, including Matthew Rose. It had never objected to any postings by the Union or rank and file employees. It had never issued any explanation as to what its terms mean. Operations Manager Newman was unable to explain what the term "similar activities" means in this rule, Tr. 230 (12/7/22). When asked what "political activities" means, Newman responded:

> Essentially opinion-based communications that is driven by, you know, things that are divisive in nature, disparaging politically driven from a union perspective against the company.

Tr. 231.

Human Resources Manager Alexis Harmon also opined that Rose's posting violated Article 18.4 because of its "political nature." Tr. 75-76 (2/4/25). Harmon's testimony establishes that Respondent had never delineated what constituted "political purposes" prior to Rose's situation and that Respondent came up with its definition for purposes of disciplining Rose, Tr. 98-100 (2/4/25).

Production Manager Matthews defines "political activities" as anything expressing a union position contrary to that of Respondent, Tr. 24 (2/4/25).

This definition would include some statements protected by the Act. Respondent did not establish that Matthew Rose violated Article 18.4. Moreover, I find he did not. Posting grievances falls within the vague term "similar activities" within the meaning of Section 18.4.[11]

More important, as alleged, Respondent violated the Act in removing Rose's postings and disciplining and discharging him for the postings. There is no statutory right of employees or a

[11] I would also note that the term "Union business meetings" can also be read to include business meetings with management, such as the one on February 25, 2002. In its brief, the General Counsel addresses a waiver argument that Respondent did not make. Moreover, the Union certainly did not waive its right to contest the new (as of January or February 2022), expansive and ambiguous definition as to what Section 18.4 means.

union to an employer's bulletin board. However, when an employer permits, as did Respondent, by formal rule or otherwise, employees and a union to post personal and official union notices on its bulletin boards, the employees' and union's right to use the bulletin board receives the protection of the Act to the extent that the employer may not remove notices, or discriminate against an employee who post notices, which meet the employer's rule of standard but which the employer finds distasteful, *Honeywell, Inc.* 262 NLRB 1402 (1982) enfd. 722 F2d. 405 (8th Cir. 1983), *Container Corporation of America*, 244 NLRB 318 fn. 2 (1979).[12] The testimony of Respondent's witnesses, establishes that Respondent only enforces Section 18.4 and its Rule 7 against notices that Respondent regards to be "distasteful." Rose's postings constituted protected union activity in that the Union had a protected right to post such notices given Respondent's blind eye to other non-company postings.[13]

Continental Group, Inc., 357 NLRB 409, 412 (2011)

In *Continental Group, Inc.*, 357 NLRB 409, 412 (2011), the Board expounded on the *Double Eagle* rule (*Double Eagle Hotel and Casino,* 341 NLRB 112, ftn. 3 (2004) enfd. 414 F. 3d 1249 (10th Cir. 2005). In *Double Eagle*, the Board held that where discipline is imposed pursuant to an overbroad rule, that discipline is unlawful regardless of whether the conduct could have been prohibited by a lawful rule. *Continental Group* involves a situation in which the Board would not apply the *Double Eagle* rule.

Continental Group involved facts, completely unlike the instant case. In that case an off-duty employee was sleeping on the employer's premises, a residential condominium. The employer issued the employee, Gonzalez, 2 warnings as a result. Gonzalez refused an offer of employment at another location and resigned. In *Continental Group*, the Board found that the *Double Eagle* rule did not apply because of Gonzalez' conduct.

I find that the rationale of *Continental Group* does not apply at all to the facts of this case. Rose's conduct even if not protected, implicated concerns underlying Section 7 of the Act. None of Rose's activities for which he was disciplined, and terminated (posting grievances, refusing to remove postings and lying about the posting under glass and his access to the keys) interfered with his own work, that of other employees, customers, clients or the public at large. As the General Counsel notes, in its discharge letter, Respondent did not contend that Rose was being discharged for interfering with production.

Respondent is also not entitled to rely on Rose's lying about posting the second notice on February 25, and access to a bulletin board and its keys in justifying his discharge. His false statements occurred during an investigation into Rose's protected activity. Thus, his dishonesty

[12] Respondent's reliance on *Flamingo Hilton-Laughlin,* 330 NLRB 287 (1999) at page 47 of its brief, is misplaced. The Board affirmed the dismissal of the Hilton's rule requiring prior approval before any employee may post a written notice on the hotel's premises. The judge and Board dismissed the relevant complaint allegation because, unlike the instant case, there was no evidence that the Hilton permitted the posting of any nonwork related items or that it refused employees permission to post any notices relating to union or protected concerted activity, *Id.* at 293.

[13] Respondent does not contend that **the conduct for which it disciplined and discharged Rose** was so egregious that he sacrificed the protections of the Act.

cannot create good cause for discipline and/or discharge, *Supershuttle of Orange County, Inc.*, 339 NLRB 1 (2003); *Kidde, Inc.*, 294 NLRB 840 fn. 3 (1989).

Respondent did not discipline or discharge Rose for insubordination or fomenting a work stoppage in December 2021. Neither did it discipline or discharge Rose for trying to undermine Richard Harter's authority or allowing Mario Pruccoli to attend the February 25, 2022, labor relations meeting. To the extent that activities for which he was disciplined and discharged can be characterized as insubordination, they constituted a failure to comply with an illegal rule.

Conclusions of Law

Respondent violated Section 8(a)(3) and (1) in disciplining Matthew Rose on January 12 and March 1, 2022, and discharging him on March 3, 2022.

Respondent violated and appears to be violating Section 8(a)(1) by maintaining its work rules # 19 and 21, in addition to those previously found illegal by the Board.

Respondent violated Section 8(a)(1) in removing the postings Rose put on the glass or under the glass of the union bulletin boards.

Matthew Rose did not violate Section 18.4 of the collective bargaining agreement in posting documents that disagreed with Respondent on the company-provided union bulletin boards.

REMEDY

The Respondent, having discriminatorily discharged an employee, must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth C*o., 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). Respondent shall also compensate Matthew Rose for any reasonable search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.

Respondent shall reimburse the discriminatee in amounts equal to the difference in taxes owed upon receipt of a lump-sum backpay award and taxes that would have been owed had there been no discrimination. Respondent shall also take whatever steps are necessary to ensure that the Social Security Administration credits the discriminatee's backpay to the proper quarters on his Social Security earnings record. To this end, Respondent shall file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

Having found that Respondent has violated Section 8(a)(1) in maintaining unlawful work rules, I shall order Respondent to either rescind or revise these rules.

Respondent shall distribute the revised rules or a statement that they have been rescinded electronically if it customarily communicates with its employees in this manner.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER[15]

Intertape Polymer Corp., Marysville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

   a. Maintaining overly broad work rules
   b. Removing material posted in non-work areas by employees pursuant to these rules that pertain to wages, hours, and other terms and conditions of employment.
   c. Disciplining and terminating employees for violations of overbroad and illegal rules.
   d. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to 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 overbroad language in its work rules 7, 9, 11, 19, 20 and 21.
   b. Within 14 days from the date of the Board's Order, offer Matthew Rose full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
   c. Make Matthew Rose whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision. Compensate Matthew Rose for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.
   d. Compensate Matthew Rose for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or

[14] 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.

Board order, a report allocating the backpay award to the appropriate calendar years

e. Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge and unlawful written warnings and within 3 days thereafter notify Matthew Rose in writing that this has been done and that the discharge and illegal disciplines will not be used against him in any way. 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.

f. Within 14 days after service by the Region, post at its facility in Marysville, Michigan, copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at Marysville, Michigan at any time since January 12, 2022.

g. 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. April 14, 2025

Arthur J. Amchan

Arthur J. Amchan
Administrative Law Judge

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

APPENDIX

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT discharge or otherwise discriminate against any of you for violating a work rule that is illegally overbroad.

WE WILL NOT maintain overly broad work rules that could reasonably be construed to interfere with employees' rights protected by Section 7 of the National Labor Relations Act.

WE WILL NOT remove any material posted by employees in non-work areas of our facility pursuant to any such rules.

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, within 14 days from the date of the Order, offer Matthew Rose full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

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

WE WILL compensate Matthew Rose for the adverse tax consequences, if any, of receiving a lump-sum backpay award and WE WILL file a report with the Regional Director for Region 7 allocating the backpay award to the appropriate calendar quarters.

WE WILL compensate Matthew Rose for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

WE WILL, within 14 days of this Order, remove from our files any reference to the unlawful discharge of Matthew Rose, and the illegal written warnings issued to him. WE WILL, within 3 days thereafter notify Matthew Rose in writing that this has been done and that the discharge and warnings will not be used against him in any way.

WE WILL file with the Regional Director for Region 7, within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of the W-2 form for Matthew Rose reflecting the backpay award.

WE WILL rescind or modify the following of our work rules:

Work rule 7: Distributing literature or printed matter of any kind on Company premises, or the posting or removal of notices, signs or writing of any form anywhere on Company premises unless specifically authorized to do so by the Company.

Work Rule 9: Loitering on Company property.

Work Rule 11: Using company telephones for personal calls without the permission of supervision.

Work rule 19: Bringing cameras or photographic equipment (including cell phones) without the company's authorization.

Work rule 20: Employees will not be allowed on company property or in the plant on shifts other than their shift unless authorized.

Work rule 21: Indirect Insubordination: challenge and abuse of directions given by supervision or management.

Intertape Polymer Corp.
(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.

477 Michigan Avenue, Patrick V. McNamara Federal Building, Room 05-200,
Detroit, MI 48226-2569
(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/07-CA-291784 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, (313) 226-3200.