United States Postal Service *and* David Covarrubias.
Case 05–CA–287508

June 11, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On September 8, 2023, Administrative Law Judge Michael A. Rosas issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order as modified and set forth in full below.[4]

REMEDY

We agree with the judge's recommended remedy with the following clarifications.

We agree with the judge's requirement that the Respondent revise or rescind the unlawful portion of the Policy and advise employees in writing that it has done so. In doing so, we rely on *Guardsmark, LLC*, 344 NLRB 809, 812 (2005) ("[R]equiring immediate rescission of the unlawful rules . . . will best effectuate the remedy for our finding that certain of [r]espondent's work rules unlawfully chill the exercise of employee rights under Section 7. [Not requiring immediate rescission] could leave some employees (especially those who are hired after the period during which the notice is posted) without assurance that they may engage in protected conduct without fear of being subjected to the unlawful rules."), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007).[5]

In addition, because the Respondent maintained the Policy nationwide, we agree with the judge that the Board's notice should be distributed nationwide to employees who work at all the Respondent's facilities throughout the United States. See *Mastec Advanced Technologies*, 357 NLRB 103, 109 (2011) ("[B]ecause the handbook containing the unlawful rules was in effect at all of [the employer's] locations nationwide, the judge erred in failing to order [the employer] to post the notice to employees at all its facilities."), enfd. sub nom. *DIRECTV, Inc. v. NLRB*, 837 F.3d 25 (D.C. Cir. 2016), cert. denied 583 U.S. 820 (2017); *Guardsmark*, 344 NLRB at 812 ("Concerning the scope of notice posting, we have consistently held that, where an employer's overbroad rule is maintained as a companywide policy, we will generally order the employer to post an appropriate notice at all of its facilities where the unlawful policy has been or is in effect. There is no dispute in this case that the unlawful rules apply to all of the [r]espondent's employees nationwide. Accordingly, we will modify the judge's [o]rder to provide for nationwide posting of the remedial notice.") (internal footnote and citation omitted).[6]

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] We agree with the judge that the Respondent violated Sec. 8(a)(1) by maintaining its policy in § 124.54(a) of the Postal Operations Manual (POM), 39 CFR § 232.1(h)(1), that prohibits "collecting signatures on petitions, polls, or surveys" on Respondent property. In reading the Policy as a whole, we disagree with the Respondent's assertion that the Policy would reasonably be understood to be applicable only to the public, and not employees. Unlike another provision in POM § 124.54, the Respondent did not narrow the Policy to "members of the public." See 39 CFR § 232.1(h)(3) ("Leafleting, distributing literature, picketing, and demonstrating *by members of the public* are prohibited in lobbies and other interior areas of postal buildings open to the public.") (emphasis added). In addition, not only did the Respondent not limit the Policy to members of the public, one of the three expressly listed exceptions to the Policy is to postings "on employee bulletin boards," which further suggests that the Policy applies to employees. In fact, the reference to employee bulletin boards demonstrates that the Policy could have been drafted to exclude employees. Moreover, despite claiming that the Policy is only to restrict disruptive conduct by the public, the Respondent acknowledges in its exceptions brief that the Policy applies to its employees during nonworking hours to prevent them from causing any disruption to the Respondent's operations while on the Respondent's property.

[3] No party excepted to the judge's finding that the Respondent violated Sec. 8(a)(1) by instructing Charging Party David Covarrubias that he could not post flyers about workplace safety issues on the Respondent's community bulletin board.

[4] We shall modify the judge's recommended Order to conform to the Board's standard remedial language. We shall substitute new notices to conform to the Order as modified.

[5] We reject the Respondent's claim that rescission would impede its legitimate and substantial interests served by the Policy. The Respondent is not prohibited from maintaining a rule to further those interests but must do so without undermining its employees' protected activity, which it is fully capable of doing by narrowly tailoring the breadth of the Policy by excluding employees from its purview. Moreover, even though the Policy is part of a postal regulation, Congress granted the Board jurisdiction over the Respondent's labor relations, which includes ensuring that the rights of the Respondent's employees—like all other employees covered under the Act—are not undermined by the maintenance of an overly broad work rule. Contrary to the Respondent's claim, the Board is not ordering rescission because the Policy is "arbitrary and capricious" or otherwise violative of the standards for agency rulemaking under the Administrative Procedures Act. See *Reese Brothers, Inc. v. U.S. Postal Service*, 905 F.Supp.2d 223, 250–259 (D.D.C. 2012). Instead, rescission is necessary because the Policy conflicts with the Act by infringing on the statutory rights of the Respondent's employees.

[6] In light of the unique nature of the Respondent's operations, we agree with the Respondent that it should not be required to physically

ORDER

The National Labor Relations Board orders that the Respondent, United States Postal Service, Merrifield, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a rule that prohibits employees from "collecting signatures on petitions, polls, or surveys (except as otherwise authorized by [the Respondent's] regulations) . . . on [the Respondent's] property."

(b) Prohibiting employees from posting materials related to their terms and conditions of employment on the Respondent's community bulletin boards.

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

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

(a) Rescind the portion of the Respondent's "Soliciting, Electioneering, Collecting Debts, Vending, and Advertising" rule that prohibits employees from "collecting signatures on petitions, polls, or surveys (except as otherwise authorized by [the Respondent's] regulations) . . . on [the Respondent's] property," or revise it to make clear to employees that the rule does not bar or restrict employees' Section 7 rights.

(b) Notify its employees, in writing, of the recission or revision of the rule and that the portion of the rule that prohibits employees from "collecting signatures on petitions, polls, or surveys (except as otherwise authorized by [the Respondent's] regulations) . . . on [the Respondent's] property" will no longer be maintained.

(c) Within 14 days after service by the Region, post at its facility in Merrifield, Virginia copies of the attached notice marked "Appendix A."[7] Copies of the notice, on forms provided by the Regional Director for Region 5, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, "Appendix A" 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, to the employees at the Respondent's Merrifield, Virginia facility. Similarly, "Appendix B," after being signed by the Respondent's authorized representative, 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, to the employees at all of its other facilities nationwide.[8] If the Respondent has closed the Merrifield, Virginia facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix A" to all current employees and former employees employed by the Respondent at that facility at any time since Augst 10, 2021. Similarly, if the Respondent has closed any of its other facilities, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix B" to all current employees and former employees employed by the Respondent at any of the closed facilities at any time since August 10, 2021.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 5 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. June 11, 2026

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James R. Murphy, Chairman

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David M. Prouty, Member

post the notice nationwide at its more than 30,000 facilities where the Policy had been maintained. The judge found that the Respondent customarily communicates with its employees through its intranet, Lite Blue, and ordered the Respondent to post the notice there. We affirm the judge's order that the Respondent electronically distribute the notice to employees nationwide on Lite Blue and by email, posting on any other intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Because of the circumstances of this case, electronic nationwide distribution of the notice will effectively inform all employees of the Respondent's unlawful conduct and the remedial steps it is taking.

Because the Respondent's unlawful prohibition on posting flyers occurred only at the Merrifield, Virginia facility, we shall include a separate notice also referencing that violation that shall be posted at and electronically distributed to the employees who work at that facility.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in "Appendix A" 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."

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

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Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

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 maintain a rule that prohibits you from "collecting signatures on petitions, polls, or surveys (except as otherwise authorized by [our] regulations) . . . on [our] property."

WE WILL NOT prohibit you from posting materials related to your terms and conditions of employment on our community bulletin boards.

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 portion of our "Soliciting, Electioneering, Collecting Debts, Vending, and Advertising" rule that prohibits you from "collecting signatures on petitions, polls, or surveys (except as otherwise authorized by [our] regulations) . . . on [our] property," or revise it to make clear to you that the rule does not bar or restrict your Section 7 rights.

WE WILL notify you, in writing, of the recission or revision of the rule and that the portion of the rule that prohibits you from "collecting signatures on petitions, polls, or surveys (except as otherwise authorized by [our] regulations) . . . on [our] property" will no longer be maintained.

UNITED STATES POSTAL SERVICE

The Board's decision can be found at http://www.nlrb.gov/case/05-CA-287508 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.

APPENDIX B

NOTICE TO EMPLOYEES
DISTRIBUTED 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 distribute 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

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Kevin P. Hendley, Esq. and *Brendan Keough, Esqs.,* for the General Counsel.

Dallas G. Kingsbury, Esq., USPS Law Department, of Washington, D.C., for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Washington, D.C. on May 9, 2023. Based on timely filed charges, the General Counsel issued a complaint on January 23, 2023, alleging that the Respondent, the United States Postal Service, violated Section 8(a)(1) of the National Labor Relations Act (the Act)[1] on or about August 10, 2021[2] by: (1) maintaining a solicitation rule that prohibited employees from "collecting signatures on petitions, polls, or surveys" on Respondent's property (the solicitation rule), and (2) prohibiting the Charging Party, David Covarrubias "from posting materials, which related employees' terms and conditions of employment, on the community bulletin boards" at the Respondent's Merrifield, Virginia facility (the Respondent's facility).[3]

The Respondent denies the material allegations and asserts the following affirmative defenses: (1) failure to state a cause of action; (2) Covarrubias' labor representative, the American Postal Workers Union, Local 6803 (the Union), agreed to the aforementioned rule, (3) the National Labor Relations Board (the Board) does not have jurisdiction to determine the legality of a postal regulation or the power to rescind postal regulations, and (4) the Respondent is entitled to deference in the interpretation of its regulations. The Respondent also filed a motion to dismiss based on its affirmative defenses. For the reason explained, infra, genuine issues of law and fact exist and the motion is denied.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent provides postal services for the United States and operates various facilities throughout the United States, including the Respondent's facility in Merrifield, Virginia (the Merrifield facility). The Board has jurisdiction over the Respondent and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101 et seq. (the PRA).

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Operations and Policies

The Merrifield facility is a large processing and distribution center serving Northern Virginia where inbound and outbound mail is sorted. Staffed by over 1000 employees, the Merrifield facility operates 24 hours a day. Their job classifications include mail handlers, clerks, special delivery, industrial engineers, custodians, supervisors, and managers.

Any employee can report hazards or unsafe conditions or practices at their facility to their supervisor on the Respondent's Form 1767.[4] An employee who desires anonymity can file the form with the safety office, where the employee's name is deleted and then submitted to the supervisor for necessary action. Supervisors are required to investigate and abate the hazard or document their recommendation for corrective action during the same shift in which the form is filed. The forms are then sent to the approving official (the supervisor's immediate supervisor) for action. The approving official will initiate action or notify the employee that the hazard was abated or determined not to exist.[5] Alternatively, employees can discuss safety concerns with coworkers, their supervisors, or safety managers, or even file OSHA complaints.[6]

The Merrifield facility has several bulletin boards. They are located in the employee breakroom, by office of the manager for distribution operations, by the cafeteria, on the opposite side of the facility, and at least three exterior bulletin boards. The MVS breakroom is next to the supervisor's area, which is next to the manager's office. It's the location where employees clock in and pick up their schedules and keys for their assignments.

There are three adjoining rectangular bulletin boards in the MVS breakroom that cover one side of the breakroom. That wall measures approximately 24 feet long. Starting from the left, the first bulletin board is designated for union-related information (the union bulletin board). The bulletin board in the middle is reserved for official business, including bids for new

[1] 29 U.S.C. §§ 151-169.

[2] All dates are in 2021 unless stated otherwise.

[3] Without objection, the complaint was amended at hearing to correct the address of the Respondent's facility. The Respondent also admitted that allegation, as well as the filing dates for the first amended charge, the supervisory status of Kenneth Seller and Dorothea Wallace, the agency status of Harold Stephenson, and the maintenance of the solicitation rule since at least August 10, 2021. (Tr. 5–7.)

[4] Yolanda Peterson, the senior safety specialist for the Virginia district, explained that supervisors cannot make changes or abate deficiencies at other facilities. (GC Exhs. 2–13; Jt. Exhs. 4–6; Tr. 81–82.)

[5] GC Exh. 15.

[6] Peterson testified that nothing that prevents an employee from discussing safety issues with coworkers before filing a Form 1767. Yet, she testified that an employee who is not a shop steward or on the safety committee, lacked the authority to have employees contact him "directly for safety matters." (Tr. 82–87.)

assignments (the Respondent's bulletin board). At the very end, there is the community bulletin board. The types of items posted on the community bulletin board include services and items for sale, retirement parties, and other nonwork-related information.[7]

B. The Respondent's Solicitation Policy

The Respondent's employees are notified of its solicitation policy in its "Rules and Regulations Governing Conduct on Postal Service Property (the solicitation rule)," which is posted on the MVS breakroom bulletin board:[8]

> Soliciting, Electioneering, Collecting Debts, Vending, and Advertising[9]
>
> Soliciting alms and contributions, campaigning for election to any public office, collecting private debts, commercial solicitation and vending, displaying or distributing commercial advertising, and collecting signatures on petitions, polls, or surveys (except as otherwise authorized by Postal Service regulations) are prohibited on Postal Service property. These prohibitions do not apply to the following:
>
> (a) Commercial or nonprofit activities performed under contract with the Postal Service or pursuant to the provisions of the Randolph-Sheppard Act.
> (b) Posting notices on employee bulletin boards as authorized by Title 39, Code of Federal Regulations (CFR) 243.2.[10]
> (c) The solicitation of U.S. Postal Service and other federal military or civilian personnel for contributions by recognized agencies as authorized by the Manual on Fund Raising Within Federal Service, issued under Executive Order 12353.

The Respondent implements the solicitation rule at Section 124.54 of the Employee Labor Policy Manual (the Manual), which is available to employees electronically. The Regulation and the Manual are essentially the same, although the Manual refers to "soliciting" signatures instead of "collecting" signatures on petitions, polls, or survey."[11] Alleged violations of the solicitation rule are "subject to a fine as provided in 18 U.S.C. 3571 or imprisonment of not more than 30 days, or both."[12]

C. The Collective-Bargaining Agreement

Article 14 of the 2021-2014 collective-bargaining agreement (the CBA) between the Respondent and the Union addresses the safety and health of bargaining unit employees. In pertinent part, the provision specifies the parties' expectations and process to be followed:

> Section 1. Responsibilities
> It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility. The Employer will meet with the Union on a semiannual basis and inform the Union of its automated systems development programs. The Employer also agrees to give appropriate consideration to human factors in the design and development of automated systems. Human factors and ergonomics of new automated systems are a proper subject for discussion at the National Joint Labor-Management Safety Committee.
>
> Section 2. Cooperation
> The Employer and the Union insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions. Mechanization, vehicles and vehicle equipment, and the work place must be maintained in a safe and sanitary condition, including adequate occupational health and environmental conditions. The Employer shall make available at each installation the appropriate forms to be used by employees in reporting unsafe and unhealthful conditions. If an employee believes he/she is being required to work under unsafe conditions, such employees may:
> (a) notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary;
> (b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor;
> (c) file a grievance at Step 2 of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour; and/or (d) make a written report to the Union representative from the Local Safety and Health Committee who may discuss the report with such employee's supervisor. Upon written request of the employee involved in an accident, a copy of the PS Form 1769 (Accident Report) will be provided.

In the implementation of Article 14, the Respondent and the Union established "Guidelines for Area/Local Joint Labor-Management Safety and Health Committees." These guidelines detail the duties and responsibilities of Local and Area Safety and Health Committee Members, Area/Local Committee Officers, and Field Federal Safety and Health Councils. However, they do not impose any duties or responsibilities on unit employees.[13]

Employees who choose to notify their supervisor of an unsafe and unhealthful condition can do so pursuant through Form 1767. An employee is also free to file an OSHA complaint. Nothing in Article 14 provides for employees who are neither stewards nor Union representatives from the Local Joint Labor-Management Safety and Health Committees to initiate a safety

[7] It is undisputed that the Respondent does not have rules restricting what can be posted on the community bulletin board. (Tr. 22–23.)

[8] The Regulation and Manual vary slightly in wording. Exception (b) of the Manual's version omits "employee" before "bulletin boards." (Jt. Exh. 1.)

[9] 39 C.F.R. § 232.1 (h).

[10] 39 C.F.R. § 243.2(a) states: "Employee bulletin boards. Bulletin boards may be placed in workrooms and employees' lunchrooms for displaying notices as prescribed in this manual and Management Labor Organization Agreements."

[11] Jt. Exh. 7 at 3.

[12] 39 C.F.R. § 232.1 (p).

[13] Covarrubias, the Charging Party, was familiar with Article 14 and the process for dealing with safety and health issues as a former shop steward and safety captain. (Tr. 51–52; Jt. Exhs. 3, 13.)

action on behalf of others. Article 14 does not list posting cartoons or directing safety concerns to an employee who is neither a steward nor a safety captain as proper reporting methods.

Article 22 of the CBA addresses the employee use of the bulletin boards at the Respondent's facilities:

> The Employer shall furnish separate bulletin boards for the exclusive use of the Union party to this Agreement, subject to the conditions stated herein, if space is available. If sufficient space is not available, at least one will be provided for the Union signatory to this Agreement. The Union may place their literature racks in swing rooms if space is available. Only suitable notices and literature may be posted or placed in literature racks. There shall be no posting or placement of literature in literature racks except upon the authority of officially designated representatives of the Union.

Employee use of bulletin boards is further defined in the Joint Contract Interpretation Manual jointly prepared by the Respondent and the Union:

> The Union controls posting/removal of material from authorized Union bulletin
> boards unless and until the Postal Service can prove that the material is unsuitable for posting because it has caused or will cause an adverse impact upon the ability of postal authorities to direct the workforce and to manage its operations effectively and productively.[14]

D. Covarrubias Posts Cartoon Flier on Community Bulletin Board

Covarrubias has been employed by the Respondent for 36-years as motor vehicle operator.

Based at the Merrifield facility, his responsibilities include driving a truck and transporting mail to and from area post offices. Covarrubias served the Union shop in several capacities, including shop steward, safety director, and craft director. As a craft director, Covarrubias filed, negotiated, and resolved Step 2 grievances. As safety director, Covarrubias attended quarterly meetings of the Local Safety and Health Committee. In 2021, however, Covarrubias was no longer serving in any of the aforementioned capacities or as a member of the Local Safety and Health Committee.

Several years earlier, Covarrubias posted two items about safety or health issues (the flyers) on one of the MVS breakroom bulletin boards.[15] On or before August 9, Covarrubias told the Union craft director, Michael Shaw, that he would be posting flyers regarding certain safety and health concerns.[16] On that day, Covarrubias worked the noon to 8:30 p.m. shift. During his shift, Covarrubias entered the breakroom and posted two flyers on the Union's bulletin board.[17] One consisted of six cartoon frames showing a dog sitting on a chair by a table with a drink.[18] With the room engulfed in smoke and flames, the dog says, "This Is Fine. I'm okay with the events that are unfolding currently." After drinking from the cup, the dog is in distress from the heat and says, "That's Okay, Things Are Going To Be Okay." The last frame shows the dog melting and its eyes popping out. The other flyer stated in a large bold font, "Is this how you feel when you tell your supervisor about a safety issue and it is never addressed? Me too." That statement was followed by a list of safety issues at the Merrifield facility and other Northern Virginia facilities and a request that employees forward safety problems to Covarrubias:

> 1) Below are some of the many hazardous conditions I see as I go about my day as an MVS driver. I am attempting to work with management to address them. When they don't, it is our right and responsibility to escalate the complaint to OSHA and/or file a S/H grievance. Don't put your safety at risk. If you are suffering with an issue that has not been addressed, send me an e-mail and I'll try to help.—cdavidneil@yahoo.com
>
> 2) Falls Church Mosby (22042) needs a Health Hazard Evaluation (HHE) to evaluate the strong smell of chemicals coming from the nail polish supply warehouse next door. Are the fumes within acceptable levels?
>
> 3) Falls Church Bailey's (22041) needs to address two longstanding dock hazards—a broken hydraulic lift that has not been repaired despite complaints, and a temporary bridge plate that is not wide enough for wire cages and BMCs. The current plate is too narrow to use without falling off the sides while loading/offloading the mail.
>
> 4) The Merrifield BMEU customer dock doors are too heavy for customers to use, and chained chocks block left on the ground create trip hazards for customers in the parking lot. One customer told me he tripped and fell and had to go to the Emergency Room. I reported this to the Safety Office but nothing has been done.

[14] Jt. Exh. 14 at 2.

[15] I credit Covarrubias' undisputed testimony he previously posted two items on one of the bulletin boards. However, consistent with my findings, infra, and the fact that neither poster was produced, I do not credit Covarrubias' testimony that they were placed on the community bulletin board. (Tr. 27–30.)

[16] Although I sustained a hearsay objection over Shaw's response, I credit Covarrubias' testimony that he told Shaw about the flyers before posting them. (Tr. 35.)

[17] `Michael Wickert, a driver who serves as safety captain, testified that he saw the flyers on the Union's bulletin board and the Respondent's bulletin board. (Tr. 64, 69.) Covarrubias testified that he only put them on the community bulletin board, (Tr. 26, 59). Neither witness was entirely convincing and Kenneth Sellers, the transportation manager, did not have direct knowledge as to where the flyers were posted. (Tr. 92–96.) Based on the record and sequence of events, however, the Respondent's position statement provided the most reliable explanation—Covarrubias initially posted them on the Union's bulletin board and, when Shaw removed it, reposted them on the community bulletin board. (Jt. Exh. 14 at 2.)

[18] Covarrubias described each flyer as "normal paper size," i.e., 8 1/2 x 11 inches. (Jt. Exh. 2 and 8.)

5) More than 13 wheel chocks are either broken or missing from the Merrifield south dock. Also, MVS drivers need SOLID chocks. Hollow chocks are not consistent with manufacturer recommendations, and are not adequate given the weight of our vehicles.

6) Also: Christmas traffic congestion near the south dock was a mess last year. Preventative measures need to be put into place before the next Christmas crush. Can we please see a plan before the holidays are upon us?

7) More than half the doors on the Merrifield west dock are unbalanced and too heavy to be raised and closed safely. Repairs are needed ASAP, or a pulley system installed so drivers can raise and lower dock doors without injury.

8) The floor of the west dock contains hazardous asbestos; it has been encapsulated in wax to mitigate the hazard but when mail handlers push pallets across the floor, the wax is stripped off, re-exposing the hazardous asbestos.
Community PO (22306/08) has a clogged downspout that creates a waterfall when it rains, spilling from the roof gutter onto the mail as drivers load their trucks. In the winter, there are icy and hazardous pavement conditions, forcing drives to walk on an untreated slippery surface. Complaints have been filed. Nothing has been done.

9) Maintenance workers in the area offices are using glyphosate (Roundup, a known carcinogen) and other unknown chemicals to control weeds. Employees are entitled to know ALL the chemicals they are being exposed to in the workplace. Service should STOP using a chemical that is known to cause cancer and is environmentally hazardous.

Yours in solidarity,
David Covarrubias

In addition to posting the flyers in the MVS breakroom, Covarrubias filed Form 1767s for each issue listed. The Falls Church Bailey's and Falls Church Mosby complaints had already been submitted on May 23 and August 3, respectively. The rest were submitted on August 11.[19]

Meanwhile, on the same day that he posted the flyers at the MVS breakroom, Covarrubias also emailed them to Bijan Jaddi, a driver at the Respondent's Dulles (Virginia) facility with a request that he post them in the drivers' breakroom at that facility. On August 11, Jaddi forwarded that email to Michael Shaw. Shaw then forwarded the email a few hours later to a union official (rcjonesdirapwu@outlook.com) and the following day to Harrold Stephenson, the Respondent's labor relations representative.[20]

Within a day or two, Shaw removed the flyers from the Union's bulletin board. Covarrubias noticed that the flyers had been removed and reposted them but this time on the community bulletin board. By August 12, Wickert noticed the flyer on the community bulletin board and informed Doreatha Wallace, the supervisor, and Yolanda Peterson, the senior safety specialist. He expressed his concern that the flyers undermined safety because Covarrubias was turning other employees against him. Wallace removed the flyers and gave them to Sellers. Covarrubias noticed at some point that the flyers had been removed. again [21]

Shortly thereafter, Covarrubias' supervisor, Dorothea Wallace, called him into a meeting with Sellers. Sellers placed the two flyers on his desk facing Covarrubias and said that he was not allowed to post them on the bulletin boards. Reading from an email from Stephenson, Sellers explained that Covarrubias "cannot solicit employee or the craft in this manner" and specified the applicable process:

If he is a steward then maybe he can make challenges though the grievance procedure. However first he must make management aware of any perceived safety/health hazard or work place condition that may pose a threat to employees before contacting OSHA. Please address accordingly.[22]

Although Sellers did not explicitly threaten Covarrubias with discipline over the issue, Article 6 of the CBA specifically mentions insubordination as a potential source of discipline.[23] Covarrubias disagreed but offered to change the wording of the flyers. Sellers was unmoved.[24]

Although he did not repost the flyers a third time, Covarrubias was not done. On August 14, he emailed Wallace and Peterson regarding the "safety and health hazards" listed in the flyers. He expressed a desire to work with them to resolve those issues within the applicable "hard deadlines," and listed two additional issues.[25] On August 15, Covarrubias emailed Stephenson and copied Sellers disputing the Respondent's directive that he cease posting the flyers on the bulletin boards:

I was called into Mr. Seller's office last Friday for having

[19] Jt. Exhs. 4–6; GC Exhs. 2–7, 12–13.

[20] Jt. Exh. 9.

[21] Although it was unclear, the emails between management and Union representatives indicate that it was three or four days at most between the time that the first flyers were posted and the second set were removed by Wallace. (Jt. Exh. 9, 14; Tr. 30–36–38, 67–69, 74–75, 99–102.)

[22] Stephenson's testimony that Covarrubias did not violate the solicitation rule contradicted his email statement that Covarrubias "cannot solicit employee (sic) or the craft in this matter." (Jt. Exh. 9; Tr. 108.)

[23] It is undisputed that Covarrubias was not disciplined for posting the flyers in the MVS breakroom. However, the Respondent did not dispute his credible testimony that he could have been disciplined for insubordination if he refused to heed Seller's directive. (Tr. 41, 52–53, 93, 103–104; Jt. Exh. 3 at 106.).

[24] I did not credit Seller's testimony that he prohibited Covarrubias from posting on the Respondent's bulletin board and the union bulletin board only. (Tr. 92–93.) First, it contradicts the Respondent's position statement that the flyers had been posted on the Union bulletin board first and then the community bulletin board. (Jt. Exh. 14 at 2.) Second, neither Sellers nor anyone from management disputed Covarrubias' assertion in his subsequent email, infra, that he posted the flyers on the community bulletin board. (Jt. Exh. 11.) Lastly, Stephenson's email did not mention the bulletin board from which Wallace removed the flyers. (Jt. Exh. 9.) Covarrubias would have faced discipline or simply had the flyers or similar materials taken down if he did it again. (Tr. 41, 52–53, 93, 103–104.)

[25] Jt. Exh. 10.

> posted something on the MVS community bulletin board. He mentioned your name and read out loud an email from you. I suspect you were not provided with a copy of the poster, so I have included it below for you to examine. What I found especially peculiar is Mr. Sellers believes I am soliciting something, which I am NOT. If you were to look at the postal policy regarding solicitation, I have made no such transgressions Also, there are many other bone-fide solicitations posted on the MVS community board on various products and services being offered. All those are real solicitations and remained posted, yet my written concerted speech was not tolerated. Lastly, I had asked Mr. Sellers what I should remove from the poster, so that it would be no longer be considered solicitation. He did not reply. Could you please tell me what exactly it is, so that I may line it out and repost it?
>
> In closing, I regard concerted speech as a fundamental right, and before I consider filing a formal complaint with the NLRB, I would like to discuss this further with you.
>
> Let me know when that would be convenient.[26]

Neither Stephenson, Sellers, nor anyone else replied to Covarrubias' August 15 email. By September 8, however, Peterson had resolved the issues raised in the Form 1767s submitted by Covarrubias or was actively addressing them. In October, Covarrubias submitted additional Form 1767s relating to the Merrifield facility and other Northern Virginia facilities. On November 19, Covarrubias sent Peterson a revised list with additional 1767s that had been filed. Less than an hour later, Peterson provided a detailed response regarding each of those 1767s or explained what was being done to address them. Covarrubias replied that he was "overwhelmed" with the response and looked forward to their meeting on November 22.[27]

Legal Analysis

I. THE BOARD HAS JURISDICTION OVER THE ALLEGATIONS

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by: (1) maintaining a solicitation rule that prohibited employees from "collecting signatures on petitions, polls, or surveys" on its property; and (2) prohibiting an employee from posting materials, which related to employees' terms and conditions of employment, on the Respondent's bulletin board. In addition to denying the allegations, the Respondent asserts that the Board lacks jurisdiction. In essence, it contends that the Board lacks the regulatory authority to rule on the propriety of the Respondent's regulatory activities because it is an independent agency of the executive branch of the United States government..

Section 1209(a) of the Postal Reorganization Act[28] brought the Respondent's labor relations within the same structure that exists for private sector employers and employees:

> (a) Employee-management relations shall, to the extent not inconsistent with provisions of this title, be subject to the provisions of subchapter II of chapter 7 of title 29.
>
> (b) The provisions of chapter 11 of title 29 shall be applicable to labor organizations that have or are seeking to attain recognition under section 1203 of this title, and to such organizations, officers, agents, shop stewards, other representatives, and members to the extent to which such provisions would be applicable if the Postal Service were an employer under section 402 of title 29. In addition to the authority conferred on him under section 438 of title 29, the Secretary of Labor shall have authority, by regulation issued with the written concurrence of the Postal Service, to prescribe simplified reports for any such labor organization. The Secretary of Labor may revoke such provision for simplified forms of any such labor organization if he determines, after such investigation as he deems proper and after due notice and opportunity for a hearing, that the purposes of this chapter and of chapter 11 of title 29 would be served thereby.
>
> (c) Each employee of the Postal Service shall have the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right.

The PRA does delegate to the Respondent "the power to promulgate rules and regulations to implement the statute." *Reese Bros. v. U.S. Postal Serv.*, 905 F. Supp. 2d 223, 252 (D.D.C. 2012).

Section 410(a) of the PRA addresses the application of other laws to the PRA:

> (a) Except as provided by subsection (b) of this section, and except as otherwise provided in this title or insofar as such laws remain in force as rules or regulations of the Postal Service, no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service.

However, neither Section 410(a) nor any other section of the PRA specifically exempts the Regulation from the Act's jurisdiction. In fact, the PRA specifically incorporates the Act into its operations at Section 1209. As the court explained in *Reese Bros.,* supra at 252:

> [A]lthough the PRA generally exempts the Postal Service from APA review, it also explicitly provides for certain exceptions to that exemption, suggesting that where Congress wanted there to be judicial review, it said so. See, e.g., 39 U.S.C. § 503 (APA review applies to Postal Regulatory Commission's promulgation of rules, regulations and establishment of procedures).

The Act is one of those specifically mentioned as exceptions

[26] Jt. Exh. 11.
[27] GC Exh. 14.
[28] 39 U.S.C. § 1209(a).

as demonstrated by the Board's adjudication of many of the Respondent's labor disputes with its employees and their representatives over the past 43 years. The examples cited by the Respondent, however, are not. *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1619 (2018) (the Act does not reflect a clearly expressed and manifest congressional intention to displace the Federal Arbitration Act); *Sears, Roebuck & Co. v. U.S. Postal Serv.*, 134 F. Supp. 3d 365, 374 (D.D.C. 2015), aff'd in part, vacated in part, rev'd in part sub nom, *Sears, Roebuck & Co. v. United States Postal Serv.*, 844 F.3d 260 (D.C. Cir. 2016) (Respondent was entitled to deference for its "reasoned decision making" where its regulation concerned a "highly technical or complex area" and agency had "unique expertise" involving the sealing of self-mailers); *McDermott v. U.S. Postal Serv.*, No. C05-0860RSL, 2006 WL 2473493, at *4 (W.D. Wash. Aug. 28, 2006) (court rejected employee's challenge to the Respondent's promulgation of a regulation relating to the cost of replacing list badges, noting that the only relevant employment-related laws Congress imposed upon the Postal Service are Chapter 7 of the [Act]."); *Currier v. Potter*, 379 F.3d 716, 724–725 (9th Cir. 2004) (court rejected challenge to Respondent's general delivery and no-fee postal regulations where there was no showing that Congress intended to subject the PRA to judicial review).

Congress clearly delegated to the Board the responsibility to apply the provisions of the Act to the labor relations of the Respondent. Therefore, it would be unlawful for the Respondent to promulgate or maintain regulations that run afoul of the Act, including its remedial provisions. The Supreme Court's limitation of the Board's remedial options in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 144 (2002) is distinguishable. There, the court endorsed the Board's application of the Act's protections to undocumented workers but limited their ability to recover backpay. That result balanced Congress' objectives in creating national immigration and labor policies. Id. at 145. However, no such remedial limitation is warranted here where the Respondent's overly broad solicitation rule has no discernable impact on its operations.

II. THE SOLICITATION RULE

A. Employees' Section 7 Rights Were Not Waived By The CBA

The Respondent argues that the Union waived any objections by represented employees to the solicitation rule by agreeing to incorporate it into Article 19 of the CBA. If it were forced by the Board to unilaterally rescind or modify the solicitation rule, the Respondent asserts that it would commit an unfair labor practice. In pertinent part, Article 19 states that the Respondent's regulations relating to "wages, hours or working conditions . . . shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable."

This defense also lacks merit. The Supreme Court has long held a union may waive a member's statutorily protected rights during the contract term. *NLRB v. Allis-Chalmers Manufacturing Co.,* 388 U.S. 175, 180 (1967). Such waivers are valid because they "rest on 'the premise of fair representation' and presuppose that the selection of the bargaining representative 'remains free.' " *NLRB v. Magnavox Co.,* 415 U.S. 322, 325 (1974) (quoting *Mastro Plastics Corp. v. NLRB,* 350 U.S. 270, 280 (1956)). Thus a union may bargain away its members' economic rights, but it may not surrender rights that impair the employees' choice of their bargaining representative. *NLRB v. Magnavox Co.,* 415 U.S., at 325.

In *Metro. Edison Co. v. NLRB*, 460 U.S. 693 (1983), however, the Supreme Court recognized that a union's right to waive employees' Section 7 rights during collective bargaining will only be upheld if it is "clear and unmistakable." Relying on *Mastro Plastics Corp.,* 350 U.S., at 283 ("there is no adequate basis for implying [the] existence [of waiver] without a more compelling expression of it than appears in ... this contract"), the court rejected the argument that a general no-strike provision waived the specific right to strike over an unfair labor practice:

> . . . we will not infer from a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is "explicitly stated." More succinctly, the waiver must be clear and unmistakable.

Id. at 708. Consistent with those principles, the Board narrowly construes waivers and has been hesitant to imply waivers not explicitly mentioned in the parties' collective-bargaining agreements. See *Mississippi Power Co.*, 332 NLRB 530, 531 (2000). The burden is on the party asserting the waiver to establish the waiver's existence. *Pertec Computer*, 284 NLRB 810, 810 fn. 2 (1987). In that respect, the Respondent fails to identify any reference in Article 19 to employee solicitation or any other Section 7 rights that were "clearly and unmistakably" waived by the Union.

Moreover, a union cannot waive the statutory rights of individual employees to engage in activities pertaining to decisions regarding union representation, i.e., whether to retain their bargaining representative, to change their bargaining representative, or to have no bargaining representative at all. *Metro. Edison Co.*, 460 U.S. at 705–706 (citing *NLRB v. Magnavox Co. of Tenn.*, 415 U.S. 322 (1974)). Solicitation directly relates to employee decisions regarding union representation, and the incumbent union cannot bargain away that right. *El Paso Electric Co.*, 355 NLRB 428, 438–439 (2010).

Accordingly, the solicitation rule is both outside the ambit of Article 19 and unlawful. Employees' Section 7 rights were not "clearly and unmistakably" waived by the union. Even if they were, such a waiver would unlawfully impact employees' statutory right to solicit representation or, in Covarrubias' case, solicit support of his coworkers in addressing safety issues in the workplace.

B. The Solicitation Rule Violates Section 8(a)(1)

The complaint alleges that the Respondent's solicitation rule violated Section 8(a)(1) by prohibiting employees from "collecting signatures on petitions, polls, or surveys" on its property. The Respondent disputes that allegation on two grounds—(1) the complaint fails to state a cause of action upon which relief can be granted, and (2) the solicitation lawfully restricts employee activity under Board precedent.

First, the Respondent asserts that the complaint is defective

because Covarrubias did not engage in any of those activities when he posted flyers on the community bulletin board. The relevant part of the rule states:

> (a) Soliciting alms and contributions, campaigning for election to any public office, collecting private debts, commercial solicitation and vending, displaying or distributing commercial advertising, and collecting signatures on petitions, polls, or surveys (except as otherwise authorized by Postal Service regulations) are prohibited on Postal Service property. These prohibitions do not apply to the following:
>
> (b) Posting notices on employee bulletin boards as authorized by Title 39, Code of Federal Regulations (CFR) 243.2.

The Respondent's defense to this allegation does not pass muster for several reasons. Although the act of collecting signatures on a petition is different from posting flyers on a bulletin board, it is not determinative. *NLRB v. Fant Milling Co.,* 360 U.S. 301, 307–308 (1959) (explaining that the Board is not confined to "precise particularizations of a charge" because it "is free to make full inquiry under its broad investigatory power" in order to fulfill its duties under the Act). Here, it suffices that both allegations fall within the sphere of solicitation—the collection of signatures on petitions is specifically defined as such, while the right of an employee to post on the Respondent's bulletin boards is also addressed. Moreover, Sellers prohibited Covarrubias from posting flyers on the community board because that was solicitation. *National Licorice Company v. NRLR,* 309 NLRB 350, 369 (1940) (the allegations in the complaint are deemed "related" if they "arise from the same factual situation, are of the same class" and "clearly relate to" allegations in the charge).

Relying on *Boeing Co.*, the Respondent argues that the solicitation rule is facially neutral and associated with a legitimate business justification, characterizes Covarrubias' activity as "peripheral," and assets that the removal of his flyers created only a "comparatively slight" risk of intruding on his Section 7 rights. 365 NLRB No. 154, slip op. at 3–4, 16 (2017).

In *Stericycle*, 372 NLRB No. 113, slip op. at 1–2 (2023), the Board recently abandoned the application of *Boeing Co.*, 365 NLRB No. 154 (2017), as the standard to determine whether work rules that do not explicitly restrict protected concerted activity are "facially unlawful under Section 8(a)(1) of the Act."[29] The new approach "builds on and revises" the Board's earlier test in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) by requiring proof that "an employee could reasonably interpret the rule to have a coercive meaning," regardless of whether "a contrary, noncoercive interpretation of the rule is also reasonable." The "employer's intent is also immaterial." The rule will be deemed "presumptively unlawful" if the General Counsel meets her burden. However, the rule will be found lawful to maintain if the employer rebuts that presumption "by proving the rule advances a legitimate and substantial business interest and that the employer is unable to advance the interest with a more narrowly tailored rule." Id at 2.

The argument that the solicitation policy is a facially neutral work rule is barely true—the word "petitions" is not preceded or followed by a specific term referenced in the Act (e.g., representation, decertification). Although the parties briefed this case based on *Boeing* as controlling precedent, their arguments fully address the integral elements of *Stericycle*—employees' reasonable interpretation of the rule and the Respondent's business interests. Here, Covarrubias reasonably interpreted the rule to prohibit Section 7 activity because his manager applied it to restrict such conduct.

As the policy is presumptively unlawful, the burden shifted to the Respondent to demonstrate a legitimate and substantial business interest. It argues that the impact on employee rights is outweighed by the Respondent's need to govern the public's conduct on federal property. In support of that argument, it notes that it is subject to other statutory and regulatory requirements, including the Hatch Act, that compel policies like the solicitation rule. Finally, the Respondent insists that the American public relies on these requirements in order to safely conduct business on its property.

Although complying with laws and government regulations, and safely conducting business on its property are legitimate and substantial business interests, the solicitation rule is overly broad and susceptible to infringement upon Section 7 activity, especially during nonwork time. A reasonable employee would clearly construe such activities to include the rights to organize, select or deselect their bargaining representative, and petition for improved terms and conditions of employment, including wages, benefits, health, and safety. Moreover, the Respondent failed to show that it is unable to advance those interests with a "more narrowly tailored rule." Finally, the solicitation rule prohibits protected concerted activity without demarcating between working and non-working hours. "The Act does not prevent any employer from making and enforcing reasonable rules covering the conduct of employees on company time." *Peyton Packing Co., Inc.,* 49 NLRB 828, 843–844 (1943). However, the Supreme Court has long held that bans on solicitation on employer property that extend beyond employee working hours represent "an unreasonable impediment to self-organization" and are unlawful. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803 fn. 10 (1945).

In these circumstances, the Respondent's maintenance of the overly broad solicitation rule violated Section 8(a)(1) of the Act.

III. THE RESPONDENT'S DIRECTIVE TO STOP POSTING FLYERS

Section 8(a)(1) makes it unlawful for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act. Section 7 guarantees employees the right to form, join, or assist labor organizations, 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. The concept of "mutual aid or protection" focuses on the goal of concerted activity; chiefly, whether the employee

[29] The Board remanded the allegations that the employer violated Sec. 8(a)(1) by maintaining its rules governing personal conduct, conflicts of interest, and confidentiality of harassment complaints to this administrative law judge for appropriate action as set forth in the decision. Id. at 15.

or employees involved are seeking to improve terms and conditions of employment or otherwise improve their lot as employees. *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 153 (2014). Concerted activity includes that which is engaged in with or on behalf of other employees, as well as where an employee brings truly group complaints to the attention of management. See *Meyers Industries*, 268 NLRB 493, 497 (1984) (*Meyers I*), 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 (1986) (*Meyers II*), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988).

Covarrubias's conduct was in line with the Respondent's safety procedures, which permit employees to discuss safety with each other before filing complaints through Form 1767 or OSHA. He also engaged in protected concerted activity when he posted the flyers about workplace safety concerns, first on the Union's bulletin board and then the community bulletin board. *EIS Brake Parts*, 331 NLRB 1466, 1469 (2000) ("[t]here can be no doubt that issues regarding workplace health and safety . . . are terms and conditions of employment.") One flyer depicted a dog in a burning room and asked if that was how coworkers felt about unresolved safety issues brought to their manager's attention. On the other flyer, Covarrubias informed coworkers of steps he was taking to address a list of safety issues at his and other Northern Virginia facilities. He reminded them of their safety obligations and urged them to inform him of similar unresolved issues and listed his email address. See *Every Woman's Place, Inc.*, 282 NLRB 413, 413 (1986) (employee's telephone call to DOL Wage and Hour Division was concerted because employees previously brought similar concerns to supervisor's attention). It is well established that "the activity of a single employee in enlisting the support of his fellow employees for their mutual aid and protection is as much 'concerted activity' as is ordinary group activity." *Fresh and Easy Neighborhood Market, Inc.*, supra at (2014) (quoting *Whittaker Corp.*, 289 NLRB 933, 933 (1988)).

Sellers prohibited Covarrubias from posting the flyers on the community bulletin board even though it did not have a rule specifically prohibiting it. Employees used the community bulletin board to post a variety of workplace and nonwork-related materials. Covarrubias protested the infringement on his right to concerted speech but Sellers replied that he could not do that because it constituted solicitation. Covarrubias complied, reasonably believing that refusing to do so would constitute insubordination. In fact, a violation of the solicitation rule would also have subjected Covarrubias to a fine and/or imprisonment.

Finally, even though the Respondent did not previously control what was posted on the bulletin board, its restriction on Covarrubias' right to post flyers about employee safety issues on that board, while permitting nonwork materials to remain, was discriminatory. *UPMC Presbyterian Hospital*, 366 NLRB No. 185, slip op. at 30 (2018) (employer violated Section 8(a)(1) by prohibiting employee from wearing union button in patient care areas, while allowing other employees to wear nonwork-related buttons in those areas).

By preventing Covarrubias from engaging in protected activity by placing flyers about workplace safety issues on the community bulletin board, the Respondent infringed on protected speech in violation of Section 8(a)(1) of the Act.

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 Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by:

(a) Maintaining a "Soliciting, Electioneering, Collecting Debts, Vending, and Advertising" rule that interferes with, coerces, and restrains employees in the exercise of rights guaranteed by Section 7, and

(b) By instructing employee David Covarrubias not to put the flyers about workplace safety issues on the Respondent's community bulletin board.

4. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices at its Merrifield facility, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Because the "Soliciting, Electioneering, Collecting Debts, Vending, and Advertising" rule was maintained nationwide the Respondent, it shall be ordered to post the Notice to Employees at its facilities throughout the United States in order to sufficiently remedy the violation. *Mastec Advanced Technologies*, 357 NLRB 103, 109 (2011), enfd. 837 F.3d 25 (D.C. Cir. 2016) (judge erred in failing to order notice posting at all of the respondent's facilities where the handbook containing the unlawful rules was in effect). The Respondent shall also be ordered to post the Notice to Employees on its intranet, Lite Blue, because it customarily communicates with its employees through that medium, and it is an appropriate method for distributing the notice to Respondent's employees. See *J&R Flooring, Inc.*, 356 NLRB 11 (2010) (due to "increasing prevalence of electronic communications at and away from the workplace, respondents in Board cases should be required to distribute remedial notices electronically when that us a customary means of communicating with employees.").

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[30]

ORDER

The Respondent, United States Postal Service, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining or enforcing the "Soliciting, Electioneering, Collecting Debts, Vending, and Advertising" policy which

[30] 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.

prohibits "soliciting signatures on petitions, polls, or surveys (except as otherwise authorized by USPS regulations).

(b) Prohibiting employees from posting materials related to the terms and conditions of employment on the community bulletin boards at Respondent's facilities.

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

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

(a) Within 14 days after service by the Region, post at its facility throughout the United States copies of the attached notice marked "Appendix."[31] Copies of the notice, on forms provided by the Regional Director for Region 5, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

(b) Within 14 days after service by the Region, post a copy of the attached notice marked Appendix on the Respondent's intranet, Lite Blue. Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 days in prominent places, including all places where the Respondent normally posts on that site notices to employees employed by the Respondent.

(c) Rescind the portion of the "Soliciting, Electioneering, Collecting Debts, Vending, and Advertising" policy which prohibits "soliciting signatures on petitions, polls, or surveys (except as otherwise authorized by the USPS regulations)," and notify Respondent's employees, in writing, of the recission and that the portion of the policy will no longer be maintained.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 5 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., September 8, 2023

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.

YOU HAVE THE RIGHT to discuss your terms and conditions of employment with your coworkers and WE WILL NOT do anything to interfere with your exercise of that right.

WE WILL NOT prohibit you from engaging in protected concerted activities, including posting materials, which are related to your terms and conditions of employment, on the community bulletin boards at our facilities.

WE WILL NOT maintain or enforce the following portion of our "Solicitation, Electioneering, Collecting Debts, Vending, and Advertising" policy which prohibits:

> Soliciting signatures on petitions, polls, or surveys (except as otherwise authorized by USPS regulations)

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the National Labor Relations Act.

WE WILL rescind the portion of our "Solicitation, Electioneering, Collecting Debts, Vending, and Advertising" policy cited above and WE WILL notify you, in writing of the recission and that the portion of the policy will no longer be maintained.

UNITED STATES POSTAL SERVICE

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/ 05-CA-287508 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

[31] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pan demic, the notice must be posted within 14 days after the facility reopens 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, the 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]." 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."