

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

FUTUREWEI TECHNOLOGIES, INC.

and

Case 19–CA–318158

VINAY KULKARNI, an Individual

Lily Fried and Ryan Connolly, Esqs.,
for the General Counsel.

Anthony Byergo, Esq. (Ogletree Deakins et al.),
for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This hearing was held in Seattle, Washington. The complaint alleged that Futurewei Technologies, Inc. (Futurewei or Respondent) violated the National Labor Relations Act (the Act) by offering severance agreements to its employees containing unlawful confidentiality provisions. On the record, I make the following

FINDINGS OF FACT¹

I. JURISDICTION

Futurewei, a corporation with a facility in Bellevue, Washington, provides information services and annually derives gross revenues exceeding \$250,000. It purchases and receives goods and services exceeding \$50,000 directly from outside of Washington. On this basis, it is an employer engaged in commerce under §2(2), (6), and (7) of the Act.

II. UNFAIR LABOR PRACTICES

A. RECORD EVIDENCE

Vinay Kulkarni was employed by Futurewei in a research and development capacity. On February 1, 2023,² he was advised that the Bellevue facility was closing and would be separated. He received a Separation Agreement, which provided consideration in exchange for, inter alia, his release of any employment-related claims against Futurewei. (JT Exh. 1).

¹ Unless otherwise stated, factual findings arise from joint exhibits, stipulations and undisputed evidence. Most of the relevant facts in this case are undisputed.

² All dates are in 2023, unless otherwise stated.

The General Counsel challenges §11, *Confidentiality*, of the Separation Agreement, which states:

5 Except as permitted in this Agreement, Employee agrees to maintain in complete confidence the existence of this Agreement, the contents and terms of this Agreement, and the consideration for this Agreement (hereinafter collectively referred to as “Separation Information”). Except as required by law, Employee may disclose Separation Information only to his immediate family members, in any
10 proceedings to enforce the terms of this Agreement, Employee’s counsel, and Employee’s accountant and any professional tax advisor to the extent that they need to know the Separation Information in order to provide advice on tax treatment or to prepare tax returns, and must prevent disclosure of any Separation Information to all other third parties. Employee agrees that he will not publicize, directly or
15 indirectly, any Separation Information.

Employee acknowledges and agrees that the confidentiality of the Separation Information is of the essence. The Parties agree that if the Company proves that Employee breached this Confidentiality provision, the Company shall be entitled
20 to an award of its costs spent enforcing this provision, including all reasonable attorneys’ fees associated with the enforcement action, without regard to whether the Company can establish actual damages from Employee’s breach, except to the extent that such breach constitutes a legal action by Employee that directly pertains to the ADEA. Any such individual breach or disclosure shall not excuse Employee
25 from his obligations hereunder, nor permit him to make additional disclosures. Employee warrants that he has not disclosed, orally or in writing, directly or indirectly, any of the Separation Information to any unauthorized party.

Employee acknowledges that he has not made any claims or allegations related to
30 sexual harassment, sexual abuse, sex discrimination or retaliation for complaining of sex discrimination or sex harassment.

(JT Exhs. 5-6). On April 17, Kulkarni signed the Separation Agreement. He received approximately \$91,000 and other benefits as consideration.

B. ANALYSIS

The Separation Agreement is unlawful. The *Confidentiality* provision is overbroad.

1. Precedent

It is unlawful for an employer to interfere with, restrain, or coerce employees in the exercise of their §7 rights. The Board employs a reasonable person standard and gauges whether, under the totality of the circumstances, an employer’s action reasonably tends to restrain, coerce, or interfere
45 with these rights. *Sunnyside Home Care Project*, 308 NLRB 346, 346 n. 1 (1992).

The Board has held that an employer violates the Act, when it conditions acceptance of a severance agreement and consideration upon the forfeiture of an employee’s §7 rights, in the absence of a “narrowly tailored” waiver. *McLaren Macomb*, 372 NLRB No. 58, slip op. at 10 (2023). The Board explained:

It is axiomatic that discussing terms and conditions of employment with coworkers lies at the heart of protected Section 7 activity Section 7 rights are not limited to discussions with coworkers, as they do not depend on the existence of an employment relationship ... and the Board has repeatedly affirmed that such rights extend to former employees Section 7 protections extend to employee efforts to improve terms and conditions of employment ... through channels outside the immediate employee-employer relationship

Inherent in any proffered severance agreement requiring workers not to engage in protected concerted activity is the coercive potential of the overly broad surrender of NLRA rights if they wish to receive the benefits of the agreement. Accordingly, ... an employer violates Section 8(a)(1) ... when it proffers a severance agreement with provisions that would restrict employees’ exercise of their NLRA rights. Such an agreement has a reasonable tendency to restrain, coerce, or interfere with the exercise of Section 7 rights by employees

Id. at 7-8 (citations and footnotes omitted).

The *Confidentiality* provision is unlawful. It broadly requires former employees to waive their rights to discuss the severance package (i.e., wages, hours and other terms and conditions of employment) in exchange for financial consideration. The waiver is unlimited in scope and lacks any effort to “narrowly tailor” its breadth to preserve ongoing protected discussions about the Severance Agreement’s terms with former workers, which was expressly barred under *McLaren Macomb*.

CONCLUSIONS OF LAW

1. Futurewei is an employer engaged in commerce under §2(2), (6), and (7) of the Act.

2. It violated §8(a)(1) by providing Separation Agreements to employees that contained *Confidentiality* provisions that conditioned acceptance and consideration upon their unrestricted forfeiture of their §7 rights.

3. This unfair labor practice affects commerce within the meaning of §2(6) and (7) of the Act.

REMEDY

The appropriate remedy for the violation found herein is an Order requiring Futurewei to cease and desist, from its unlawful conduct and to take certain affirmative action. Having found that it issued and maintained Separation Agreements with confidentiality language that would

reasonably chill employees in the exercise of their §7 rights, it is ordered to cease and desist therefrom, rescind the overly broad language in the *Confidentiality* provision, and notify employees subject to the Separation Agreements in writing that this provision will not be enforced. It shall also post the attached notice under *J. Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended³

ORDER

A. Futurewei Technologies, Inc., Bellevue, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Providing Separation Agreements to employees containing unlawfully overbroad *Confidentiality* provisions.

b. In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by §7 of the Act.

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

a. Within 14 days of the Board’s Order, rescind the unlawfully overbroad *Confidentiality* provisions in the Separation Agreement and notify, in writing, those former employees who signed the Separation Agreements that this has been done and such language will not be enforced or implemented.

b. Within 14 days after service by the Region, post at its Bellevue, Washington facility the attached notice marked “Appendix.”⁴ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by Futurewei’s authorized representative, shall be posted and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the 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 February 1, 2023.

³ If no exceptions are filed as provided by §102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴ 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.”

c. Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

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Dated Washington, D.C. September 18, 2025



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Robert A. Ringler
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 provide Separation Agreements to our employees that contain unlawfully overbroad confidentiality provisions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the unlawfully overbroad confidentiality sections in the Separation Agreements provided to our employees, and notify, in writing, the former employees who entered into the Separation Agreements that we have taken this action, that those provisions are null and void, and that the invalid confidentiality language will not be enforced.

FUTUREWEI TECHNOLOGIES, INC.
(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.

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 <https://www.nlr.gov/case/19-CA-318158> 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 (206) 220-6284.