JD–53–26
Greenwich, CT

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

RAVEN CLINICAL RESEARCH, INC.

and Case No. 09-CA-361350

DAVID SMITH,
An Individual

*Jack D. Verner, Esq.,* for the General Counsel.
*Jason H. Ehrenberg, Esq., (Holon Law Partners LLP, New York, New York)* for the Respondent.

## DECISION

### STATEMENT OF THE CASE

**Arthur J. Amchan**, Administrative Law Judge. This case was tried virtually via Zoom on June 23-24, 2026. David Smith filed the charge in this matter on March 4, 2025. The charge alleges that Smith was discharged because he engaged in protected concerted activities by "discussing wages and/or other terms and conditions of employment." The General Counsel issued a complaint on March 25, 2026.

The Complaint is more specific than the charge. It alleges that Respondent discharged David Smith on or about March 3, 2025, for engaging in protected concerted activity in violation of Section 8(a)(1) of the Act, on or about February 28, 2025," by discussing Respondent's policy change regarding payment for travel and payroll issues."

The main issues in this case are whether David Smith was an employee of Respondent, or an independent contractor, and whether the activity he engaged in prior to his termination was protected and concerted.[1]

- [1] I have read and considered the briefs filed by the General Counsel and Respondent.

## Findings of Fact

Respondent facilitates clinical research. This involves recruiting and evaluating patients for participation in drug trials, developing study protocols and coordination with the clinicians who conduct the trials. It is a Connecticut corporation operating in various states, including Kentucky from where David Smith worked remotely. In the year prior to March 1, 2026, Respondent performed services in excess of $50,000 in states other than Kentucky. Respondent is an employer engaged in commerce within the meaning of the Act.

David Smith worked for Respondent as a clinical research professional from August 2024 until March 3, 2025, when Respondent's CEO Dell Hines terminated its relationship with him. The record is somewhat vague as to what Smith's work entailed.

Respondent initially retained Smith for a contract position with compensation at $50 per hour at an initial commitment of 10-20 hours per week. The offer letter states: "Subject to the mutual agreement of the parties, we anticipate that the role may potentially evolve into a more permanent position to be discussed by the parties at a future date." In some, but not all pay periods afterwards his hours were much more than that, Exh. R-5

Both Smith and Respondent understood that initially Smith was an independent contractor.

On January 20, 2025, Respondent offered Traci Bryant a contract position as a clinical research specialist. Her offer letter stated that after approximately six weeks from her start date, her position will convert from a contract role to that of permanent, W-2 employment, R. Exh. 17. In an undated document, Raven changed Bryant to a W-2 employee effective April 6, 2025. Joy Newby also became a W-2 employee, in about April 2025, Tr. 117, 125. The record does not contain a letter for Newby similar to one for Bryant, converting her to employee status. From this, I infer that a Raven contractor could become an employee without Respondent issuing such a letter. Moreover, I find that Smith became Raven's employee no later than February 5, 2025, when Smith signed the retention bonus letter discussed below.

Smith testified that he and others were also promised conversion to employee status by Hines and Vontrece Williams and that the date of this conversion was repeatedly delayed, Tr. 144, 149-150. Hines did not contradict Smith on this point and in fact, testified that Respondent had a process of converting contractors to W-2 status. I find that it did so with regard to Smith no later than February 5, 2025.

On January 31, 2025, Respondent offered Smith a retention bonus of up to $9,000 for his hard work and professional expertise. The bonus was to be paid in 6-$1500 installments in the pay periods between February 15th and April 30, 2025. Respondent's offer uses the term "your employment" when referring to Smith's status. For example, the letter states that, "To receive the bonus, you must remain actively employed with the company through April 30, 2025", G.C. Exh. 14. Smith signed the retention document on February 5, 2025, Tr. 269. Raven paid the retention bonus to Smith twice in February 2025, R. Exh. 5. [2]I deem the January 31 letter and Smith's acceptance of that letter to be an employment contract and the functional equivalent of the letter Hines sent to Traci Bryant.[3]

G.C. Exhs. 13.& 14.

On February 28, 2025, after apparently not being paid on time, Smith called his colleagues Traci Bryant and Joy Newby.[4] He asked both if they had been paid yet. Both said they had not, Tr. 158. Neither Bryant nor Newby testified. Thus, their accounts of their conversations with Smith, solicited by Respondent, G.C. Exhs. 5 and 6 are hearsay and are not credited. I find that Respondent has not established that Smith made the comments attributed to him by Bryant and Newby via Sandra Serran, who performed human resource functions for Respondent and Vontrece Williams, who participated in the management of Respondent.

On or just after February 28, Vontrece Williams[5] reported to Hines that Smith was telling people that he hadn't been paid for months at a time. This led Hines to terminate Respondent's working relationship with Smith, Tr. 277, 286-87. Williams did not testify and therefore her statements as to what Smith said to other Raven personnel are hearsay and are not credited.[6]

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[2] Smith's testimony at Tr. 227 that he did not understand that the arrangement with Raven was changing "at that time," does not refer to the February 2025 time period after he signed the retention agreement, Tr. 223-24.

[3] G.C. Exh. 14 is styled as an offer and asks Smith to sign it if he agrees with its terms, which Smith did on February 5, 2025. Nothing in the letter indicates that it is anything other than an employment contract to which the usual contract rules of "offer and acceptance" apply.

[4] Exhibit R-5 indicates that Raven paid Smith on February 28. I decline to find that it did so. Smith testified he was not paid on time, Tr. 153. Dell Hines testified that Smith was paid every dollar for every hour he submitted. He did not testify that Smith was paid on time on February 28, 2025., Tr. 267. R-Exhibit 5 is a summary prepared by Dell Hines. The underlying documents are not in the record.

[5] The General Counsel alleges that Vontrece Williams was a supervisor and an agent of Respondent. Respondent denies both. It alleges that Williams was an independent contractor. Tr. 7, 37-40. I find that Williams was an agent of Respondent. She was a conduit between Dell Hines and other Raven personnel. She gave Smith instructions and assignments. When Smith asked her about Raven's travel pay, Williams responded "we usually pay." Dell Hines also relied on what Williams told him in deciding to terminate Raven's relationship with Smith. As a conduit between Hines and other Raven personnel, Williams was Raven's agent, *Martinelli Interior Construction Co.,* 351 NLRB 1184 (2007); *Pan-Oston Co.,* 336 NLRB 305, 306 (2021). Williams also directed Sandra Serran to interview Smith. Serran shared the results of her interviews with Williams and Hines.

[6] At trial, I erroneously stated that if Williams was an agent of Respondent, the truth of her statements were not hearsay, Tr. 277. Rule 801 (d) (2) of the Federal Rules of Evidence provides that an opposing party's statement is not hearsay only if offered against an opposing party. In the instant case Respondent offered Williams' statement in support of its case.

Between February 28 and March 3, CEO Hines sent a letter to Smith informing him that, "your contract with Raven Clinical Research will end as of Monday, March 3, 2025."

> The decision to end your contract has been made following careful consideration. This decision is based on your continued involvement in HR-related discussions with other personnel, despite previous instructions not to engage in such conversations.
>
> This behavior has had a negative impact on the team and is not aligned with the solution-oriented culture we are striving to build.

G.C. Exh. 4.

After being terminated Smith described his status with Raven on LinkedIn as "contract, while describing his status with other employers as "Full-Time," R. Exh. 16. I find this fact to have no bearing as to whether Smith was an employee or independent contractor as of February 28, 2025.

*Current Board Law on the Employee/Independent Contractor Issue*

The most recent authoritative discussion of Board law regarding the difference between statutory employees and independent contractors, who are excluded from the definition of employee by Section 2(3) of the Act is *The Atlanta Opera,* 372 NLRB No. 95 (2023). In that case the Board overruled its decision in *SuperShuttle DFW, Inc.* 367 NLRB No. 75 (2019) and rejected any approach which elevates any single factor, such as entrepreneurial opportunity in determining an individual's relationship to an employer.

The Board returned to the approach of earlier decisions which required assessing and weighing all the common-law factors set forth in the Second Restatement of Agency, without considering any one factor to be decisive. However, in this case I find Respondent entered into an employment contract with Smith on February 5, 2025. Therefore, resort to the Restatement factors is unnecessary in this matter. I am unaware of any precedent that would support the theory that a worker subject to an employment contract is an independent contractor. In the event that the Board disagrees with me, I also find that applying the Restatement factors, Smith was an employee, by February 5, 2025. Respondent did not meet its burden of proving that he was an independent contractor when it terminated him.

This test includes the following non-exhaustive factors:

a. The extent of control by which the employer may exercise over the details of the work;
b. Whether or not the one employed is engaged in a distinct occupation or business;
c. The kind of occupation, i.e., whether the work is usually done under the direction of the employer or by a specialist without supervision.
d. The skill required in the particular occupation
e. Who supplies the tools and place for the individual doing the work;

f. The length of time for which the person is employed.
g. The method of payment, whether by the time or by the job;
h. Whether the work is part of the regular business of the employer;
i. Whether or not the parties believe they are creating an employment relationship;
j. Whether the principal is or is not in business.

Another factor to be considered is whether the individual has significant entrepreneurial opportunity for gain or loss. This often involves an assessment of whether the person has the ability to work for other companies, hire their own employees, and had a propriety interest in their work.

In the instant case, not all of the common-law factors are particularly relevant. The factors that are relevant are the following:

a. Respondent did not exercise much, if any, control over the way David Smith performed his duties.
b. Smith was a specialist in clinical research and performed his tasks without much supervision.
c. Smith worked remotely from home and generally worked with his own property—except for the software that was used to perform his tasks.
d. When Smith was retained by Respondent, the relationship was open-ended as opposed to being limited to a specific period or job;
e. Smith was performing work that was a primary function of Respondent. While Respondent argues to the contrary, Smith's status was unlike, for example, a painter or plumber working for an employer who was not in the painting or plumbing business.
f. At the outset of Smith's relationship with Respondent, both parties understood that he was an independent contractor. He never received a W-2 form from Respondent and did not receive any fringe benefits. Raven provided Smith with an IRS form 1099.
g. However, at some point, his work hours increased. Smith came to regard himself as an employee. The retention agreement indicates that Respondent also considered Smith to be an employee no later than February 5. Moreover, prior to February 2025, there was an expectation on the part of both Smith and Respondent that their relationship would eventually become that of employer/employee. Dell Hines' January 20, 2025, letter to Traci Bryant and Hines' testimony indicates that Raven had a practice of converting contractors to statutory employees. Respondent contends that since Raven never gave Smith such a letter, this factor tends to indicate that Smith was an independent contractor. However, there is no evidence that Raven gave Joy Newby the same kind of letter it gave to Bryant. Respondent converted Newby to employee status.
h. After Smith's hours increased, he had little opportunity to earn a living with his skills during normal working hours outside of his relationship with Respondent. His relationship with Raven was subject to a Nondisclosure Agreement. It provided:

> During the term of your appointment, you shall not do anything to compete with Raven Clinical, or any of its affiliates, partners, portfolio companies, investors

officers, …, or in view of creating a Company to compete with the Company or the Related Parties.

G.C. Exh. 8.

I find this provision effectively prevented Smith from working in clinical research other than in performing his duties for Respondent. Other provisions forbid Smith for 18 months after his appointment ended, from hiring or recruiting employees of Raven or soliciting business from Raven's customers. This provision is also inconsistent with independent contractor status.

*Applicable Board Law on Protected Concerted Activity*

Section 7 provides that, "employees shall have the right to self-organization, 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 ...* (Emphasis added)."

In *Myers Industries (Myers 1)*, 268 NLRB 493 (1984), and in *Myers Industries (Myers II)* 281 NLRB 882 (1986), the Board held that "concerted activities" protected by Section 7 are those "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." However, the activities of a single employee in enlisting the support of fellow employees in mutual aid and protection are as much concerted activity as are ordinary group activities.

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

This burden normally requires that the General Counsel establish that the discriminatee engaged in protected concerted activity, that the Respondent was aware of the activity and its concerted nature, that Respondent bore animus towards the discriminatee as a result of this awareness and was motivated by this animus in discharging or otherwise discriminating against the employee.

I infer a direct connection between Smith's calls to Bryant and Newby and the termination of his relationship with Respondent. The timing of Hines' termination letter strongly suggests such a relationship. It is unclear whether either Bryant or Newby shared Smith's concerns. The record also does not contain any evidence of an explicit entreaty to Bryant and Newby to join Smith in addressing his concerns about delayed payment with management. [7]

[7] The absence of such evidence may be due to Respondent's failure to comply with the General Counsel's subpoena which requested all documents showing Raven's pay

Nevertheless, I deem his outreach to them as an effort to instigate group action and that it thus constitutes protected concerted activity, *Mobil Exploration and Producing U.S., Inc. v. N.L.R.B,* 200 F. 3d 230, 241 (5th Cir. 1999). If Smith's gripe was purely personal, he would have had no reason to reach out to Bryant and Newby. The termination letter and Dell Hines' testimony establishes that Respondent's concern that Smith was engaging in concerted activity motivated its decision to terminate its relationship with him. I discredit Hines' self-serving testimony that he was planning to terminate Smith prior to learning of Smith's calls to Bryant and Newby.

Even if Smith did not engage in protected concerted activity, his discharge would violate the Act because his discharge was motivated by Respondent's desire to prevent him from doing so in the future, *Parexcel International, LLC,* 356 NLRB 516, 519 (2011); *RRI West Management,* 374 NLRB, No. 98 (April 17, 2026) fn. 14.

*Respondent's "due process" argument*

Respondent contends that the complaint prohibits the General Counsel from prevailing under any theory other than that Smith was discharged for objecting to policy changes. First of all, the complaint is broad enough to encompass Respondent's failure to pay on time. Secondly, the issues as to whether Respondent terminated Smith for the discussions he had with Bryant and Newby were tried by consent. The evidence that Raven fired Smith in part for this reason is Dell Hines' testimony.

It is well settled that the Board may find and remedy a violation even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated, *Pergament United Sales,* 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). The Board applies this test with particular force where the finding of a violation is established by testimonial admissions of Respondent's own witnesses, *Kankakee County Training Center for the Disabled,* 366 NLRB No. 181 (2018).

## Conclusions of Law

David Smith was an employee of Respondent no later than February 5, 2025.

Respondent did not meet its burden of proving that Smith was an independent contractor after February 5, 2025.

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schedules and all documents relating to David Smith's communications with co-workers. Respondent contends that some of these records are maintained by Upwork, an independent entity. Respondent did not make any request to Upwork for documents, nor did it show that it was not entitled to obtain such documents from Upwork, *Clear Channel Outdoor, Inc.,* 346 NLRB 696, 702 fn. 10 (2006); *Club Quarters Grand Central,* 2021 WL 3021105 fn. 3 (July 15, 2021). The definition of document in the General Counsel's subpoena includes "material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party…"

David Smith engaged in protected concerted activity by calling Joy Newby and Traci Bryant on February 28, 2025, to determine whether they also had not been paid on time.

Respondent would not have terminated Smith's employment on March 3, 2025, had it not learned that he made calls to Newby and Bryant on February 28.

Respondent violated Section 8(a)(1) in terminating Smith's employment.

## REMEDY

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

The Respondent, having discriminatorily discharged an employee, must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth C*o., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). Respondent shall also compensate David Smith for any reasonable search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.

Respondent shall reimburse the discriminatee in amounts equal to the difference in taxes owed upon receipt of a lump-sum backpay award and taxes that would have been owed had there been no discrimination. Respondent shall also take whatever steps are necessary to ensure that the Social Security Administration credits the discriminatee's backpay to the proper quarters on his Social Security earnings record. To this end, Respondent shall file with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

[8] 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.

## ORDER

The Respondent, Raven Clinical Research, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

   a. Terminating employees because it knew or suspected that they engaged in protected concerted activity.
   b. 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. Within 14 days from the date of the Board's Order, offer David Smith full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
   b. Make David Smith whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision. This includes any unpaid portion of his retention bonus. Compensate David Smith for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.
   c. Compensate David Smith for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years
   d. Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge and within 3 days thereafter notify David Smith in writing that this has been done and that the discharge will not be used against him in any way.
   e. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
   f. Within 14 days after service by the Region, post at all its physical facilities, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by

[9] 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

the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on any intranet or an internet site, and/or by other electronic means, that Respondent customarily communicates with its employees. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent since March 3, 2025.

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

Dated, Washington, D.C. August 17, 2026

Arthur J. Amchan

Arthur J. Amchan
Administrative Law Judge

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Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

**APPENDIX**

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

**WE WILL NOT** discharge or otherwise discriminate against any of you for engaging or planning to engage in protected concerted activity.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

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

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

**WE WILL** compensate David Smith for the adverse tax consequences, if any, of receiving a lump-sum backpay award and WE WILL file a report with the Regional Director for Region 9 allocating the backpay award to the appropriate calendar quarters.

**WE WILL** compensate David Smith for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

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

**WE WILL** file with the Regional Director for Region 9, within 21 days of the date that the amount of backpay is fixed, either by agreement or board order or such additional time as the

Regional Director may allow for good cause shown, a copy of the W-2 form for David Smith reflecting the backpay award.

Raven Clinical Research, Inc.
(Employer)

Dated ____________________ By ________________________________________________
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

If you wish to contact an NLRB agent, you may call the Board's toll-free number 1-844-762-6572 or contact the Board's Region 9 office at 550 Main St., Rm 3-111, Cincinnati, Ohio 45202-3271, Tel: 513-684-3686, Hours 8:00-4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/09-CA-361350 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, (513) 684-3686.