Tramont Manufacturing, LLC and United Electrical, Radio and Machine Workers of America, Local 1103. Case 18–CA–155608

July 27, 2020

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On April 7, 2017, the National Labor Relations Board issued an Order Vacating, and Decision and Order on Remand in this proceeding, adopting the administrative law judge's finding that the Respondent, a successor employer as defined in *NLRB v. Burns International Security Services*, 406 U.S. 272 (1972) (*Burns*), violated Section 8(a)(5) of the National Labor Relations Act by failing to bargain with the Union over the effects of unilaterally implemented layoffs.[1] The Respondent subsequently filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit. On May 29, 2018, the court granted the petition for review in part, finding that the Board erred by failing to adequately explain why it had found the "clear and unmistakable waiver" standard applicable to the analysis of an effects-bargaining issue.[2] The court remanded the case for the Board "to provide an explanation of the legal standard it applies when determining which subjects of mandatory bargaining are displaced by a *Burns* successor's unilaterally imposed employment terms."[3]

On August 7, 2018, the Board notified the parties that it had accepted the court's remand and invited them to file statements of position with respect to the issues raised. The Respondent filed a statement of position.

Having considered the matter in light of the court's opinion and the Respondent's statement of position, we reaffirm our prior finding that the Respondent violated Section 8(a)(5) of the Act by refusing to bargain with the Union over the effects of its layoffs. In doing so, pursuant to the court's direction, we clarify the legal standard that we will apply when interpreting initial terms and conditions of employment unilaterally implemented by a *Burns* successor upon commencement of operations. More specifically, we adhere to our prior view, which the court found "perfectly reasonable,"[4] that a contract-coverage standard should not apply. We also conclude, in response to the court's remand, that a clear and unmistakable waiver standard should not apply in these circumstances. Instead, we hold, consistent with Board precedent discussed below, that a *Burns* successor may lawfully take actions that are reasonably encompassed by unilaterally implemented initial terms and conditions of employment. Such actions do not constitute a material change in the status quo requiring advance notice to and bargaining with an incumbent union under *NLRB v. Katz*, 369 U.S. 736 (1962) (*Katz*). Applying that standard here, we find that the effects of the Respondent's decision to lay off employees were not reasonably encompassed by any criteria established as initial terms of employment. Consequently, the Respondent's refusal to bargain about the layoffs' effects was unlawful.

I. BACKGROUND

The Respondent, which manufactures diesel engines and parts, took over operations from its predecessor, Tramont Corporation, in May of 2014. It is undisputed that the Respondent is a *Burns* successor employer and that, pursuant to rights confirmed in *Burns*, it unilaterally implemented certain initial terms and conditions of employment in the form of an employee handbook on May 7, 2014, before it hired its full complement of employees. Section 5.5 of the handbook, which addressed layoffs, stated that "[f]rom time to time, management may decide to implement a reduction in force," and set forth the procedures that the Respondent would use to select employees for layoff. However, this handbook section did not address what procedures, if any, would apply with regard to the effects of a layoff.[5]

[1] 365 NLRB No. 59 (2017) (*Tramont II*). The Board vacated an earlier decision, reported at 364 NLRB No. 5 (2016) (*Tramont I*), which was remanded by the United States Court of Appeals for the District of Columbia Circuit upon the Board's motion to address an issue overlooked by the Board that was raised by the Respondent's exceptions to a decision issued by Administrative Law Judge Sharon Levinson Steckler on January 28, 2016. As further discussed below, after remand the Board reviewed the judge's decision de novo, including the previously overlooked issue.

[2] *Tramont Mfg., LLC v. NLRB*, 890 F.3d 1114, 1122–1123 (D.C. Cir. 2018).

[3] Id.

[4] Id. at 1120.

[5] In its position statement to the Board on remand, the Respondent makes reference to Sec. 7.22 of the handbook, which states that "[a]ny severance pay offered is at Company discretion and requires the employee to sign a Release of Claims Agreement as a condition of payment." This is the first time the Respondent has specifically referenced Sec. 7.22, or any other section of the handbook besides Sec. 5.5, before either the Board or the District of Columbia Circuit. See *Tramont Mfg., LLC v. NLRB*, 890 F.3d at 1117 (observing that Sec. 5.5 is "the only handbook provision Tramont has put at issue in these proceedings"). Accordingly, we find that the Respondent has waived the argument that any handbook sections other than Sec. 5.5 privileged its refusal to bargain with the Union about the effects of the layoff decision at issue in this case.

After implementing its initial terms and conditions of employment, the Respondent hired a full complement of employees. Because a majority of the employees were unit members from the predecessor, the Respondent agreed, as *Burns* requires, to recognize and bargain with the Union. The parties then began negotiations for a collective-bargaining agreement. On February 9, 2015, the Respondent laid off 12 employees, using the selection criteria outlined in its handbook as part of its initial terms and conditions of employment. The Union requested information relating to the layoffs and, at a subsequent grievance meeting, it requested restoration of the "status quo ante" and bargaining over both the decision and effects of the layoffs. The Respondent refused to bargain over either of those topics.

II. PRIOR BOARD AND COURT PROCEEDINGS

The Administrative Law Judge's Decision

The judge found that the Respondent violated Section 8(a)(5) of the Act by failing to provide the Union with notice and an opportunity to bargain over the effects of the layoffs. She rejected the Respondent's argument that the Board should apply a contract-coverage analysis, adopted by certain courts of appeals,[6] to the layoff provisions in the handbook, explaining that, under extant law at the time, the Board applied a clear and unmistakable waiver standard.[7] The judge applied that standard and found that the provisions of the handbook did not address the effects of layoffs. Therefore, the provisions obviously were not sufficient to constitute a waiver of the Union's bargaining rights under the Board's precedent. The judge further observed that even if the Board were to apply a contract-coverage analysis, she did not believe that would change the outcome because the parties did not bargain over the unilaterally implemented handbook. Accordingly, she concluded that the Respondent violated Section 8(a)(5) by failing to bargain with the Union over the effects of the layoffs.

The Board's Decision

In *Tramont II*, the Board adopted the judge's finding that the Respondent violated Section 8(a)(5), explaining that the same result would follow from application of either the clear and unmistakable waiver standard or the contract-coverage standard.[8] With respect to the clear and unmistakable waiver standard, the Board agreed, "for the reasons stated by the judge," that the Union had not waived effects bargaining.[9] The Board then turned to the contract-coverage standard, finding that, first, there was "no judicial authority for the proposition that the 'contract coverage' standard could apply in the absence of a negotiated contract," and, second, "even if the layoff provision in the handbook could somehow be treated as a contract, it simply addresses how employees are selected for layoff" and "cannot be read to authorize the Respondent to refuse to bargain with the Union over the *effects* of such layoffs."[10]

The D.C. Circuit's Decision

On May 9, 2018, the D.C. Circuit issued a decision granting the Respondent's petition for review in part, denying the petition for review in part, and remanding the case to the Board. The court found that "the Board's decision not to apply [the contract-coverage] standard fell within [its] legitimate policy ambit in interpreting the National Labor Relations Act," explaining that the Respondent "cites no precedent—nor are we aware of any—from this or any court applying the contract-coverage standard when determining which subjects a *Burns* successor's initial terms and conditions remove from mandatory bargaining, let alone any precedent holding that the Board must apply this standard."[11] However, the court found that the Board's clear and unmistakable waiver analysis fell short, concluding that the Board made "no attempt to explain how a waiver standard can sensibly apply to a *Burns* successor's unilaterally imposed initial employment terms."[12] "Simply put," the court observed, "we do not see how employment terms unilaterally imposed *by an employer* could ever effect a waiver of bargaining rights *by the union*."[13]

The court therefore remanded the case to the Board "to provide an explanation of the legal standard it applies when determining which subjects of mandatory bargaining are displaced by a *Burns* successor's unilaterally imposed initial employment terms."[14] Specifically, the court instructed that

> even if the Board chooses to abandon its waiver standard in this context, it might, in its discretion, nonetheless decide that unilaterally imposed employment terms should be narrowly construed and that liability remains

[6] See, e.g., *NLRB v. Postal Service*, 8 F.3d 832 (D.C. Cir. 1993).

[7] See, e.g., *Provena St. Joseph Medical Center*, 350 NLRB 808 (2007), subsequently overruled in *MV Transportation*, 368 NLRB No. 66 (2019) (adopting the contract-coverage standard).

[8] 365 NLRB No. 59, slip op. at 2.

[9] Id.

[10] Id. (emphasis in original).

[11] 890 F.3d at 1119–1120 (internal quotations omitted).

[12] Id. at 1121.

[13] Id. (emphasis in original).

[14] Id. at 1122–1123. The court also rejected the Respondent's arguments that the Union received adequate notice of the layoffs, that it waived its right to request bargaining over the effects of the layoffs by failing to request bargaining in a timely manner, and that the Board imposed an overly burdensome remedy. 890 F.3d 1114, 1121–1122.

> appropriate here. Should it do so, however, it must respond to Tramont's argument that such an outcome would run counter to *Monterey Newspapers, Inc.*, 334 NLRB 1019 (2001), in which the Board held that the Act imposed no obligation on a *Burns* successor to bargain over "the rate of pay it proposed in each job offer it made to each prospective new employee" where the employer's initial employment terms established that new employees would be offered pay rates within specified bands, *id.* at 1019.

Id. at 1121.

III. DISCUSSION

A. Clarification of the Appropriate Legal Standard

1. The contract coverage standard and the clear and unmistakable waiver standard do not apply in defining a *Burns* successor's bargaining obligation.

The court has directed us to clarify the standard that governs the bargaining obligations of a successor employer that has chosen to unilaterally set initial terms and conditions of employment, as *Burns* permits. Before addressing the governing standard, we briefly turn to the standards that we now agree do *not* apply.

To begin, we affirm our prior view that it would be inappropriate to apply the contract-coverage standard in these circumstances. In *MV Transportation*, the Board recently adopted the contract-coverage standard "when considering whether an employer's unilateral action is *permitted by a collective-bargaining agreement*."[15] The Board applies the contract-coverage standard in such circumstances because "when parties 'bargain about a subject and memorialize that bargain in a collective bargaining agreement, they create a set of rules governing their future relations,'" and "'there is no continuous duty to bargain during the term of an agreement with respect to a matter covered by a contract.'"[16] As the court observed in this case, however, that rationale "evaporates where, as here, the employer argues that its bargaining duties have been displaced not by a bargained-for contract, but instead by a handbook provision that it has itself unilaterally implemented . . . and to which the Union ha[s] never agreed."[17]

For similar reasons, we now agree with the court that a clear and unmistakable waiver analysis is also inappropriate. Board law has recognized three ways in which a union could waive its right to bargain over an otherwise mandatory subject of bargaining: "'by express provision in the collective bargaining agreement, by the conduct of the parties (including past practices, bargaining history, and action or inaction), or by a combination of the two.'"[18] Although the Board now evaluates collective-bargaining provisions under the contract-coverage standard as opposed to the clear and unmistakable waiver standard, a union may still waive its right to bargain over an otherwise mandatory subject of bargaining by "some combination of contractual language, bargaining history, and past practice."[19] None of those exceptions logically applies to initial terms implemented by a *Burns* successor employer in advance of any bargaining and as to which there would be no past practice for this employer in the new workforce. We agree with the D.C. Circuit that it is difficult to see "how employment terms unilaterally imposed *by an employer* could ever effect a waiver of bargaining rights *by the union*."[20] Accordingly, we clarify that a successor employer's unilaterally implemented terms cannot operate as a waiver of a union's right to bargain over a particular mandatory bargaining subject.

2. The standard applicable to unilateral actions taken by a *Burns* successor after setting initial terms.

Having determined both that the contract-coverage and clear and unmistakable waiver standards do not apply, we next clarify what the proper standard should be. Our analysis must begin with the Supreme Court's holding that a *Burns* successor is not obligated to adopt the collective-bargaining agreement between the predecessor employer and the incumbent union, and, further, is not bound to continue to apply the agreement's substantive terms.[21] The Court explained that not only would such a requirement violate Section 8(d) of the Act, which states that the existence of the collective-bargaining obligation "does not compel either party to agree to a proposal or require the making of a concession," but it could also result in "serious inequities" for both the employer and union should the parties be saddled with terms and conditions of employment that do not align with their interests and relative bargaining power in the context of a new and different collective-bargaining relationship.[22] Further, a successor employer is not bound by terms and conditions of employment established by the predecessor's past practices,

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[15] 368 NLRB No. 66, slip op. at 1 (emphasis added).

[16] Id., slip op. at 11 (quoting *NLRB v. Postal Service*, 8 F.3d 832, 836 (D.C. Cir. 1993)). Subsequently, the Board held that the contract-coverage standard does not apply to unilateral changes made after a collective-bargaining agreement has expired, where the expired agreement did not provide that the employer would retain a relevant right of unilateral action post-expiration. *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 369 NLRB No. 61 (2020).

[17] *Tramont Mfg. v. NLRB*, 890 F.3d at 1120.

[18] *American Diamond Tool*, 306 NLRB 570, 570 (1992) (quoting *Chesapeake & Potomac Telephone Co. v. NLRB*, 687 F.2d 633, 636 (2d Cir. 1982)).

[19] *MV Transportation*, supra, slip op. at 12.

[20] *Tramont Mfg. v. NLRB*, 890 F.3d at 1120 (emphasis in original).

[21] 406 U.S. at 281–282.

[22] Id. at 282–284, 287–288.

whether or not related to application of contractual provisions. As the Court stated, "It is difficult to understand how Burns could be said to have changed unilaterally any pre-existing term or condition of employment without bargaining when it had no previous relationship whatsoever to the bargaining unit and . . . no outstanding terms and conditions of employment from which a change could be inferred."[23]

The Court's decision in *Burns* clearly recognizes an exception, based on statutory and economic considerations, to the usual bargaining principles that exist for a continuous collective-bargaining relationship with an incumbent union, as set forth in *Katz.* Accordingly, the Board has recognized that "the setting of initial employment terms by a lawful *Burns* successor stands on different footing than decisions made by an incumbent employer."[24] That is, the *Burns* successor is free to make one-time initial unilateral changes in the status-quo terms and conditions of employment for bargaining unit employees that the predecessor, as an incumbent employer, would have been precluded from making. The successor can, in effect, reset the status quo at the commencement of a bargaining relationship. "Once a *Burns* successor has set initial terms and conditions of employment, however, a bargaining obligation attaches with respect to any subsequent changes to terms and conditions of employment,"[25] as required by *Katz*.

In *Katz*, the Supreme Court held that, upon commencement of a bargaining relationship, employers of union-represented employees are required to maintain the status quo, i.e., to refrain from making a material change regarding any term or condition of employment that constitutes a mandatory subject of bargaining, unless notice and an opportunity to bargain regarding a contemplated change to the status quo is provided to the union. But although *Katz* holds that unilateral "changes" violate the Act, *Katz* also preserves an employer's right to act in line with "long-standing practices" that involve the exercise of some degree of discretion. Such actions constitute "a mere continuation of the status quo."[26] As recently reaffirmed in *Raytheon Network Centric Systems,* 365 NLRB No. 161 (2017), "the Board has interpreted *Katz* to hold that an employer may lawfully take unilateral actions where those actions are similar in kind and degree with what the employer did in the past, even though the challenged actions involved substantial discretion."[27]

The same principles apply when considering whether actions taken by a *Burns* successor represent a material change in the status quo set when the successor implemented initial terms and conditions of employment. For example, in *Monterey Newspapers*—a case that the court has directed us to consider—the successor employer's initial terms and conditions of employment included a pay system for new hires that differed from the wage scale that it continued to apply for employees retained from the predecessor's work force. Under this system, the employer would offer new job applicants wage rates within a specified pay band. Determination of the specific wage rate offered to each applicant would be "based on the applicant's qualifications and the local market conditions for such jobs."[28] The Board affirmed the judge's finding in the case that the employer lawfully established the new-hire pay system as an initial term of employment under *Burns*. It reversed the judge, however, and found that the employer did not violate Section 8(a)(5) of the Act by failing to provide the union with prior notice and an opportunity to bargain concerning the rate of pay it proposed in each job offer it made to applicants subsequent to the commencement of operations. In so finding, the Board rejected the theory that bargaining was required because the determination of each pay offer involved the exercise of discretion. Describing the discretion as "tightly circumscribed" by pay bands, the Board opined that finding a successor employer could lawfully establish the pay system as an initial term of employment "but could not offer a starting wage to any job applicant under that system without bargaining with the Union, deprived the Respondent of the rights to which it was entitled under *Burns*."[29]

We note that the Court's remand opinion in the present case stated that the Board could "decide that [a *Burns* successor's] unilaterally imposed employment terms should be narrowly construed," but that the Board would have to respond to the argument that such a decision would run counter to the rationale of *Monterey Newspapers*.[30] We find no basis in the fundamental bargaining principles underlying *Burns* and *Katz* for narrowly construing the scope of initial terms lawfully set by a successor employer. To the contrary, we find that subsequent actions taken in application of an initial term may not be a material

[23] Id. at 294.

[24] *Monterey Newspapers*, 334 NLRB 1019, 1021 (2001); see also id. at 1021 fn. 11.

[25] *Paragon Systems, Inc.*, 362 NLRB 1385, 1386 (2015).

[26] *Katz*, 369 U.S. at 746.

[27] Id., slip op. at 16. Indeed, in some instances involving what has been termed a "dynamic status quo," an employer must continue to make changes in accord with an established past practice. The failure to do so would be a material change in the status quo, triggering the *Katz* obligation to bargain. Id., slip op. at 5–7; see also *800 River Road Operating Co., LLC*, 369 NLRB No. 109, slip op. at 5 (2020).

[28] *Monterey Newspapers*, 334 NLRB at 1019.

[29] Id. at 1021.

[30] 890 F.3d at 1121.

change in the status quo, and therefore need not require notice to the union and opportunity to bargain, even if the degree of managerial discretion inherent in that term is not as "tightly circumscribed" as it was in the pay-range system in *Monterey Newspapers*.

For example, the Board found in *Paragon Systems* that a successor employer was privileged to make changes in the amount of paid pre- and post-shift "guard mount" time, without providing the union notice and an opportunity to bargain, where its unilaterally implemented initial terms stated that "shift schedules [would] be determined in accordance with the operational needs of the contract, with consideration given to employee seniority."[31] Under such circumstances, the Board concluded, the employer's unilateral action with respect to what constituted a paid shift was "reasonably encompasse[d]" by its initial terms and conditions of employment; therefore, the Board explained, "the General Counsel . . . failed to establish that the Respondent *unlawfully changed* terms and conditions of employment."[32]

In sum, a *Burns* successor's right to take unilateral action that is reasonably encompassed by its initial terms and conditions of employment is no more than any employer's right, under *Katz*, to engage in action that constitutes "a mere continuation of the status quo," as opposed to a material change.[33] Recognition of such a right does not, to borrow the language of the District of Columbia Circuit, "displace" the employer's obligation to bargain over any mandatory subjects of bargaining under Section 8(a)(5) of the Act.[34] The "reasonably encompassed" standard does not place successor employers and non-successor employers on different footing with respect to an obligation to maintain the status quo, once established. Rather, a *Burns* successor, like an employer with an established past practice, may take unilateral action in accordance with the status quo, even if such action involves "substantial discretion."[35]

Accordingly, where it is alleged that a successor employer, after setting initial terms and conditions of employment, has subsequently taken action constituting an unlawful unilateral change, we hold that the relevant question is whether that action was reasonably encompassed by the initial terms.[36] If so, then we will find that there has been no material "change" at all, and hence no violation of the Act. By contrast, a violation will be found if the subsequent action is not reasonably encompassed by the successor's initial terms.

B. Application of the Standard in this Case

Having clarified the relevant standard, we now turn to the facts of the present dispute. The layoffs at issue involve related, but technically separate mandatory subjects of bargaining. It is undisputed that the Respondent had no obligation to bargain about the decision to lay off 12 employees on February 9, 2015, because there is no contention that this decision involved a material change in the status quo established by the criteria set forth in Section 5.5 of the handbook governing layoff selection procedures. The same cannot be said, however, for the effects of that decision. Section 5.5 did not mention the effects of any layoffs on unit employees.

It is well established that an employer is generally obligated to bargain over the effects of a decision even when it has no statutory duty to bargain over the decision itself.[37] Accordingly, the Respondent's refusal to bargain about the effects of the layoffs can be lawful only if layoff effects are reasonably encompassed by the language of Section 5.5. As previously stated, however, Section 5.5 only refers to layoff selection criteria. There is no basis for finding that those criteria reasonably encompass the discrete subject of a layoff's effects.[38] Although the Respondent had no obligation to bargain about its decision to select certain employees for layoff in this case, it was still obligated to give notice to the Union and bargain upon request about the effects of the layoff decision on those bargaining unit employees selected as well as on those retained.

IV. CONCLUSION

We affirm our prior finding that the Respondent violated Section 8(a)(5) of the Act by refusing to bargain with the Union over the effects of its layoffs. A *Burns* successor that has implemented new initial terms and conditions

[31] 362 NLRB 1385, 1386 (2015).

[32] Id. at 1386–1387 (emphasis added).

[33] 369 U.S. at 746.

[34] *Tramont Mfg. v. NLRB*, 890 F.3d at 1120. Indeed, the Board has made clear that an employer's right to take unilateral action consistent with its longstanding policies and practices does not displace its separate "obligation to bargain, upon the union's request and at times when Sec. 8(d) requires bargaining, about changing that status quo for the future." *Mike-Sell's Potato Chip Co.*, 368 NLRB No. 145, slip op. at 4 (2019).

[35] *Raytheon*, 365 NLRB No. 161, slip op. at 16.

[36] *Paragon Systems, Inc.*, 362 NLRB at 1386.

[37] See *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681–682 (1981); *Allison Corp.*, 330 NLRB 1363, 1366 (2000); *Good Samaritan Hospital*, 335 NLRB 901, 902 (2001); *KIRO, Inc.*, 317 NLRB 1325, 1327 (1995).

[38] In this respect, contrary to the Respondent's argument in its post-remand statement of position, this case is clearly distinguishable from *Monterey Newspapers*, where the challenged actions were consistent with identifiable and specific initial terms set by the successor.

Relatedly, the Respondent mistakenly relies on precedent from the District of Columbia Circuit holding that, under a contract-coverage standard, a contract provision that "covers" a particular decision inherently covers the effects of that decision as well, absent unusual facts creating an exception to that rule. *Enloe Medical Center v. NLRB*, 433 F.3d 834, 839 (D.C. Cir. 2005). For the reasons given above, this is simply not a contract-coverage case.

of employment may take unilateral action that is reasonably encompassed by those terms, as such action does not constitute a material change in the status quo under *Katz*. But, here, the Respondent has not shown that the effects of its layoffs were reasonably encompassed by its initial terms and conditions of employment, as those initial terms addressed layoff decisions, that mandatory bargaining subject is distinct from the mandatory subject of the effects of layoff decisions, and the initial terms set for layoff decisions were silent as to the effects of any layoffs. Accordingly, the Respondent was obligated to bargain over those effects.

ORDER

The National Labor Relations Board affirms its Order Vacating, and Decision and Order on Remand issued in this proceeding on April 7, 2017 (reported at 365 NLRB No. 59), as modified,[39] and orders that the Respondent, Tramont Manufacturing, LLC, Milwaukee, WI, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Replace paragraph 2(f) with the following.

(f) Post at its facility in Milwaukee, Wisconsin, copies of the notice marked "Appendix."[40] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. 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 at any time since February 9, 2015.

Dated, Washington, D.C. July 27, 2020

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[39] We shall modify our Order in accordance with our recent decision in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020).

[40] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of the paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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."