American Baptist Homes of the West d/b/a Piedmont Gardens *and* Service Employees International Union, United Healthcare Workers-West. Cases 32–CA–078124 and 32–CA–080340

May 1, 2014

DECISION AND ORDER

BY MEMBERS MISCIMARRA, JOHNSON, AND SCHIFFER

On January 29, 2013, Administrative Law Judge Jay R. Pollack issued the attached decision. The Charging Party filed exceptions, and the Respondent filed an answering brief. In addition, the Respondent filed cross-exceptions and a supporting brief, the General Counsel filed an answering brief, which the Charging Party joined, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, to adopt his recommended Order as modified and set forth in full below, and to substitute a new notice.[2]

1. We adopt the judge's conclusion that the Respondent violated Section 8(a)(1) of the Act on April 3, 2012, by posting a sign in the employee break room prohibiting union meetings there. The sign stated, in relevant part, that "[t]he union is not permitted to hold meetings in the employee break room." This stated prohibition did not acknowledge the Union's right to have access to the Respondent's premises for certain purposes as stated in the parties' expired collective-bargaining agreement. The sign was therefore overbroad in violation of Section 8(a)(1).[3]

The Respondent argues that the sign was not a violation because it did not actually interfere with employees' Section 7 rights, noting that union representative Donna Mapp conversed with an unspecified number of employees in the break room after it posted the sign. We are not persuaded by the Respondent's argument because employees could not reasonably infer from those conversations that, contrary to the clear language of the sign, the Union was permitted to hold meetings in the break room.

2. We further adopt the judge's finding that the Respondent violated Section 8(a)(1) by maintaining a policy prohibiting employees from remaining on its premises after their shift "unless previously authorized by" their supervisor.[4] Under *Tri-County Medical Center*, 222 NLRB 1089, 1089 (1976), a rule restricting off-duty employee access is valid only if it (1) limits access solely with respect to the interior of the facility and other working areas, (2) is clearly disseminated to all employees, and (3) applies to off-duty employees seeking access to the plant for any purpose and not just to those employees engaging in union activity. The Respondent's policy is unlawful under the third prong of the *Tri-County* standard. Although generally prohibiting off-duty access, the

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order and substitute a new notice to conform to the violations found, and to the Board's standard remedial language and with *Durham School Services*, 360 NLRB 694 (2014). We shall further modify the judge's recommended Order to provide for the posting of the notice in accord with *J. Picini Flooring*, 356 NLRB 11 (2010). We deny the Charging Party's request for special remedies.

[3] In adopting the judge's finding that the Respondent violated Sec. 8(a)(1) by posting the sign, we note that the Decision and Order in *Turtle Bay Resorts*, 353 NLRB 1242 (2009), cited by the judge, was issued by a two-member Board, but was subsequently affirmed and adopted by a three-member panel, 355 NLRB 706 (2010). That subsequent decision was later enforced by the Fifth Circuit, 452 Fed. Appx. 433 (2011).

Additionally, we do not rely on *Swardson Painting Co.*, 340 NLRB 179 (2003), cited by the judge. In *Swardson Painting*, the Board based its finding that the employer in that case violated Sec. 8(a)(1) by instructing a union agent to leave its premises on the fact that the employer lacked an exclusionary property interest. Here, by contrast, the Respondent possesses an exclusionary property interest in the break room.

[4] The Respondent's policy is set forth in Rule 33 in its Chart of Infractions and a supplemental memorandum.

Contrary to his colleagues, and for the reasons stated by former Member Hayes in his dissent in *J.W. Marriott Los Angeles at L.A. Live*, 359 NLRB 144, 148–149 (2012), Member Miscimarra would find that a rule may lawfully prohibit off-duty employees from accessing the interior of a workplace even if the rule contains an exception permitting access if employees obtain the prior approval of a supervisor or manager or if access is warranted by other unspecified circumstances. Such an exception reasonably contemplates legitimate business reasons, which cannot be enumerated in advance, that predictably would warrant allowing off-duty employees on the premises. Nevertheless, as explained below in footnote 7, Member Miscimarra finds that the Respondent did violate Sec. 8(a)(1) by applying its off-duty access rule to restrict the exercise of Sec. 7 rights. To remedy this violation, Member Miscimarra would order the Respondent to cease and desist from applying the off-duty access rule to restrict the exercise of Sec. 7 rights. He would not order the Respondent to rescind the off-duty access rule because Member Miscimarra would find that the rule is facially lawful.

Member Johnson joins Member Schiffer in finding maintenance of the rule here unlawful based on its granting a supervisor unlimited and standardless discretion to determine permissible access to off-duty employees and, further, the evidence that the Respondent has enforced the rule specifically to restrict Section 7 activity, which we further find unlawful here. Member Johnson does not rely on the judge's citation to precedent arguably standing for the broad proposition that a rule permitting any limited exception to a uniform prohibition of off–duty employee access is unlawful.

Respondent's policy contains an exception, indefinite in scope, under which off-duty access is permitted with supervisory authorization. The vice in such a rule is that it gives the Respondent "broad—indeed, unlimited—discretion 'to decide when and why employees may access the facility.'" *J.W. Marriott Los Angeles at L.A. Live*, 359 NLRB 144, 144 (2012) (quoting *Sodexo America LLC*, 358 NLRB 668, 669 (2012) (finding facially unlawful a handbook rule prohibiting off-duty access except in unspecified circumstances with prior approval of a manager)).

The Respondent argues that its access policy is lawful because, in practice, the Respondent only permitted off-duty employees to enter the nursing home in three limited circumstances: when an off-duty employee picked up her paycheck, attended a scheduled meeting with human resources representatives, or arrived early for the night shift. Although the Respondent's Acting Human Resources Director, Lynn Morgenroth, testified that the Respondent permitted off-duty employees to access the nursing home in those three circumstances, she did not testify (and the record otherwise fails to establish) that those were the *only* circumstances under which supervisors and managers had granted access in the past or had discretion to grant access. In any event, neither Rule 33 nor the supplemental memorandum informs employees that supervisors and managers may grant access to off-duty employees only under the three circumstances identified by Morgenroth.[5] Accordingly, we find Rule 33 unlawful on its face.

We also reject the Respondent's argument that the Union "waived any defects" of the policy by successfully lobbying the Respondent to permit off-duty employees to access the vestibule for up to an hour prior to the start of the night shift. Any waiver by a union of its members' Section 7 rights must be "clear and unmistakable." *Engelhard Corp.*, 342 NLRB 46, 47 (2004), enfd. 437 F.3d 374 (3d Cir. 2006). The Union did not clearly and unmistakably consent to the aspects of the policy that make it unlawful under *Tri-County* when it prevailed upon the Respondent to permit certain off-duty employees to access the vestibule.[6]

3. Finally, we agree with the judge that the Respondent violated Section 8(a)(1) of the Act by enforcing its unlawful off-duty access rule on April 16, 2012, against employees Elizabeth Shoaga and Geneva Henry, who sought access to the premises to engage in the protected activity of aiding the Union in presenting employee complaints to management. In addition to our finding that the Respondent's off-duty access policy is unlawful on its face, the judge correctly found that the Respondent's enforcement of that policy against two off-duty employees who were seeking access to aid the Union in presenting employment-related complaints to management reasonably tended to interfere with, restrain, and coerce employees in the exercise of their rights under Section 7 of the Act.[7]

ORDER

The National Labor Relations Board orders that the Respondent, American Baptist Homes of the West d/b/a Piedmont Gardens, Oakland, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing employees that the Union is not permitted to hold meetings in the employee break room.

(b) Maintaining a policy that prohibits off-duty employees from accessing the Respondent's premises unless previously authorized by their supervisor.

(c) Enforcing such a rule against off-duty employees who seek to access the Respondent's premises to assist the Union.

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

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

(a) Rescind Rule 33 and supplemental memorandum, which prohibit off-duty employees from accessing the Respondent's premises unless previously authorized by their supervisor.

[5] Thus, we need not pass on whether a violation would lie had the policy clearly provided that off-duty employees would be granted access only in the three circumstances described by Morgenroth.

[6] Because the Union did not clearly and unmistakably waive its members' right to be free of a facially invalid off-duty access restriction, we need not decide whether a union is capable of such a waiver. Cf. *NLRB v. Magnavox Co. of Tennessee*, 415 U.S. 322 (1974) (holding that union was incapable of waiving its members' Sec. 7 right to distribute literature in nonwork areas during nonwork time).

[7] Although Member Miscimarra disagrees that the off-duty access rule is facially unlawful, he agrees with his colleagues that the Respondent unlawfully applied it to off-duty employees Shoaga and Henry. The Respondent's practice was to permit off-duty employees to enter the facility to attend scheduled meetings with human resources representatives. On April 3, the Union and the Respondent scheduled a meeting for April 16, and they agreed that employees would attend. On April 16, Shoaga and Henry sought access to join a union agent in presenting complaints to management about terms and conditions of employment. Contrary to its practice of permitting off-duty access to attend scheduled meetings with management, the Respondent applied its off-duty access rule to prohibit Shoaga and Henry from attending the scheduled meeting with management accompanied by their union agent. Under these circumstances, Member Miscimarra finds that the Respondent applied its off-duty access rule in a discriminatory manner that restricted the employees' Sec. 7 activity in violation of Sec. 8(a)(1).

(b) Furnish employees with an insert for the current Chart of Infractions that (1) advises that Rule 33 has been rescinded, or (2) provides a lawfully worded provision on adhesive backing that will cover the unlawful provision; or publish and distribute to employees a revised Chart of Infractions that (1) does not contain Rule 33, or (2) provides a lawfully worded provision.

(c) Within 14 days after service by the Region, post at its Oakland, California facility copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 3, 2012.

(d) 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.

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 inform you that the Union is not permitted to hold meetings in the employee break room.

WE WILL NOT maintain a policy that prohibits off-duty employees from accessing our premises unless previously authorized by their supervisor.

WE WILL NOT enforce such a rule against off-duty employees who seek to access our premises to assist the Union.

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 Rule 33 and supplemental memorandum, which prohibit off-duty employees from accessing our premises unless previously authorized by management.

WE WILL furnish you with an insert for the current Chart of Infractions that (1) advises that Rule 33 has been rescinded, or (2) provides a lawfully worded provision on adhesive backing that will cover the unlawful provision; or publish and distribute to you a revised Chart of Infractions that (1) does not contain Rule 33, or (2) provides a lawfully worded provision.

AMERICAN BAPTIST HOMES OF THE WEST D/B/A
PIEDMONT GARDENS

The Board's decision can be found at www.nlrb.gov/case/32–CA–078124 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273–1940.

[8] 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."

Judith J. Chang, for the General Counsel.
David S. Durham and *Christopher M. Foster (Arnold & Porter),* of San Francisco, California, for Respondent.
Manuel A. Boigues (Weinberg, Roger & Rosenfeld), of Alameda, California for the Union.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. This case was tried in Oakland, California on November 13, 2012. On April 4, 2012, Service Employees International Union, United Healthcare Workers West (the Union) filed the charge in case 32–CA–78124 against American Baptist Homes of the West d/b/a Piedmont Gardens (Respondent or the Employer). On May 4, 2012, the Union filed the charge in Case 32–CA–80340 against Respondent. On July 27, 2012, the Union filed amended charges in both cases. On August 20, 2012, the Regional Director for Region 32 of the National Labor Relations Board (the Board) issued a consolidated complaint against Respondent. The complaint alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) by denying access to a representative of the Union, and unlawfully maintaining and enforcing a rule against off duty employees. The Respondent filed a timely answer in which it denied that it had violated the Act.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses,[1] and having considered the briefs submitted by the parties, I make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

At all material times, Respondent has been a California nonprofit corporation, engaged in the operation of continuing care retirement communities, including a facility located in Oakland, California known as Piedmont Gardens, and a separate facility also located in Oakland, California known as Grand Lake Gardens. Respondent, in conducting its business operations described above, during 12 months prior to the issuance of the complaint, purchased and received goods at its facilities in California valued in excess of $5,000 directly from sources outside the State of California. Further, during the same time period, Respondent derived gross revenues in excess of $100,000 from its business operations. Accordingly, the parties stipulated and I find, Respondent is an employer engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

[1] The credibility resolutions here have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Manufacturing Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings here, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence, or because it was in and of itself incredible and unworthy of belief.

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

II. FACTS

Since at least 2007, the Union has been the exclusive collective-bargaining representative of an appropriate unit of Respondent's employees at its Piedmont Gardens and Grand Lake Gardens facilities. The last agreement between the parties was a 2007–2010 collective-bargaining agreement. The bargaining unit covered by the agreement is:

> All employees performing work described in and covered by "Section 1, Union, 1.1, Recognition" of the March 1, 2007 through April 30, 2010 collective bargaining agreement between Piedmont Gardens and Grand Lake Gardens and the Union (the Agreement); excluding all other employees, guards, and supervisors as defined in the Act..

This case only involves the Piedmont Gardens facility. Negotiations for a successor agreement to the 2007 through 2010 agreement last occurred in August 2010 and the parties have not recommenced negotiations since that time.

Section 1.4 of the expired agreement provides the following with regards to union access:

> A duly authorized Field Representative of the Union shall be allowed to visit the Home at reasonable times for the purpose of ascertaining whether or not this Agreement is being observed and to check upon complaints of employees, provided:
>
> 3. The Union Field Representative confers with employees solely on the employee's free time and on a non-work area; provided. However, this sub-section shall not be construed so as to prevent a Union Field Representative from conferring with an employee and his supervisor or another representative of the Employer on the Employer's time in connection with a specific complaint or problem concerning the employee.

Respondent and the Union have also agreed to "ground rules" governing the access rights of Union Representative Donna Mapp as well as future union agents:

> 2. A duly authorized field representative of the Union will be allowed to visit the Communities at reasonable times for the purpose of ascertaining whether the contract is being observed and to check upon complaints of the members. The parties understand the field representative may need to access the Communities during late night or early morning hours to confer with NOIC shift employees.
>
> 6. . . . . And the field representative shall have access in employees' break rooms.

Union Representative Donna Mapp testified that she has held numerous meetings with employees in the break room. These meetings have varied in times from as many as every day to once a week depending on the issue involved and have involved different sized groups of employees, ranging from a low of 3–4 to a high of 15 employees. Typically during these meetings Mapp sat on a chair at a table in the break room. Employees who wished to speak with her would gather around the same table. Mapp used different methods of notifying unit employees of these meetings.

On April 2, 2012, Mapp posted a flyer on the union bulletin board in the break room at Respondent's facility announcing to employees that she planned on being in the break room on April 3, to meet with employees. The notice stated:

Join Us For
Union Meeting

> Some individuals are jeopardizing our future and we need to come together to discuss next steps and how we can put an end to the confusion.
> Please join us for an informational meeting and to learn how we can take back our union and our signature.

Mapp testified that she intended to discuss many issues at this meeting including the contract, benefits, treatment of workers as well as rumors about support of a rival union. On cross-examination, Mapp admitted that one of the purposes of the meeting was to discuss the issue of employees taking back authorization cards they had signed on behalf of a rival union.

On the morning of April 3, Mapp arrived at Respondent's facility at approximately 6:30 a.m. After checking in, she headed towards the break room. Mapp was met by Gayle Reynolds, Respondent's executive director. Reynolds asked why Mapp was having a meeting and pointed to the union flyer. Reynolds told Mapp that she could not have a union meeting. Mapp explained that she and the employees were allowed to meet in the break room. Reynolds stated that Mapp could not have this type of meeting. Reynolds then went to her office.

Reynolds then created a sign stating, "NO UNION MEETING HERE. The Union is not permitted to hold meetings in the break room." At about 9:30 a.m. Reynolds posted the sign on the bulletin board. However, Mapp remained in the break room and continued to talk to small groups of employees on their breaks.

Reynolds testified that she believed that the flyer indicated that two union representatives would be present and that the purpose of the meeting was not contract issues but rather a union meeting to discuss the rival union.

Respondent maintains a rule that states:

> Employees may not clock in for duty before their shift begins, nor are they to remain on the grounds after the end of their shift, unless previously authorized by their supervisor. Employees must have prior supervisor authorization before working/incurring overtime.

This rule was reaffirmed by a September 2011 memorandum from Rita Jennings, Respondent's administrative manager, which reads:

> No employees are allowed inside the building when not scheduled to work unless they have prior approval of their supervisor/manager, Human Resources, or the Executive Director.

However, Respondent has permitted off-duty employees to access the facility for meetings with Human Resources. Off duty employees are permitted to enter the employee entrance to pick up their paychecks at the security desk.

On April 3, Mapp emailed Lynn Morgenroth, Respondent's human resources director, and requested a meeting. A meeting was set for April 16 to discuss various issues. In an email of April 13, Mapp requested that off-duty employees be allowed to attend the meeting. On April 16, Morgenroth responded that "Employees that are not scheduled to work may not attend these meetings."

Mapp received Morgenworth's email about an hour before the scheduled meeting. Mapp telephoned Morgenworth and advised Morgenworth that she had two off-duty employees with her who would be coming to the meeting. Morgenworth stated that the off-duty employees would not be allowed to enter the premises. Mapp stated that the two employees were already with her and were on their way. Morgenworth told Mapp to get off the phone and notify the off-duty employees that they were not allowed in the building. Morgenworth stated that the two off-duty employees with Mapp would not be allowed to enter the building.

After the conversation with Morgenworth, Mapp along with off-duty employees Elizabeth Shoaga and Geneva Henry went to Piedmont Gardens. They announced their arrival at the security desk and signed in at approximately 10 a.m. Morgenworth arrived and told the two employees that they were not on duty and would not be allowed in the building. The employees then left.

Morgenworth asked to have the meeting but Mapp stated that she didn't want to meet without the employees.

Respondent's defense

Respondent argues that the Union had no statutory right to hold a union meeting in Respondent's break room. Respondent further argues that its off-duty access rule is valid under *Tri-County Medical Center* 222 NLRB 1089 (1976).

III. CONCLUSIONS

Reynolds Posting of the Sign on April 3

Board law is well-settled that a union's access to represent employees on an employer's premises is a mandatory subject of bargaining. *American Commercial Lines,* 291 NLRB 1066, 1072 (1988). In addition, a union access provision in a collective-bargaining agreement is a term and condition of employment that survives the agreement's expiration. *Turtle Bay Resorts,* 353 NLRB 1242 (2009).

Under the contract, Mapp had a right to be in the break room to meet with employees. Mapp had the right to meet with employees to monitor the agreement and to check upon complaints of employees. Reynolds never inquired from Mapp what her intentions for the meeting were. She wrote the sign prohibiting the union meeting based on the assumption that the meeting was to discuss the drive by the rival union. However, the purposes of the meeting included employee concerns about the status of the Union as well as the contract and employee benefits. By posting the sign, "No Union Meeting Here," Respondent interfered with the Union's right to access in violation of Section 8(a)(1). See *Swardson Painting Co.,* 340 NLRB 179 (2003).

Respondent's Off-Duty Access Rule

In Tri-County Medical Center, 222 NLRB 1089 (1976), the Board held that a rule denying off-duty employees access to an employer's premises is lawful if it: (1) limits access solely with

respect to the interior of the plant and other working areas; (2) is clearly disseminated to all employees; and (3) applies to off-duty employees seeking access to the plant for any purpose and not just to those employees engaging in union activity.

In *Saint John's Health Center,* 357 NLRB 2078 (2011), the Board invalidated an employer's access policy because it provided an ambiguous (and wholly undefined) exception for "health-center sponsored events." The Board interpreted this policy to mean "[i]n effect, the Respondent is telling its employees, you may not enter the premises after your shift except when we say you can."

Similarly in *Sodexo America,* 358 NLRB 668 (2012), the Board invalidated an employer's "ambiguous" no access policy that provided an exception for "hospital related business" which the Board interpreted to mean that the employer had "free reign to set the terms of off-duty employee access."

Here the rule's exception is "prior approval of their supervisor/manager, Human Resources, or the Executive Director." This exception provides the employer with unlimited discretion and thus is invalid under *Tri-County Medical Center.*

On April 16, Respondent applied the invalid access rule to employees Shoaga and Henry and did not permit the employees to attend a meeting with management. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 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. Respondent violated Section 8(a)(1) of the Act by posting a notice which prohibited a union meeting in its break room.
4. Respondent violated Section 8(a)(1) of the Act by maintaining and enforcing an off-duty access rule which granted it unlimited discretion to permit access.
5. Respondent violated Section 8(a)(1) by denying access to two off-duty employees to its premises for a union-management meeting.

REMEDY

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

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended.[2]

ORDER

Respondent, American Baptist Homes of the West d/b/a Piedmont Gardens, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Posting notices prohibiting union access to its break room to hold meetings with employees.

(b) Maintaining and enforcing an off-duty access rule which limits off-duty employees' access to the facility for some purposes while permitting access for other purposes.

(c) Enforcing its off-duty access rule to deny employees access to a union-employer meeting.

(d) 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 off-duty access policy to the extent that it permits off-duty employees access to the facility for some purposes while barring off-duty access for other purposes.

(b) Within 14 days after service by the Region, post at its facility in Oakland, California, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt 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 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 April 2012.

(c) 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.

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[2] All motions inconsistent with this recommended order are hereby denied. In the event 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.

[3] 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."