

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

UNIVERSITY OF DAYTON

And

Case No. 09-CA-362228

LIS REGULA,  
An Individual

*Jack D. Verner, Esq., for the General Counsel.*

Douglas C. Anspach, Jr, Matthew S. Hauer, Esqs. (Taft Stettinius & Hollister, Dayton, Ohio)  
for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. Lis Regula filed the charge in this matter on March 18, 2025. The General Counsel issued the complaint on November 23, 2025. On March 3, 2026, the parties filed a joint motion for a stipulated record and proposed stipulations. The motion seeks a decision by the undersigned upon this stipulated record. Charging Party Regula waived the right to a hearing and consents to having the matter decided by a judge based on a stipulated record. I granted the parties' motion. The General Counsel and Respondent have filed briefs which I have read and considered.

Respondent is a private university in Dayton, Ohio. In March 2025, Respondent notified 45 professional staff members, including Lis Regula, a lecturer in Biology, that it would not renew their annual employment agreements. Soon afterwards it presented all 45 a Separation and Release Agreement (Severance Agreement). The terms of Section 7 of that Agreement are at issue in this case.

**7) Nondisclosure of Confidential Information.**

a) By reason of Employee's position with Employer, Employee has or may have received access to various types of confidential business, medical, and personnel information relating to Employer, its business operations, its internal policies and procedures, and its

employees (collectively, “Confidential Information,” some of which constitute trade secrets). Employee agrees not to disclose any Confidential Information to any other person or entity except as required by a court order or other compulsory legal process. Employee agrees to immediately notify Employer upon receiving any such order or compulsory legal process and to reasonably cooperate with all Employer efforts to maintain the confidentiality of Confidential Information. Employee acknowledges that such Confidential Information is of a proprietary and sensitive nature and understands that Employer has a legitimate business interest in continuing to maintain the confidentiality of all such Confidential Information.

b) Employee agrees that the disclosure of Confidential Information by Employee would result in irreparable harm to Employer, and that Employer shall be entitled to injunctive relief to restrain such violations of this Agreement, without limiting any legal action for resulting damages.

The General Counsel alleges that Section 7 of the Severance Agreement violates Section 8(a)(1) of the Act.

#### *Analysis*

The parties appear to agree that the controlling Board precedent on this issue is *McLaren Macomb*, 372 NLRB No. 58 (2023). In that case, the Board overruled *Baylor University Medical Center*, 369 NLRB 43 (2020) and *IGT*, 370 NLRB No. 50 (2020), which in turn overruled Board precedent.<sup>1</sup> The holding of *McLaren Macomb* is that a severance agreement is unlawful if its terms have a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Section 7 rights. If it does, the proffer of such agreement to employees is unlawful. The General Counsel does not have to establish anti-union animus or other discriminatory motivation.

Under *Baylor University*, coercive language cannot have a reasonable tendency to coerce employees unless the severance agreement is proffered in circumstances deemed coercive, independent of the agreement itself. Absent coercive circumstances, an employer does not violate the Act in proffering a facially unlawful severance agreement.

Respondent makes 2 arguments: 1) the holding in *McLaren Macomb* does not require finding a violation in this case; 2) That *McLaren Macomb* was wrongly decided. Argument #2 is not for me to contemplate. I am bound by Board precedent. However, I agree with Respondent as to Argument #1. The holding of *McLaren Macomb* is limited to situations in which the Employer committed other unfair labor practices, not the situation in the present case. To the extent *McLaren Macomb* suggests that this Separation and Release Agreement violates the Act, the decision is dicta, which I am not required to follow.<sup>2</sup> Moreover, I find that the Agreement in this case, on its face, is not coercive.

<sup>1</sup> E.g., *Clark Distribution Systems*, 336 NLRB 747 (2001)

<sup>2</sup> Member Kaplan, dissenting in *McLaren Macomb*, was of this view, Slip Op. at 13, fn. 2.

Unless, the employer's conduct would cause a reasonable employee to think otherwise, he or she would not conclude from the language of the Agreement that he or she is prohibited from discussing wages with other employees or engage in other activities protected by the Act. As Respondent notes, the *McLaren Macomb* agreements contained a broad non-disparagement clause, not present in the instant matter.<sup>3</sup>

A reasonable employee would likely conclude that confidential personnel information, as that term is used in the Agreement, is about other employees' information that a reasonable employee would conclude that he or she is not free to disclose. This might cover information another employee shares in confidence, or to which the employee gains access via confidential personnel records.

ORDER

The Complaint is Dismissed.

Dated: Washington, D.C.  
April 10, 2026




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Arthur J. Amchan  
Administrative Law Judge

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<sup>3</sup> The non-disparagement clause in Section 8 of the instant agreement is not at issue in this case. In that Section, the employee agrees not to make any defamatory or maliciously false statement or communication to any third party that disparages the Employee or Released Parties. The non-disclosure section in the *McLaren Macomb* Agreement prohibited employees from making statements which could disparage or harm the image of the Employer. Maliciousness or Defamation was not an element of the prohibition in the *Macomb* agreement.

Section 9 of the Agreement, also not at issue in this case, requires the employee to keep the Severance Payment in Section 3(a) of the Agreement confidential. This is different than the terms of the *McLaren Macomb* Agreement, which made the entire severance agreement confidential. Both agreements have exceptions for disclosure to governmental taxing authorities, for example.

If no timely 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.