

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

SK USA CLEANERS INC.,

and

Case 22-CA-27954

**LOCAL 947, INTERNATIONAL UNION OF
JOURNEYMEN AND ALLIED TRADES**

***Robert Gonzalez, Esq., for the General Counsel
Diane H. Lee, Esq., of Fort Lee, New Jersey,
for the Respondent***

DECISION

Statement of the Case

ELEANOR MACDONALD, Administrative Law Judge: This case was tried in Newark, New Jersey, on January 23, 2008. The Complaint alleges that Respondent, in violation of Section 8(a)(1) and (5) of the Act, failed to execute a written contract containing terms and conditions of employment agreed upon with the Union and solicited employees to decertify the Union. The Respondent denies that it has engaged in any violations of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties in March, 2008, I make the following¹

Findings of Fact

I. Jurisdiction

Respondent, a corporation with an office and place of business in Garfield, New Jersey, is engaged in the operation of a commercial laundry business. Annually, Respondent purchases and receives at its Garfield, New Jersey, facility goods and supplies valued in excess of \$50,000 from other enterprises located within the State of New Jersey, which enterprises received these goods and supplies directly from suppliers located outside the State of New Jersey. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and that Local 947, International Union of Journeymen and Allied Trades, is a labor organization with the meaning of Section 2(5) of the Act.

¹ The record is hereby corrected so that at page 97, line 18, the phrase is "Since I do not speak English or Spanish he does the translation".

II. Alleged Unfair Labor Practices

A. Failure to Execute the Collective-Bargaining Agreement

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Gloria Larrondo, the president of Local 947, testified that she organized the shop in 2005. The Union was successful in the election conducted in August 2005 in the following appropriate unit

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All full-time and regular part-time washing machine operators, press operators, button openers, ticketing employees, packaging employees, and drivers employed by Respondent at its 141 Lanza Avenue, Garfield, New Jersey, facility.²

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After the election Larrondo met face-to-face with the president of Respondent, Yi Jae Cho, to negotiate a collective-bargaining agreement and to discuss other matters in 2005 and 2006. Because it was hard to communicate with Cho in English, Larrondo eventually sent the Union's proposed contract to Cho's daughter. Larrondo and Cho's daughter exchanged e mails; Larrondo was informed that Cho was reviewing the contract and that he was discussing it with the Korean Association. During 2006 Cho repeatedly informed Larrondo that he was nearly out of business.

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Respondent retained counsel after the Union filed charges against it and the Union then attempted to conduct negotiations through the lawyer. On February 28, 2007 Larrondo mailed the Union's proposal to Diane Lee, Esq. Lee told Larrondo that Cho would not agree to many of the Union proposals. Although Larrondo more than once gave Lee dates for face-to-face negotiations and asked for such negotiations the two never met and they continued to negotiate over the phone and in writing. In April Larrondo received the employer's proposed collective-bargaining agreement. Larrondo asked for changes and she told Cho and Lee that this was a substandard contract but they both insisted that they would not improve Respondent's offer.

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The collective-bargaining agreement sent to the Union by Respondent contained, *inter alia*, a recognition clause, a union security clause, clauses dealing with probation and seniority, clauses dealing with hours, overtime, holidays and vacations, a no-strike and no-lockout clause, a grievance procedure, and a clause providing a wage increase on November 1, 2008. The document stated an effective date from June 1, 2007 through May 31, 2010.

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On May 10, 2007 Larrondo executed the Respondent's proposed contract and mailed it to Attorney Lee by overnight delivery. Larrondo explained that although the contract was substandard it was better than leaving the employees in an "at will" status. Larrondo asked Lee on May 11 if she had received the signed contract and she requested that it be signed and returned to the Union. Lee acknowledged receipt of the signed contract. Larrondo repeated her request that Respondent sign and return the contract to the Union on May 17 and 31 and June 11, 2007. In response, Lee told Larrondo that she was trying to get Cho to sign the contract. Larrondo went to the shop in June or July 2007 and asked Cho to sign the contract. Cho answered that business was bad and he was going out of business. The Union has never received a signed contract from the Respondent.

The testimony is uncontradicted that Lee never asserted to Larrondo that the

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² Due to an oversight the Certification of Representative was not issued until April 2006.

Respondent's proposed collective bargaining agreement is not a complete proposal. Cho testified herein, as will be seen below, but he offered no reason for failing to execute the Respondent's contract proposal. The Respondent's Brief states, "The parties have reached an agreement and the terms of the Agreement have been reduced to writing."

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B. The Decertification Petition

The General Counsel alleges that a supervisor, Adolfo Garcia, drew up and collected employee signatures on a decertification petition. The Respondent denies that Garcia is a supervisor and denies that he collected any signatures.

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Garcia, who testified through an interpreter, stated that Cho does not speak good Spanish. Most employees at the plant are Spanish speaking and Garcia often translates for Cho.³ Although Garcia testified herein through an interpreter it was apparent to me that Garcia understood English; he often began answering a question before the interpreter had translated the question into Spanish.

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Adolfo Garcia testified that he began working for Respondent 8 years ago. Garcia's employment was interrupted twice by absences that are not otherwise described on the record. Garcia has no formal title at the shop; he earns \$10 per hour. Garcia does not sign the sheet that other employees sign to record their hours of work. Garcia was called by Counsel for the General Counsel pursuant to Section 611(c) of the Federal Rules of Evidence. When asked to describe his job, Garcia stated, "I supervise the quality of production" and my job is "essentially to organize the whole production." Garcia said that he watches how employees are doing jobs and that his duties have him going from station to station moving all over the factory. Garcia is the company's most experienced worker and he does different jobs at the plant. Garcia verifies that shirts come out from washing, that there are no problems, that the shirts are ironed properly and that employees are not making mistakes. Garcia said that when employees need time off they come to him. If Cho is not there Garcia decides whether an employee can have a day off. If an employee has an emergency and Cho is not in the plant Garcia can grant the employee days off or more time to travel back to his country. If Cho is present Garcia consults with Cho.

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When a new person is hired Garcia assigns the new employee to a machine where he is needed. The more experienced employees already working on a machine teach the newer employee how to do the job. Garcia stated that he does not train employees because he is on the production floor making sure that every one is working; according to Garcia, "that is my job." Garcia agreed with the claim in his affidavit that he had the authority to grant time off without first seeking permission from Cho. Garcia also agreed with the statement in his affidavit that if an employee asks for time off on one of the busier days he will ask the employee to consider taking time off on a less busy day. Garcia confirmed the statement in his affidavit that, "I also direct employees where to work when we are short. ... I decide which employee works at which machine."

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Employee Joel Sanchez has worked at the company for 4 or 5 years.⁴ Sanchez testified that Garcia speaks English to Cho. He identified as his "boss" both Cho and Garcia. Sanchez stated that most employees refer to Garcia as the boss. When Cho is not at the plant Garcia moves employees around and he also moves the new employees. Employee Freddy Justiniano

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³ There are about 17 employees at the plant.

⁴ Sanchez testified through an interpreter.

has worked as a driver for the company for 8 years.⁵ He testified that Garcia assigns new employees to machines and he agreed with his affidavit that Garcia “is the person who assigns new employees to machines and where they get training. I also know that Adolfo is the person who moves employees from one place to another. He looks to see how the employee is working and then moves them around.” Cho also moves employees around the plant. If the plant is busy and employees see that a machine requires more manpower, the employees themselves may move to another machine.

Garcia does not hire or fire employees, nor does he recommend such actions, and he does not issue discipline to employees.

Garcia was aware that the Union won the election but he said that employees were not paying dues to the Union. He himself did not favor Union representation and the Union people coming to the plant made him feel “very uncomfortable.” Garcia spoke to other employees “because every day these people from the Union were coming.” One day Garcia met with 4 other employees who asked him to write a petition. Garcia wrote the words in Spanish, “The Company SK USA Cleaners, we don’t want to belong to the Union.” Under this sentence was a column headed “name” and another column headed “signature.”⁶ Garcia was present when some employees signed the petition and the petition was left on a table at the plant for others to sign. Garcia stated that Cho never spoke to him about getting rid of the Union.

Justiniano testified that Garcia wrote the words at the top of the petition because, “We all wanted the Union not to be there anymore.” Before Justiniano left to make some deliveries he observed Garcia go from machine to machine and take the petition “to all of the workers that are there. He gave it to all of the workers, one by one.” This occurred during work time and break time. Justiniano agreed with his affidavit that, “yesterday Mr. Cho told me that the papers were ready and asked me to drop them off at the Labor Board.⁷ I then asked Adolfo to give me the papers so that I could drop them off...” Justiniano stated that he asked Cho for the address of the Labor Board. The decertification petition was filed on May 3, 2007.

Yi Jae Cho testified that Garcia had no official position with the company.⁸ He stated that Garcia does inspections and all kinds of jobs. Garcia “goes here and there.” Cho said that employees speak to Garcia if they need help. Cho said that he does not speak English well or Spanish. He said that Garcia does not speak English well. Cho said he does not have to speak to Garcia, they just gesture to each other and know what they are talking about. Cho testified that when he is not at the plant Garcia directs the employees to work.⁹ If he is not at the plant, employees can ask Garcia or Justiniano for time off. Garcia is the most experienced employee at the plant and the highest paid employee. Although Garcia is supposed to sign in he does not do so and Cho does not ask him to sign in.

When the decertification petition was shown to him Cho testified that he did not know what it was. Cho said he was not involved with the employees who did not want the Union. Before the election he knew some workers wanted the Union and some did not. But in 2007 he did not find out that employees no longer wanted the Union.

⁵ Justiniano testified through an interpreter.

⁶ The Spanish words of the petition were translated on the record by the official interpreter.

⁷ The affidavit was given on May 3, 2007.

⁸ Cho testified through an interpreter.

⁹ At the end of his testimony Cho added the assertion that when he is not at the plant his wife, Garcia and many other employees run the factory.

III. Discussion and Conclusions

A. Failure to Execute the Collective-Bargaining Agreement

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The evidence establishes, and the Respondent does not dispute, that Respondent and the Union engaged in negotiations and that on May 10 Respondent sent the Union a proposed complete collective-bargaining agreement with a term from June 1, 2007 to May 31, 2010. The Union signed the agreement. Despite repeated requests by the Union, Respondent failed to execute the contract. By failing to execute the collective-bargaining agreement, Respondent violated Section 8(a)(5) and (1) of the Act. *Park Maintenance*, 348 NLRB No. 98 (2006).

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B. The Decertification Petition

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I credit the testimony of Garcia who impressed me as a witness who was intelligent and aware of the facts at issue herein. I credit the testimony of Sanchez who appeared to answer the questions to the best of his recollection and in a consistent manner. I credit the testimony of Justiniano where it agrees with his sworn affidavit given to a Board agent. Justiniano sometimes testified contrary to his affidavit but when portions of the document were read to him he stated that the affidavit was correct. I find that the affidavit, given closer in time to the relevant events, was more likely to be accurate.

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I note that Cho's testimony on direct was given in response to leading questions by Counsel for Respondent. Cho gave testimony that was at odds with the testimony of his employees, two of whom expressed sentiments against the Union and who had no motive to shade their testimony to favor the General Counsel's position herein. As described above, these employee witnesses impressed me as credible and reliable. I shall not rely on Cho's testimony where it is contradicted by the testimony of more reliable witnesses.

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The record establishes that Garcia is the highest paid and most experienced employee at the plant. Unlike other employees, Garcia never signs the time sheet and Cho does not require him to sign it. I credit Garcia that his job is to "supervise the quality of production" and to "organize the whole production." I credit Garcia that his job is to make sure that every one is working and that he goes from one station to another to see how employees are doing their jobs. I credit Garcia that when Cho is not there he has the authority to grant time off and even to grant a lengthy leave for an employee who must return to his own country in an emergency. I credit Garcia that when an employee asks for time off on a busy day Garcia will ask the employee to take time off when the plant is likely to be less busy. I credit Garcia that he assigns new employees to their machines and that he moves employees from machine to machine as the pace of production requires. I credit Sanchez that employees refer to both Cho and Garcia as "boss." I credit Sanchez that when Cho is not there Garcia is the one who moves employees around and assigns the new employees. I credit Justiniano that Garcia assigns new employees to machines and moves employees from one machine to another.

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I credit Garcia that he translates on behalf of Cho for the majority of employees who are Spanish speaking. I credit Cho that employees go to Garcia if they need help and that Garcia directs the employees when he himself is not at the plant. I do not credit Cho's testimony, added at the very end of the hearing, that when he is not present his wife, Garcia and many other employees run the factory. No credible testimony supports this assertion. I credit Cho that when he is not at the plant employees can ask Garcia for time off.

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In *Oakwood Healthcare, Inc.*, 348 NLRB No. 37 (2006), the Board discussed the

standards for determining whether an individual is a supervisor by virtue of having the authority, in the interest of the employer, to assign and responsibly to direct employees in a manner requiring the use of independent judgment. The Board defined the process of assigning as one where the supervisor matches the employee's skill and training to a particular task or set of tasks. The Board defined the concept of responsible direction as the act of carrying out the interests of management, noting that a supervisor is aligned with management. Independent judgment was defined as a judgment not dictated or controlled by detailed instructions. The Board determined that independent judgment in making assignments requires the supervisor to weigh the employees' skills and training.

Under these standards I find that Garcia is a supervisor within the meaning of Section 2(11) of the Act. Garcia organizes the production and makes sure that employees are performing their jobs in accordance with the quality standards of the plant. He assigns employees to perform tasks based on their skills and the production needs of the moment. He has the authority to grant time off and to grant leaves of absence when Cho is not at the plant. He grants the days off with due consideration for the amount of work that must be done on certain days. Garcia uses independent judgment in making the assignments, in assessing the quality of work produced by employees and in deciding whether to grant time off or a leave of absence. Garcia is clearly aligned with management in performing these tasks; he may be called upon to assign employees to less favored tasks and he may refuse a request for time off or a leave of absence if, in his judgment, the circumstances do not permit the employee to leave the plant. Garcia is called "boss" by the employees, further demonstrating that he is aligned with management. He earns more than any other employee and he is not required to sign in or out to record his hours unlike the other employees at the plant. When Cho is away from the plant Garcia is in charge of the approximately 17 employees working at the company. There is no credible evidence that any other individual takes over for Cho when he is absent.

I credit Garcia and Justiniano that Garcia drew up the decertification petition and collected some employee signatures for the petition. I credit Justiniano that Garcia collected signatures during work time and during break time. I credit Justiniano that on May 2 Cho told him that the decertification petition was ready and asked him to take it to the Labor Board. I credit Justiniano that Garcia gave him the completed document. I find that Respondent violated Section 8(a)(1) of the Act by drawing up and collecting signatures for a decertification petition and by directing the filing of the petition with the Regional Office. *Central Washington Hospital*, 279 NLRB 60, 64 (1986).

The General Counsel urges that, even if Garcia is not found to be a supervisor of Respondent, Garcia acted as an agent of Respondent with apparent authority to engage in drawing up a decertification petition and collecting signatures for the petition.

Section 2(13) of the Act provides that:

In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

In *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82 (1988), the Board said, "Apparent authority is created through a manifestation by the principal to a third party that supplies a reasonable basis for the latter to believe that the principal has authorized the alleged agent to do the acts in question. Thus, either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or the principal should realize

that this conduct is likely to create such belief.” (Citations omitted)

In the instant case the evidence shows that Garcia transmits Cho’s decisions to employees concerning their assignments and requests for time off. Garcia translates for the mostly Spanish-speaking work force when employees must communicate with Cho. When employees want something they often speak to Garcia rather than approaching Cho directly. In the operation of the plant Cho authorizes Garcia to act for him and to convey instructions on his behalf. The employees at the plant commonly refer to Garcia as “boss.” Employees know that Garcia has the authority to move them from station to station and to give them assignments. In Cho’s absence Garcia grants time off and emergency leaves of absence. Thus, Cho must realize that employees believe they should follow Garcia’s instructions and abide by his decisions as though they were being communicated by Cho himself.

The Board has found leadmen to be agents of the employer when “virtually all of the information and or directions emanating from the Respondent’s managers to the employees flowed down to them through the leadmen or the junior foreman. ... [T]he Spanish-speaking employees had little if any contact with the admitted supervisors, who spoke mostly English, if these employees had problems they went to their leadmen or the junior foreman who, in turn, communicated the problems to management and vice versa.” The Board held that because the company used the leadmen and junior foreman as “conduits for relaying to the employees decision, directions, and views of the Respondent which could not be directly communicated by the Respondent’s supervisor, we find that these employees would reasonably have believed that the leadmen and junior foreman ... were expressing management’s antiunion views and acting on management’s behalf when taking action regarding union activities.” *Poly-America, Inc.*, 328 NLRB 667 (1999).

I find that when Garcia drew up and circulated the decertification petition he had apparent authority to act on Cho’s behalf. Even if Garcia is not found to be a supervisor, Respondent violated Section 8(a)(1) of the Act when its agent Garcia drew up and collected signatures for a decertification petition and when Cho directed Justiniano to file the petition with the Regional Office.

Conclusions of Law

1. By failing to execute the collective-bargaining agreement effective from June 1, 2007 to May 31, 2010 that it had negotiated with Local 947, International Union of Journeymen and Allied Trades, Respondent violated Section 8(a)(5) and (1) of the Act.

2. By drawing up and collecting signatures on a petition to decertify the Union and by directing the filing of the petition with the NLRB the Respondent solicited employees to decertify the Union and Respondent violated Section 8(a)(1) of the Act.

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.

On these findings of fact and conclusions of law and on the entire record, I issue the

following recommended¹⁰

ORDER

5 The Respondent, SK USA Cleaners Inc., Garfield, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

10 (a) Failing and refusing to execute the collective-bargaining agreement with a term from June 1, 2007 to May 31, 2010.

(b) Soliciting employees to decertify the Union by drawing up and collecting signatures for a decertification petition and directing the filing of the petition with the NLRB.

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

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

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(a) Execute the collective-bargaining agreement with a term from June 1, 2007 to May 31, 2010.

25 (b) Within 14 days after service by the Region, post at its facility in Garfield, New Jersey, copies of the attached notice marked "Appendix"¹¹ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In 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 May 2, 2007.

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45 ¹⁰ 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.

50 ¹¹ 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."

(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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Dated, Washington, D.C., May 21, 2008

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Eleanor MacDonald
Administrative Law Judge

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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 fail to execute the collective-bargaining agreement effective from June 1, 2007 to May 31, 2010 that we negotiated with Local 947, International Union of Journeymen and Allied Trades.

WE WILL NOT solicit you to decertify the Union by drawing up and collecting signatures on a decertification petition and by directing the filing of the petition.

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 execute the collective-bargaining agreement with the Union.

SK USA CLEANERS 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.nlr.gov.

20 Washington Place, 5th Floor
Newark, New Jersey 07102-3110
Hours: 8:30 a.m. to 5 p.m.
973-645-2100.

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, 973-645-3784.