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

HOFFMANN BROTHERS HEATING AND AIR CONDITIONING, INC. D/B/A HOFFMANN BROTHERS

and **Case 14-CA-344872**

INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL, AND TRANSPORTATION WORKERS, LOCAL UNION NO. 36

Joseph Page and Raymond Meyers IV, Esqs.,
for the General Counsel.
Burton Garland, Jr. and Alex Hunstein, Esqs.,
for the Respondent.
Christopher Grant, *Esq.*
for the Union.

DECISION

INTRODUCTION[1]

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. This hearing was held on September 23, 2025, in St. Louis, Missouri, over allegations that Hoffmann Brothers Heating and Air Conditioning, Inc. d/b/a Hoffmann Brothers ("the Respondent") violated Section 8(a)(1) of the National Labor Relations Act ("the Act") by maintaining two provisions and a policy that prohibit employees from disclosing or using "confidential information" without the Respondent's prior consent. By definition or description, confidential information includes, among others, wage and benefit information, employee lists, and employee telephone numbers. The General Counsel argues that the provisions and policy at issue either explicitly restrict or would reasonably be interpreted to restrict employees from exercising their rights guaranteed by Section 7 of the Act. The Respondent defends that the provisions and policy are necessary to serve legitimate and substantial business interests, and those interests cannot be advanced with more narrowly tailored language. For the reasons stated below, I recommend finding the Respondent committed the violations, as alleged.

FINDINGS OF FACT

A. Jurisdiction

The Respondent is a corporation engaged in the service and repair of heating, ventilation and air conditioning ("HVAC"), plumbing, appliance, and electrical systems in residential and commercial units. It has a facility in Brentwood, Missouri. During the 12-month period ending April 30, 2025,

[1] Abbreviations in this decision are as follows: Transcript citations are "Tr. ___"; Joint Exhibits are "Jt. Exh. ____"; General Counsel Exhibits are "GC Exh. __"; and Respondent's Exhibits are "R Exh. ___." Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions not limited to those cited items and are based on the entire record.

the Respondent purchased and received goods at its Brentwood facility valued in excess of $50,000 directly from points outside the State of Missouri. 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. I further find this dispute affects commerce and the National Labor Relations Board ("the Board") has jurisdiction pursuant to Section 10(a) of the Act.

B. Alleged Unfair Labor Practices

1. *Background*

The Respondent provides its employees with access to proprietary and non-public information about its business and its customers. To safeguard that information, the Respondent requires all employees to review and sign certain documents upon hire. Among the documents are the Employee Non-Compete/Confidentiality Agreement and the Employee Handbook. (Jt. Exh. 7). These documents each contain language addressing confidentiality.

2. *The Employee Non-Compete/Confidentiality Agreement*

Prior to June 19, 2025, the Employee Non-Compete/Confidentiality Agreement ("the Original Agreement") read, in relevant part, as follows:

> 1. Fair Competition
>
> A. Confidentiality I acknowledge that during my period of engagement by Hoffmann Brothers, Hoffmann Brothers will furnish me with confidential information which I agree is protected information.
>
> Confidential information shall mean any communication disclosed to me or known by me through my employment with [the Respondent]. This includes information not generally known and available in the industries [the Respondent] operates within. Information which is [the Respondent]'s proprietary and non-public method(s) of doing business, including but not limited to, any information related to computer software, trade secrets, know-how, customer lists, employee lists, training and operating manuals, identity of vendors, prices charged to customers, vendor pricing, pricing calculations, financial performance results, compensation and benefit information, etc. I agree both during, whether under this agreement or otherwise, and for a three-year period after my employment ceases, not to disclose to others or to personally use, except with [the Respondent's] specific prior written consent, or in the performance of my duties hereunder, any confidential information.
>
> B. Non-Solicitation I agree, both during the term of my employment with [the Respondent], and for the period of two years from the termination of my employment, for whatever reason, I will not directly or indirectly, either on my account or in the service of or for any other persons, entities, or organizations other than [the Respondent]:
>
> 1) Solicit, direct away or accept any business from any customer or account of [the Respondent] or
>
> 2) Solicit for employment, induce to leave employment or employ any employee of [the Respondent]

> C. Relief I further agree that any violation by me will cause such damage to [the Respondent] as will be irreparable and the exact amount of which will be impossible to ascertain and for that reason further agree that [the Respondent] shall be entitled, as a matter of right, to an injunction out of any court of competent jurisdiction, restraining any further violation of the covenant by me and/or persons with whom I am associated, either directly or indirectly, such right to an injunction, however, to be cumulative and in addition to whatever remedies [the Respondent] may have under applicable law and/or this agreement…. I agree that in the event [the Respondent] is forced to enforce this agreement due to my breach and [the Respondent] prevails in a judicial action or receives a sum of money that I will pay all costs, expenses and fees, including attorney fees incurred by [the Respondent] in connection with my breach of this agreement.
>
> D. Purpose It is my intent to restrain my actions only to the extent necessary for the protection of the legitimate business interests of [the Respondent]. I specifically covenant and agree that should any of the provisions set forth in this paragraph, under any set of circumstances, be deemed too broad for that purpose, said provision shall nonetheless be valid and enforceable to the extent provided by law and necessary for such protection. I further acknowledge and agree that my performance under this agreement is not restricted by any other agreement to which I am subject.
>
> …

(Jt. Exh. 1).

3. *The Employee Handbook*

The Employee Handbook contains the Confidential Information policy ("the Policy"), which reads as follows:

> Purpose
>
> Maintaining confidential information is vital to [the Respondent's] competitive position and necessary in order to achieve success and stability. Team members must maintain strict confidentiality in all matters pertaining to customers, customers' families, and business-related information.
>
> Policy
>
> Team members may not disclose confidential information or trade secrets to anyone outside the Company without appropriate authorization. Confidential information may include internal reports, financials, customer lists, team member contact information, methods of production or process, or other internal business-related communications… Confidential information may only be disclosed or discussed with those who need the information. Conversations of a confidential nature should not be held within earshot of the public or customers.
>
> Team members shall not discuss or in any other manner communicate information of any kind learned while on duty with any person except in the performance of duty and will limit their discussion of information to internal reports of the organization as provided by procedures, and to necessary communications with other team members in the performance of duty.

> Any team member, customer, or vendor telephone numbers made available to the team member for use in the performance of duty will not be divulged to anyone except those persons who by their position are authorized to receive such information.
>
> This duty of confidentiality applies whether the team member is on or off the company's premises, and during and even after the end of the team member's employment with [the Respondent]. This duty of confidentiality also applies to communications transmitted by [the Respondent]'s electronic communications.
>
> When any inquiry is made regarding a team member, a former team member, client, or customer, the inquiry should be forwarded to a manager or Human Resources without comment from the team member. This policy is intended to always impress upon team members the need for discretion and is not intended to inhibit normal business communications. In addition, nothing in this policy is intended to infringe upon team member rights.

(Jt. Exh. 5).

4. *Conduct By Steven Brunk*

Steven Brunk worked for the Respondent as an HVAC installer from October 2021 to July 2022, when he resigned. (Tr. 36-38). As part of his on-boarding process, Brunk signed the Original Agreement. Following his resignation, Brunk went to work for the International Association of Sheet Metal, Air, Rail, and Transportation Workers, Local Union No. 36 ("the Union"). In April and May 2024, Brunk contacted the Respondent's employees about working for a Union contractor. (R Exhs. 3 and 4). His efforts were later reported to management.

On June 3, 2024, the Respondent's attorney, Kristen Maly, sent Brunk a cease-and-desist letter. (Jt. Exh. 3). The letter reminded Brunk that he remained bound to the terms of the Original Agreement he signed in October 2021, and it went on to quote both the Confidentiality and Non-Solicitation provisions, highlighting (in bold) language in each. Maly stated it has come to the Respondent's attention that Brunk was contacting the Respondent's employees in what was believed to be an attempt to solicit them in disregard of his obligations under the Non-Solicitation provision. She stated that if this was true, the Respondent was requesting that he cease such conduct and abide by the terms of his contractual obligations. She added that if a breach occurs, the Respondent would seek any and all damages available under the law, including the recovery of all its costs and fees in enforcing the Original Agreement. (Jt. Exh. 3).

Brunk responded to Maly that he had no intention of violating the terms of any agreement he signed. Following these exchanges, Brunk had no further contact with his former coworkers, and the Respondent took no action to enforce the terms of the Original Agreement against him. (Tr. 66-67).

5. *Charges and Complaint*

On June 21, 2024, the Union filed the charge in this case. On February 27, 2025, the Union amended that charge. The charge, as amended, alleges that within the previous six months, the Respondent interfered with, restrained, and coerced employees in the exercise of their Section 7 rights by maintaining the Confidentiality provision in the Original Agreement. On May 30, 2025, the Acting Regional Director for Region 14, on behalf of the General Counsel, issued a complaint alleging that maintenance of the Confidentiality provision in the Original Agreement violated Section 8(a)(1). On

June 13, 2025, the Respondent filed its answer. On July 1, 2025, the Respondent amended its answer. The answers deny the alleged violations and raise several affirmative defenses.

6. *Revised Employee Non-Compete/Confidentiality Agreement*

On about June 19, 2025, the Respondent revised the Original Agreement, modifying the Confidentiality provision ("the Revised Agreement").[2] The modified Confidentiality provision in the Revised Agreement reads:

> A. Confidentiality. To the greatest extent permitted by law, Confidential Information shall mean any communication disclosed to me or known by me through my employment with [the Respondent]. This includes information not generally known and available in the industries within which [the Respondent] operates. [The Respondent's] Confidential Information includes its proprietary and non-public method(s) of doing business, information related to computer software, trade secrets, know-how, customer lists, employee lists, training and operating manuals, identity of vendors, prices charged to customers, vendor pricing, pricing calculations, financial performance results, compensation and benefit information, etc. I agree both during and after my employment with [the Respondent] ends, whether under this agreement or otherwise, and for so long as the Confidential Information remains confidential (meaning not generally known to the public), I will not to disclose to others or to personally use, except with [the Respondent's] specific prior written consent, or in the performance of my duties hereunder, any Confidential Information. I understand this Agreement does not prevent me from discussing my terms and conditions of employment with my coworkers. By agreeing to this Agreement, I do not waive the right to use Confidential Information in pursuit of an administrative complaint with the National Labor Relations Board or the Equal Employment Opportunity Commission, or any other governmental administrative agency or law enforcement entity. For the avoidance of doubt, the Agreement prohibits me from using [the Respondent's] Confidential Information on behalf of a competitor or any other business entity or person to the detriment of [the Respondent].

(Jt. Exh. 2).

On July 11, 2025, the Respondent's Director of People Operations Brenden Whitt emailed a copy of the Revised Agreement to all current employees with instructions to review and sign it. Whitt's email explained, "As part of our annual review process, we've made a clarifying update to the [Agreement], specifically within the Confidentiality section (1.A). This change was reviewed by our legal team to ensure we remain compliant and uphold best practices as part of our regular due diligence on an annual basis." (Jt. Exh. 6). The Respondent did not provide the employees with any other information regarding the purpose or scope of the Revised Agreement.[3]

[2] There were no changes made to the Non-Solicitation provision.

[3] For the employees who left their employment with the Respondent in the three years before June 19, 2025, the Original Agreement remains in effect. The Respondent, in its post-hearing brief, does not dispute this. It acknowledges that it "maintained and continues to maintain an 'Employee Non-Compete/Confidentiality Agreement' in two iterations … to address its legitimate and substantial business needs." (R. Br. 2). It, therefore, is unnecessary for me to address the Union's argument that the Respondent failed to effectively repudiate the original Confidentiality provision under *Passavant Memorial Area Hospital*, 237 NLRB 138, 138-139 (1978).

7. *Amendments to the Complaint*

On September 15, 2025, the Regional Director for Region 14 issued an amendment to the complaint. It added the allegation that since June 19, 2025, the Respondent has violated Section 8(a)(1) by issuing and maintaining the modified Confidentiality provision in its Revised Agreement. The Respondent did not file a written answer to this amendment. On September 23, 2025, prior to the start of the hearing, the Regional Director issued a second amendment to the complaint. It added the allegation that since a date unknown to the General Counsel (later stipulated to be December 21, 2023), the Respondent has also violated Section 8(a)(1) by maintaining the Policy in its Employee Handbook. At the start of the hearing, the Respondent orally denied the allegations in both amendments. (Tr. 8).

LEGAL ANALYSIS

A. Allegations and Applicable Framework

The General Counsel's complaint, as amended, alleges the Respondent has been violating Section 8(a)(1) of the Act by: (1) maintaining the Confidentiality provision in the Original Agreement; (2) maintaining the Confidential Information policy in the Employee Handbook; and (3) issuing and maintaining the modified Confidentiality provision in the Revised Agreement.[4]

Section 8(a)(1) of the Act makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act, which includes the right to self-organization, to form, join or assist labor unions, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as well as the right to refrain from these activities with certain limitations.

Section 7 of the Act affords employees the right to raise issues over their wages, hours, and other terms and conditions of employment, or otherwise improve their lot as employees, through channels both inside and outside their immediate employee-employer relationship. See *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978). Consistent with *Eastex*, the Board has held that employees' concerted communications regarding matters affecting their employment with a labor union, governmental entities, the employer's customers, the media, or the public at large are protected by Section 7 and, with certain limited exceptions, cannot be banned. See *North Mountain Foothills Apartments, LLC*, 373 NLRB No. 26, slip op. at 8 (2024), enfd. 157 F.4th 1089 (9th Cir. 2025); *Victory Casino Cruises II*, 363 NLRB 1578, 1580 (2016). The Board has consistently held that rules restricting employees from disclosing or discussing information on these topics, particularly about wages, violate the Act.[5] See e.g., *Heritage Lakeside*, 369 NLRB No. 54 (2020); *Double Eagle Hotel & Casino*, 341

[4] Although the complaint alleges the Respondent violated the Act by issuing *and* maintaining the modified Confidentiality provision, the General Counsel does not raise any arguments for how the issuance of the provision constituted an unfair labor practice. As such, I will only address the maintenance allegation.

[5] For the activity to be protected under Sec. 7 of the Act, it must be both "concerted" and "for mutual aid or protection." See *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB 151, 152–153 (2014). "Concerted" activity "encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management." See *Meyers Industries*, 268 NLRB 493, 497 (1984), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), supplemented *Meyers Industries*, 281 NLRB 882, 887

NLRB 112, 115 (2004); *Kinder-Care Learning Centers, Inc*., 299 NLRB 1171, 1172 (1990); and *Waco, Inc*., 273 NLRB 746, 748 (1984).

Section 7 also affords employees the right to use for organizational purposes information and knowledge that comes to their attention in the normal course of their work activity, but they are not entitled to use their employer's private or confidential records. See *Ridgeley Mfg. Co*., 207 NLRB 193, 196-197 (1973), enfd. 510 F.2d 185 (D.C. Cir. 1975). See also *Rocky Mountain Eye Center, P.C*., 363 NLRB 325 fn. 1 (2015); *Gray Flooring*, 212 NLRB 668 (1974). This includes sharing employee information, including lists, rosters, work schedules, telephone numbers, home addresses, and email addresses, with a labor union. The Board has held that rules restricting this conduct violate the Act. See e.g., *Quicken Loans, Inc*., 361 NLRB 904 (2014), affirming 359 NLRB 1201 (2013); *Albertsons, Inc*., 351 NLRB 254, 259 (2007).

In determining whether a provision violates Section 8(a)(1), the Board examines whether it would reasonably tend to chill employees in the exercise of their Section 7 rights. See *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). If it explicitly restricts Section 7 activity, it violates the Act. See *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646 (2004). If it does not explicitly restrict Section 7 activity (i.e., is facially neutral), it nonetheless will violate the Act if: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) it was promulgated in response to protected activity; and/or (3) it has been applied to restrict the exercise of Section 7 rights. Id. at 647. The maintenance of an unlawful provision violates the Act even absent evidence of enforcement. See *Lafayette Park Hotel*, supra at 825. See also *New Passages Behavioral Health*, 362 NLRB 435, 435 (2015); *J.C. Penney Co*., 266 NLRB 1223, 1224-1225 (1983).

In *Stericycle Inc*., 372 NLRB No. 113 (2023), the Board established the current two-part standard for determining whether a facially neutral provision violates Section 8(a)(1).[6] Under this

(1986), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). "Mutual aid or protection," in turn, "focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to 'improve terms and conditions of employment or otherwise improve their lot as employees.'" *Fresh & Easy*, supra, 361 NLRB at 153.

The right of employees to discuss their wages with each other is a core substantive right protected by the Act. See, e.g., *Triana Industries, Inc*., 245 NLRB 1258, 1258 (1979). Discussions about wages are deemed "inherently concerted" activity, and as such are considered protected, regardless of whether they are engaged in with the express object of inducing group action. See *Automatic Screw Products Co*., 306 NLRB 1072, 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992) and *Alternative Energy Applications, Inc*., 361 NLRB 1203, 1203 (2014). The rationale is that wages are a "vital term and condition of employment," the "grist on which concerted activity feeds," and such discussions are often preliminary to organizing or other action for mutual aid or protection. *Aroostook County Regional Ophthalmology Ctr*., 317 NLRB 218, 220 (1995), enf. denied in part on other grounds 81 F.3d 209, 214, 317 U.S. App. D.C. 114 (D.C. Cir. 1996).

[6] The Board has vacillated over the appropriate standard for evaluating facially neutral provisions. In *Boeing Co*., 365 NLRB 1494 (2017), the Board overruled *Lutheran Heritage*'s "reasonably construe" standard and replaced it with a balancing test. Under *Boeing*, and as later clarified *in LA Specialty Produce Co*., 368 NLRB No. 93 (2019), the Board first determined whether a challenged provision, reasonably interpreted, would potentially interfere with employees' exercise of their Sec. 7 rights. If not, the rule or policy was lawful. If so, the Board would then balance "the nature and extent of the potential impact on NLRA rights" against "legitimate justifications associated with the rule," viewing the rule or policy from the employees' perspective. Id., slip op. at 3. The Board's effort to "strike the proper balance" resulted in the creation of three categories. Id., slip op. at 3-4. Category 1 were provisions that the Board designated as lawful to maintain, either because (a) the provision,

standard, the General Counsel has the initial burden of proving the challenged provision has a reasonable tendency to chill employees from exercising their Section 7 rights. Id. slip op. at 2. In making this determination, the Board applies an objective standard. It will interpret the provision from the perspective of an employee who is subject to it and economically dependent on the employer, and who contemplates engaging in protected concerted activity. Consistent with this perspective, the employer's intent in maintaining the rule is immaterial. Rather, if an employee could reasonably interpret the provision to have a coercive meaning, the General Counsel will carry their burden of demonstrating the provision is presumptively unlawful, even if a contrary, noncoercive interpretation is also reasonable. Id. at slip op. 9-10.

Once the General Counsel has met their burden, the employer may rebut the presumption that the provision is unlawful by proving that it advances a legitimate and substantial business interest, and that the employer is unable to advance that interest with a more narrowly tailored provision. Id. at slip op. 17. In evaluating the provision, the Board returns to a "case-specific approach" that looks to the wording of the rule, the industry and workplace context in which it is maintained, the employer interests it may advance, and the statutory rights it may infringe. Id. slip op. at 20. In determining if the provision is narrowly tailored, the Board will evaluate any explanations or illustrations contained therein regarding how the provision does not apply to Section 7 activity. Id. slip. op. at 22 fn. 26.

B. Position of the Parties

The General Counsel argues the Confidentiality provisions and the Policy violate Section 8(a)(1) because they each broadly define "confidential information" in a manner that restricts or would reasonably be interpreted to restrict the disclosure or use of such information in the furtherance of Section 7 activity. And, to the extent the provisions and the Policy serve legitimate and substantial business interests, the Respondent has failed to establish that it is unable to advance those interests with more narrowly tailored restrictions.

The Respondent counters that the Confidentiality provisions and the Policy are lawfully maintained to address legitimate and substantial business interests. It contends the provisions seek to protect the company's proprietary and confidential information from disclosure to or use by its

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when reasonably interpreted, did not prohibit or interfere with the exercise of statutory rights; or (b) the potential adverse impact on protected rights is outweighed by justifications associated with the provision. Category 2 were provisions that warranted individualized scrutiny as to whether they, when reasonably interpreted, would prohibit or interfere with the exercise of statutory rights, and if so, whether any adverse impact on the statutorily protected conduct is outweighed by legitimate justifications. Category 3 were provisions that the Board designated as unlawful to maintain because they would prohibit or limit protected conduct, and the adverse impact on rights under the Act were not outweighed by justifications associated with the provision. The Board held that provision prohibiting employees from discussing wages with one another to fall within Category 3. The Board, in applying Boeing, held that provisions prohibiting employees from disclosing employee names and contact information fall within in Category 2. See *Interstate Management*, 369 NLRB No. 84 (2020) (Board upheld employer policy restricting disclosure of employee names, telephone numbers and other contact information because it was limited to information given to the employer in confidence and stored in its internal records and databases containing sensitive information).

In *Stericycle*, the Board overruled *Boeing, LA Specialty,* and their progeny and adopted a modified version that "builds on and revises" the standard set forth in *Lutheran Heritage*. The Respondent argues the Board should overrule *Stericycle* and return to the standard set forth in *Boeing*. As an administrative law judge, I am bound to follow Board precedent that has not been overruled by the U.S. Supreme Court. The authority to alter existing law rests solely with the Board. See *Western Cab Co*., 365 NLRB 78, fn. 4 (2017).

competitors, and the Policy seeks to protect against the disclosure of customer information. The Respondent further argues each is appropriately tailored to advance their specific interest, and the most recent iterations contain language affirming that nothing contained therein detracts from employees' Section 7 rights.

C. Lawfulness of Provisions

1. *Confidentiality Provision in the Original Agreement*

As discussed, the Confidentiality provision prohibits employees from disclosing to others or personally using "confidential information" outside the performance of their job duties, without the Respondent's specific prior written consent. "Confidential information" is defined as "any communication" disclosed to or known by the employee through their employment with the Respondent, including "information not generally known and available in the industries within which [the Respondent] operates." By using the word "any," the definition broadly encompasses all information communicated to or learned by the employee through their employment, including about their wages, benefits, and other terms and conditions of employment, as well as information about their coworkers, including their names and contact information, because that information is not generally known and available in the industry. Thus, a reasonable employee would interpret this provision as broadly prohibiting them from disclosing/using this information as part of protected concerted or union organizing activity.

Any doubt over whether the provision prohibits such activity is resolved in the next sentence, which lists "compensation and benefit information" and "employee lists" among the categories of "proprietary and non-public methods of doing business" that employees are prohibited from disclosing or using outside the performance of their job duties, without the Respondent's prior written consent. A provision that explicitly restricts employees from engaging in Section 7 activity is unlawful, regardless of which of its standards the Board applies. See *Stericycle*, supra slip op. at 2-3; *Boeing Co.*, supra at 1497; *Lutheran Heritage Village-Livonia*, supra at 346; *Double Eagle Hotel & Casino*, supra at 116; *Waco, Inc.*, supra at 748. The same is true regarding a provision that requires employees to secure their employer's permission before engaging in Section 7 activity during non-work time and in non-work areas. See *Brunswick Corp.*, 282 NLRB 794, 795 (1987). See also *Cardinal Home Products*, 338 NLRB 1004, 1005-1006 (2003); *Teletech Holdings, Inc.*, 333 NLRB 402, 403-404 (2001); and *Chromalloy Gas Turbine Corp.*, 331 NLRB 858, 858-859 (2000), enfd. 262 F.3d 184 (2nd Cir. 2001).

Even if the Confidentiality provision was not explicit in its restrictions (i.e., the references to "compensation and benefit information" and "employee lists" were removed),[7] employees contemplating protected activity would still reasonably interpret the definition of "confidential information," and the restriction that it not be disclosed "to others" or personally used, as barring certain Section 7 activity. As such, I conclude the General Counsel has established the Confidentiality provision is presumptively unlawful.

The burden then shifts to the Respondent to rebut this presumption. The Respondent asserts the Confidentiality provision advances a legitimate and substantial business interest, which is to protect

[7] The Respondent submits in its post-hearing brief that if the inclusion of "compensation and benefit information" is found to be problematic, that phrase could be removed from the Original and Revised Agreements without invalidating the entirety of those documents. (R Br. 14 fn. 5). For the reasons stated above, I find the removal of this phrase, without further revisions, would not cure the unlawfulness of the provisions.

against the unfair competition that would result from the disclosure of proprietary and confidential information. It notes that employees have access to vast amounts of this information, including pricing models, training materials, service plans, and customer information, and it would be devastating for business if that information was disclosed to the company's competitors. The Respondent further asserts the provision is appropriately tailored to safeguard against that occurring, and the provision's narrow scope is established when read in context with the remainder of the Agreement. First, the Confidentiality provision is under the Fair Competition heading, which the Respondent contends signifies that it should be interpreted to achieve that aim. Second, the Confidentiality provision is followed by the Non-Solicitation provision, and the two should be read together as jointly part of a non-compete agreement to protect against unfair competition, whether that competition is the result of disclosing confidential information or from soliciting away customers or employees. Finally, the narrowness of the provision is confirmed by Section 1(D), which states, "It is my intent to restrain my actions only to the extent necessary for the protection of the legitimate business interests of [the Respondent.]"[8] According to the Respondent, the combination and context of these provisions establish the restriction at issue is both necessary and narrowly tailored to protect its confidential and proprietary information from being disclosed to or used by its competitors.

I conclude that while the Respondent has articulated a substantial and legitimate business interest, it has failed to establish that it is unable to advance that interest with a more narrowly tailored, less restrictive provision. As stated, rather than limiting the restriction to proprietary and confidential information related to the operation of its business, the provision broadly encompasses all communication disclosed to or known by the employee that is not generally known and available in the industry. And rather than limiting the restriction to competitors, the provision broadly applies to the disclosure or use of that information "to others." Significantly, there is no limitation on the wide-ranging restriction against employees disclosing or using "compensation and benefit information" or "employee lists."

As for the Respondent's arguments, there is no explanation about what the Fair Competition heading means, or how the Confidentiality provision should be narrowly interpreted to serve that undefined interest. The Confidentiality and the Non-Solicitation provisions may be in the same non-compete agreement, but they do not otherwise overlap or clarify one another. On the contrary, they contain separate obligations, and those obligations remain in effect for differing periods of time, which undercuts the Respondent's argument they should be read in tandem. Finally, Section 1(D) does not identify or define what the Respondent's legitimate business interests are, or how they affect the limits on employees' disclosure or use of "confidential information."

For these reasons, I conclude the Respondent's maintenance of the Confidentiality provision in the Original Agreement restricts or would reasonably be interpreted to restrict employees from engaging in protected concerted and/or union organizing activities, and the Respondent has failed to establish it could not more narrowly tailor the provision to advance its stated interest in protecting its proprietary and confidential information from disclosure or use by its competitors. I, therefore, recommend finding the provision violates Section 8(a)(1).

[8] There was testimony from employees and former employees about how they interpret(ed) the language at issue. I allowed the testimony to permit the parties an opportunity to present their cases, but I give it no weight because, as stated, the Board applies an objective standard, making their subjective interpretations and views about the provisions immaterial.

2. *Modified Confidentiality Provision in the Revised Agreement*

The Respondent contends the modifications to the Confidentiality provision in the Revised Agreement clarify that nothing contained therein detracts from employees' Section 7 rights. The General Counsel counters that even with the modifications, the provision continues to violate Section 8(a)(1).

The first three sentences of the provision remain largely unchanged. The one change is the addition of "[t]o the greatest extent permitted by law" to the beginning of the first sentence. The provision then sets forth the same overbroad definitions of "confidential information" discussed above, and it maintains the unlawful provisions specifying that "compensation and benefit information" and "employee lists" are among the categories of "proprietary and non-public methods of doing business" that employees are prohibited from disclosing or using, without the Respondent's specific prior written consent. The provision concludes with the following language:

> I understand this Agreement does not prevent me from discussing my terms and conditions of employment with my coworkers. By agreeing to this Agreement, I do not waive the right to use Confidential Information in pursuit of an administrative complaint with the National Labor Relations Board or the Equal Employment Opportunity Commission, or any other governmental administrative agency or law enforcement entity. For the avoidance of doubt, the Agreement prohibits me from using [the Respondent's] Confidential Information on behalf of a competitor or any other business entity or person to the detriment of [the Respondent].

The question is whether the added language cures the provision. In *First Transit, Inc*., 360 NLRB 619, 621–622 (2014), the Board held that a savings clause may, in certain circumstances, clarify the scope of an otherwise ambiguous and unlawful restriction. In deciding whether a clause adequately clarifies the restriction, the Board considers whether the language "address[es] the broad panoply of rights" protected by Section 7; the length of the document and the placement of the savings clause in relation to the provisions that it is claimed to remedy; whether the savings clause and the provisions reference each other; and whether the employer has enforced the overbroad provision in a way that shows employees that the savings clause does not safeguard their Section 7 rights. Id. at 621–622. See also *Care One at Madison Avenue*, 361 NLRB 1462, 1465 fn. 8 (2014), enfd. 832 F.3d 351 (D.C. Cir. 2016). In deciding whether a savings clause renders an otherwise overly broad restriction lawful, the Board construes any ambiguity against the employer as the drafter. *Stericycle*, supra; *Century Fast Foods, Inc.,* 363 NLRB 891, 901 (2016). Additionally, the Board has found general savings clauses insufficient to ameliorate the chilling effect when specific language is used to preclude protected behavior. Aee *Allied Mechanical*, 349 NLRB 1077, 1084 (2007). An employer may not specifically prohibit employee activity protected by the Act and then seek to escape the consequences of the specific prohibition by a general reference to rights protected by law. See *Ingram Book Co*., 315 NLRB 515, 516 (1994); *McDonnell Douglas Corp*., 240 NLRB 794, 802 (1979); *Trailmobile*, 221 NLRB 1088, 1089 (1975).

The Respondent made three additions to the modified Confidentiality provision. First, there is the addition of the clause "[t]o the greatest extent permitted by law" at the beginning of the provision. The General Counsel argues, and I agree, this language fails to adequately clarify matters because an average employee does not know what disclosures and conduct are "permitted by law." In interpreting rules from the perspective of a reasonable employee, the Board in *Stericycle* held that a typical employee interprets work rules or other provisions as a layperson rather than as a lawyer. The Board

has held that "[r]ank-and-file employees do not generally carry lawbooks to work or apply legal analysis to company rules as do lawyers, and cannot be expected to have the expertise to examine company rules from a legal standpoint." *Ingram Book Co*., 315 NLRB at 516 n. 2. For this reason, the Board evaluates language from the position of non-lawyers, rejecting wordsmithing efforts---no matter how carefully crafted---to salvage restrictions on protected conduct with language that assumes knowledge of the law. Id. The Board has held similar language to be inadequate to save an otherwise unlawful provision. See, e.g., *Ford Motor Co*., 315 NLRB 609, 610 (1994) (exception for solicitation and distribution that are "legally protected" found insufficient to validate employer's rule); *Ingram Book*, supra (facially overbroad distribution rule not saved by disclaimer that "[t]o the extent any policy may conflict with state or federal law, the Company will abide by the applicable state or federal law"); *Westinghouse Electric Corp*., 240 NLRB 905, 916-917 (1979) (rule prohibiting solicitation and distribution found unlawful, notwithstanding the clause "except where permitted by law"), enfd. in relevant part 612 F.2d 1072 (8th Cir. 1979); *McDonnell Douglas Corp*., supra (facially overbroad no-distribution rule unlawful despite an exception for distribution "protected by Section 7 of the National Labor Relations Act" because employees would need to know what distribution Section 7 protects to understand what the exception allows).

Second, there are the first two sentences added at the end of the provision. This language clarifies that certain activity is protected, but it does not address the broad panoply of rights protected by Section 7. For example, it states that employees are permitted to discuss their own "terms and conditions of employment" with their coworkers, but it is unclear whether that includes information about their wages and benefits. The continued reference to "compensation and benefit information" in the next sentence as information that must not be disclosed without permission creates ambiguity over whether that is the type of information that can be disclosed between employees. A rank-and-file employee is not equipped to parse this language and fairly determine what information qualifies as part of their terms and conditions of employment. Also, while the modifications state employees are permitted to use confidential information to pursue an administrative complaint, they do not address whether employees are permitted to use such information for other statutorily protected purposes. It does not clarify or address whether employees are permitted to disclose such information to third parties, such as a labor union, customers, or the public, as part of protected concerted or organizing activities. Additionally, the continued reference to "employee lists" indicates---or at least creates ambiguity over whether---that is information that may (not) be disclosed to outside entities, such as a labor union, for representational purposes.

Finally, there is the last sentence added, which broadly restricts the use of confidential information "on behalf of a competitor or any other business or person to the detriment of [the Respondent.]" The Respondent's stated purpose for the provision is to protect against the disclosure of proprietary and confidential information to its competitors, but the provision also applies "to any other business or person." The use of the phrase "to the detriment of [the Respondent]" does not clarify matters because it is undefined. This provision would reasonably be interpreted as barring employees from various protected activities, including soliciting support from third parties, such as customers or the public, regarding a labor dispute by disclosing information about their wages, benefits, or terms and conditions of employment (e.g., handbilling or area-standards picketing). It also would reasonably be interpreted to prohibit employees from disclosing information on these topics to a labor union as

part of an organizing effort, because they would fairly believe their employer would consider disclosures aimed at achieving an organized workforce to be detrimental to its business. [9]

For these reasons, I conclude that even with the modifications, the Confidentiality provision in the Revised Agreement would reasonably tend to chill employees from engaging in certain Section 7 activities, and the Respondent has failed to establish it could not more narrowly tailor the provision to advance its stated interest in protecting its proprietary and confidential information from disclosure or use by its competitors. I, therefore, recommend finding the modified provision violates Section 8(a)(1).

3. *Confidential Information Policy in Employee Handbook*

The Policy states employees (or "team members") "must maintain strict confidentiality in all matters pertaining to customers, customers' families, and business-related information." It prohibits employees from disclosing confidential information "to anyone outside the Company without appropriate authorization." Confidential information "may include internal reports, financials, customer lists, team member contact information, methods of production or process, or other internal business-related communications." Employees are prohibited from discussing or in any other manner communicating "information of any kind learned while on duty" with "any person except in the performance of [their] duty …" The policy specifically states that "[a]ny team member, customer or vendor telephone numbers made available for use in the performance of duty will not be divulged to anyone except those persons who by their position are authorized to receive such information." This duty of confidentiality "applies whether the team member is on or off the company's premises, and during and even after the end of the team member's employment with [the Respondent.]" It concludes by stating, "This policy is intended to always impress upon team members the need for discretion and is not intended to inhibit normal business communications. In addition, nothing in this policy is intended to infringe upon team member rights."

The General Counsel contends that several sentences in the Policy are unlawful under *Stericycle*.[10] First, they argue the requirement that employees maintain "strict confidentiality in all matters pertaining to … business-related information" is overbroad because the term "business-related information" is undefined and reasonably would be interpreted to include information regarding employees' wages, benefits, and terms and conditions of employment. Next, they argue the language prohibiting the disclosure of "confidential information" to "anyone outside the Company" is also

[9] The Board has held provisions that broadly prohibit statements or conduct that could disparage or be detrimental to the employer may violate Section 8(a)(1). See e.g., *Schwan Homes Services, Inc*., 364 NLRB 170, 174-175 (2016) (restrictions on "conduct detrimental to the best interests of the company or its employees," found unlawful); *First Transit, Inc*., 360 NLRB at 619-620 fn. 5 (rule that includes restrictions on "activities that are detrimental to the company's image or reputation, or where a conflict of interest exists" and conduct during nonworking hours that "would be detrimental to the interest or reputation" of the employer found unlawful). Cf. *Tradesmen International*, 338 NLRB 460, 462-463 (2002) (finding lawful rule prohibiting "verbal or other statements which are slanderous or detrimental to the company or any of the company's employees").

[10] The Respondent does not raise any arguments regarding the timing of the General Counsel's amendment to add maintenance of the Policy as an unfair labor practice. Even if the Respondent had claimed the allegation was untimely under Sec. 10(b) of the Act, I would reject that claim because the Board has held the maintenance of a violative rule or policy during the six-month period preceding the filing of the charge is a continuing violation for as long as it remains in effect, regardless of when the rule or policy was adopted or promulgated. See *Cedars-Sinai Medical Center*, 368 NLRB No. 83, slip op. at 8 fn. 7 (2019); *Cellular Sales of Missouri, LLC*, 362 NLRB 241, 242 (2015), enfd. in relevant part 824 F.3d 772 (8th Cir. 2016).

overbroad because it reasonably would be interpreted to prevent protected activity that involves the disclosure of information to, among others, a labor union, a governmental agency, and the public.

The General Counsel also argues the policy's definition of "confidential information" includes multiple terms that could encompass Section 7 activity under *Stericycle*. They first argue that as a business, the Respondent's "financials" include the wages it pays employees. Thus, without further clarification, a reasonable employee could interpret the inclusion of that term to bar discussions about wage and benefit information, which clearly implicate Section 7 activity. In *Cintas Corp*., 344 NLRB 943 (2005), enfd. 482 F.3d 463 (D.C. Cir. 2007), the Board held that a rule "protect[ing] the confidentiality of any information concerning the company, its business plans, its partners, new business efforts, customers, accounting and financial matters" violated Section 8(a)(1) because it could be reasonably construed by employees to restrict discussions of wages and other terms and conditions of employment with those inside and outside the company, including a union.

The General Counsel also argues the phrase "methods of production and process" could reasonably be interpreted to encompass employees' job assignments and the methods they use to accomplish those tasks, which relate to their terms and conditions of employment. In *BMW Mfg. Co*., 370 NLRB No. 56, slip op. at 4 (2020), the Board applied the since-overruled *Boeing* standard to hold lawful a policy prohibiting the disclosure of "confidential business information and trade secrets," including "but . . . not limited to … production processes and product research and development." The Board has not analyzed similar language under the *Stericycle* standard, but I conclude that the phrase would reasonably be interpreted by an employee contemplating protected activity as barring them from disclosing information about how the Respondent expects them to perform their job, particularly when read along with the otherwise broad definition and examples of confidential information.

The General Counsel next argues that as with the restrictions in the Original and Revised Agreements on "employee lists," the Policy's reference to "team member contact information" would broadly prohibit employees from gathering and providing that information to a labor union as part of an organizing effort. I agree. And the Policy makes clear that the restriction applies whether the employees are on or off duty. As stated, the Board has held contact information may be disclosed as part of protected activity, as long as it is not taken from the Respondent's private or confidential records. No such distinction is made in the Policy. The restriction is reiterated later, when the Policy prohibits employees from disclosing "team member . . . telephone numbers made available to the team member for use in the performance of [their] duty."

Lastly, the General Counsel argues the reference to "other internal business-related communications" is vague, and—as with the initial "Purpose" paragraph—would broadly cover all communications the Respondent has with employees about their terms and conditions of employment. I agree. Similar to the overbroad definition of "confidential information" in the Agreements, this term encompasses all information shared with employees during their employment, including about their wages, benefits, and terms and conditions of employment, and it would reasonably be interpreted as interfering with or restraining employees' Section 7 right to disclose that information as part of protected concerted and/or union organizing activities.

As for the scope of the restriction, the General Counsel argues the prohibition is overly broad, because it bars employees from discussing or in any other manner communicating "information of any kind learned while on duty" with "any person except in the performance of [their] duty …" This clause contains no limitation, and a reasonable employee would read it to mean that it includes *any* information they learn from the Respondent, including concerns about their wages, benefits, and terms

and conditions of employment, and it precludes them from disclosing those concerns to third parties, such as governmental agencies, labor unions, and/or the public, because those disclosures would not occur "in the performance of [their] duty."

The General Counsel argues the Policy's final paragraph, requiring that "when any inquiry is made regarding a[] team member, former team member, client, or customer, the inquiry should be forwarded to a manager or Human Resources without comment from the team member," is overbroad and encompasses any question that might be asked of an employee, including those protected under Section 7 of the Act. They contend there are any number of "inquiries" that an employee may freely discuss under Section 7 that do not implicate a legitimate business interest in confidentiality, and that an employee could reasonably read the above language to mean they could not, in responding to inquiries, divulge information about employees' wages, benefits, and terms and conditions of employment to anyone outside of the Respondent. While I disagree that this specific provision would be read so broadly, other provisions discussed above reasonably would be. Regardless, I do find that this language would reasonably be read as barring employees from responding to inquiries by the Board related to investigations into alleged violations of the Act.[11]

Overall, I conclude the General Counsel has established the Policy is presumptively unlawful. The burden then shifts to the Respondent to rebut this presumption. The Respondent asserts that, in contrast to the Confidentiality provisions in the Agreements which were intended to protect against the disclosure of information to or on behalf of competitors, the Policy is "simply focused on avoiding disclosure of confidential information related to customers." The Respondent argues that the ability to maintain confidential information of customers is a foundational requirement for any customer service-based industry, and it has been recognized by the State of Missouri as a lawful basis for imposing confidentiality obligations on employees.

While protecting confidential customer information is a legitimate and substantial business interest, the Policy is not narrowly tailored to just that information. As discussed, the Policy also broadly encompasses information about employees, including, but not limited to, their contact information and telephone numbers, which employees have the Section 7 right to disclose as part of protected concerted and/or union organizing activities. The provision unlawfully prohibits the disclosure of such information without regard to how or where the information was obtained, thereby broadly forbidding the disclosure from any source.

As part of its defense, the Respondent contends the Policy contains a savings clause that it is not intended to "inhibit normal business communications" or "to infringe upon team member rights." It argues this clarification that the Policy is not meant to prevent normal business communications is exactly the type of explanation contemplated in *Stericycle*. As stated, the Board in *Stericycle* and *First Student* held that for a savings clause to cure an otherwise unlawful provision, it must address the broad panoply of rights protected by Section 7 of the Act. The Policy not only fails to address the broad panoply of rights protected by Section 7, it fails to reference any of the rights protected by Section 7. See *G4S Secure Solutions (USA) Inc*., 364 NLRB 1327, 1331 (2016) (policy's vague reference to "rights under federal law" is insufficient to inform employees that the policy does not prohibit conduct protected by Section 7). Regardless, as stated above, an employer may not prohibit employee activity

[11] The Respondent may contend that it eliminated this potential concern with the language it added to the modified Confidentiality provision discussed above. However, the Policy does not incorporate or otherwise reference the Revised Agreement. As such, the modified Confidentiality provision fails to save the Policy from violating the Act.

protected by the Act and then seek to escape the consequences of the specific prohibition by a general reference to rights protected by law.

Accordingly, I conclude that employees would reasonably construe the Policy to prohibit Section 7 activity, including, but not limited to, the disclosure or use of employee names, contact information, and telephone numbers as part of protected concerted or organizing activities, and the Respondent has failed to establish that it could not more narrowly tailor the Policy to advance its interest in protecting confidential customer information. I, therefore, recommend finding the Policy violates Section 8(a)(1).

CONCLUSIONS OF LAW

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

2. The Respondent violated Section 8(a)(1) of the Act since about December 21, 2023, and continuing, by maintaining the overly broad Confidentiality provision in the original Employee Non-Compete/Confidentiality Agreement.

3. The Respondent violated Section 8(a)(1) of the Act since about June 19, 2025, and continuing, by maintaining the overly broad Confidentiality provision in the revised Employee Non-Compete/Confidentiality Agreement.

4. The Respondent violated Section 8(a)(1) of the Act since about December 21, 2023, and continuing, by maintaining the overly broad Confidential Information Policy in its Employee Handbook.

5. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent engaged in unfair labor practices, I shall order it to cease and desist and to take certain affirmative actions designed to effectuate the purposes of the Act. Specifically, I shall require the Respondent to rescind the Confidentiality provision in its Employee Non-Compete/Confidentiality Agreement, the modified Confidentiality provision in its revised Employee Non-Compete/Confidentiality Agreement, and the Confidential Information Policy in its Employee Handbook, and, if it chooses, distribute a revised Employee Non-Compete/Confidentiality Agreement and a revised Employee Handbook to current and former employees that contain lawfully worded policies. I shall also require the Respondent to physically post and electronically distribute an appropriate informational notice as described below. Finally, I shall require the Respondent to mail a copy of the notice to all former employees employed by the Respondent at its Brentwood facility since December 21, 2023.

On these findings of fact and conclusions of law, and on the entire record in this case, I issue the following recommended[12]

ORDER

The Respondent, Hoffmann Brothers Heating and Air Conditioning, Inc. d/b/a Hoffmann Brothers, Brentwood, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining the overly broad Confidentiality provision in its Employee Non-Compete/Confidentiality Agreement.

(b) Maintaining the overly broad modified Confidentiality provision in its revised Employee Non-Compete/Confidentiality Agreement.

(c) Maintaining the overly broad Confidential Information Policy in its Employee Handbook.

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

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

(a) Within 14 days of the date that this order becomes final, the Respondent shall:

(i) Rescind the Confidentiality provision in the Employee Non-Compete/Confidentiality Agreement that employees signed between December 21, 2023 and June 19, 2025, and notify by mail all former employees employed by the Respondent at its Brentwood facility that were subject to this provision on or after December 21, 2023, that this provision has been rescinded; and

(ii) Furnish all former employees who signed the original version of the Employee Non-Compete/Confidentiality Agreement implemented between December 21, 2023 and June 19, 2025, with an insert that (1) advises that the unlawful Confidentiality provision has been rescinded, or (2) provides a lawfully worded policy on adhesive backing that will cover the unlawful policy. Alternatively, Respondent may publish and distribute a revised version of that original Employee Non-Compete/Confidentiality Agreement that either does not contain the unlawful Confidentiality provision or includes a lawfully worded policy.

(b) Within 14 days of the date that this order becomes final, the Respondent also shall:

(i) Rescind the modified Confidentiality provision in the revised Employee Non-Compete/Confidentiality Agreement that employees signed or after June 19, 2025, and notify

[12] 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 waived for all purposes.

all employees employed by that Respondent at its Brentwood facility that this provision has been rescinded; and

(ii) Furnish all employees who signed the revised version of the Employee Non-Compete/Confidentiality Agreement implemented on about June 19, 2025, with an insert that (1) advises that the unlawful Confidentiality provision has been rescinded, or (2) provides a lawfully worded policy on adhesive backing that will cover the unlawful policy. Alternatively, Respondent may publish and distribute a further revised Employee Non-Compete/Confidentiality Agreement that either does not contain the unlawful Confidentiality provision or includes a lawfully worded policy.

(c) Within 14 days of the date that this order becomes final, the Respondent also shall:

(i) Rescind the Confidential Information Policy in its Employee Handbook and notify all employees (including by mail to former employees) employed by the Respondent at its Brentwood facility since December 21, 2023, that this policy has been rescinded; and

(ii) Furnish all current employees with an insert for the current Employee Handbook that (1) advises that the unlawful Confidential Information Policy has been rescinded, or (2) provides a lawfully worded policy on adhesive backing that will cover the unlawful policy. Alternatively, Respondent may publish and distribute a revised Employee Handbook that either does not contain the unlawful Confidential Information Policy or includes a lawfully worded policy.

(d) Within 14 days after service by the Region, the Respondent shall post at its Brentwood, Missouri location the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 14, 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, 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 a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 21, 2023.[14]

[13] 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."

[14] If the facilities involved in these proceedings are closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]."

(e) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that that the Respondent has taken to comply.

Dated, Washington, D.C. January 5, 2026

Andrew S. Gollin
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

(To be printed and posted on the official Board notice form)

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose a representative 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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT maintain an overly broad Confidentiality provision in our Employee Non-Compete/Confidentiality Agreement.

WE WILL NOT maintain an overly broad Confidential Information Policy in our Employee Handbook.

WE WILL rescind the Confidentiality provision in the Employee Non-Compete/Confidentiality Agreement that employees signed between December 21, 2023 and June 19, 2025, and notify by mail all former employees employed by the Respondent at its Brentwood facility that were subject to this provision on or after December 21, 2023, that this provision has been rescinded.

WE WILL furnish all former employees who signed the original version of the Employee Non-Compete/Confidentiality Agreement implemented between December 21, 2023 and June 19, 2025, with an insert that (1) advises that the unlawful Confidentiality provision has been rescinded, or (2) provide a lawfully worded policy on adhesive backing that will cover the unlawful policy. Alternatively, **WE WILL** publish and distribute a revised version of that original Employee Non-Compete/Confidentiality Agreement that either does not contain the unlawful Confidentiality provision or includes a lawfully worded policy.

WE WILL rescind the modified Confidentiality provision in the revised Employee Non-Compete/Confidentiality Agreement that employees signed or after June 19, 2025, and notify all employees employed by that Respondent at its Brentwood facility that this provision has been rescinded.

WE WILL furnish all employees who signed the revised version of the Employee Non-Compete/Confidentiality Agreement implemented on about June 19, 2025, with an insert that (1) advises that the unlawful Confidentiality provision has been rescinded, or (2) provide a lawfully worded policy on adhesive backing that will cover the unlawful policy. Alternatively, **WE WILL** publish and distribute a further revised Employee Non-Compete/Confidentiality Agreement that either does not contain the unlawful Confidentiality provision or includes a lawfully worded policy.

WE WILL rescind the Confidential Information Policy in its Employee Handbook and notify all employees employed by the Respondent at its Brentwood facility since December 21, 2023, that this policy has been rescinded.

WE WILL furnish all current employees with an insert for the current Employee Handbook that (1) advises that the unlawful Confidential Information Policy has been rescinded, or (2) provides a lawfully worded policy on adhesive backing that will cover the unlawful policy. Alternatively, **WE WILL** publish and distribute a revised Employee Handbook that either does not contain the unlawful Confidential Information Policy or includes a lawfully worded policy.

HOFFMANN BROTHERS HEATING AND AIR CONDITIONING, INC. D/B/A HOFFMANN BROTHERS

(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

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/14-CA-344872 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 (314) 449-7493.