

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

DEBT SETTLEMENT USA, INC.

and

Case 28-CA-21594

RANDI SWEET, An Individual

and

Case 28-CA-21699

ANN M. BOETTCHER, An Individual

Sandra Lyons, Esq., for the General Counsel.

Christopher M. Mason, Esq.,
(*Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*)
of Phoenix, Arizona, for the Respondent.

DECISION

Statement of the Case

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Phoenix, Arizona, on May 29-30 and June 3-4, 2008. The charge in Case 28-CA-21594 was filed on September 27, 2007¹ and the charge and amended charge in Case 28-CA-21699 were filed on December 30 and February 19, 2008, respectively, and the order consolidating cases, consolidated Complaint and notice of hearing (the Complaint) issued February 26, 2008. The Complaint, as amended at the hearing, alleges that Debt Settlement, Inc. (herein the Respondent) violated Section 8(a)(1) by discharging employees Randi Sweet, Ann Boettcher, Krista Keran, and Jennifer Elland and issuing a warning to Daniel Beckblissinger because they engaged in protected, concerted activity. The Complaint also alleges that Respondent maintained three rules in its rulebook that violated Section 8(a)(1). Finally, the Complaint alleges that Respondent promulgated a rule prohibiting employees from discussing their wages and employment conditions, unlawfully threatened employees with unspecified reprisals, interrogated employees concerning their protected concerted activity, and telling employees that they were discharged because they had engaged in concerted activities all in violation of Section 8(a)(1). Respondent filed a timely answer that as clarified at the hearing admitted the allegations concerning the filing and service of the charges, jurisdiction, and agency status. It denied that Respondent violated the Act and asserted that one of the alleged discriminatees, Randi Sweet, would have been fired in any event because she walked off the job.

¹ All dates are in 2007 unless otherwise noted.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following.²

Findings of Fact

5

I. Jurisdiction

Respondent, a corporation, is engaged in the business of providing debt consultation services at its facility in Scottsdale, Arizona where during the 12-month period ending September 27, 2007 it purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Arizona. 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.

10

II. Alleged Unfair Labor Practices

15

A. Background

Respondent offers debt settlement services to consumers. Ted and Diane Brauer own Respondent; John F. Craven is Respondent's president. He is responsible for all the operations, technology, and business development. Danny Cullom, hired in June as director of sales, reports directly to Craven. Reporting to Cullom are about four sales managers. Each sales manager supervises a group of from 10-16 debt consultants. Casey Sorells was the sales manager of the four employees fired in this case. Sorells himself was fired in about April 2008. Michael Accunzo is the human resources director.

20

25

Respondent advertises its services; potential customers contact it by telephone or internet. Those contacts or "leads" are referred to Respondent's debt consultants. The debt consultants, including the four employees involved in this case, contact the lead and screen the potential customer to see if the customer qualifies under Respondent's program. The debt consultants attempt to persuade the potential customer to purchase Respondent's service and, if successful, gather appropriate documentation from the customer. A file is created with the documentation and the file is submitted to Respondent's verification department. There the customer's qualifications are reviewed and after the first payment is received the matter goes to the negotiations department where the process of contacting the creditors and settling the customer's debts begins.

30

35

Respondent employs about 40-60 debt consultants. The debt consultants work in an open area without cubicles. Each has a desk, telephone, and computer. The debt consultants spend a good deal of time on the telephone talking with potential customers as they are expected to make a minimum of about 80 calls each day. Some employees use headsets and may move away from their desk area as they speak with potential customers. Clients rarely, if ever, are present in the debt consultants' work area.

40

45

Debt consultants are allowed to, and do, talk to each other about a wide variety non-work matters on the sales floor. Sorells testified that this happens very often. On occasion a nerf football would be tossed around the sales floor. Keran, for example, kept racquetballs on her desk and she would stand sometimes as she talked to a potential customer and bounce the ball against the wall and catch it. Another employee had a device that would eject a "little rocket thing" at a target.

50

² The General Counsel's unopposed motion to correct transcript is granted.

Debt consultants were paid by commission.³ They were also eligible for a bonus under a program called the President's Club. Under this program for each month that a debt consultant sent at least 20 files of potential customers to the verification department the debt consultant earned a star. That star was worth \$10 for each file sent. Under this program debt consultants were able to accumulate stars for each consecutive month they sent at least 20 files to verification. For example, if a debt consultant meets the requirement for three consecutive months he or she earns \$30 for each file sent that month for the verification department. Some debt consultants were able to accumulate eight to ten stars; for these employees the bonus was substantial. Effective January 1, however, the President's Club was modified so that no new members would be added and thus it would phase out of existence over time. Thereafter other changes were made to the President's Club program. As the President's Club program was phased out Respondent presented the debt consultants with a new bonus program. In July Respondent altered the new bonus plan by requiring that the customer make two payments, instead of just one payment, before that sale could be used in determining a debt consultant's bonus. The document describing this change did not precisely indicate a time by which Respondent must receive the payments from the customer; this becomes a matter of concern for some debt consultants when Respondent later set a specific time frame. During this time frame Respondent also reduced the commission rate it paid the debt consultants from 8 percent to 7 percent. Supervisors also had their salary reduced.

As mentioned, Randi Sweet, Ann Boettcher, Krista Keran, and Jennifer Elland worked as debt consultants. They were excellent performers and together accounted for about 20 percent of the production for the debt consultants. They all had participated in the President's Club bonus program.

B. Employee Guidebook

Respondent gives each new employee a guidebook. Among the provisions in the guidebook is a grievance and arbitration procedure. The arbitration procedure described in the guidebook allows an employee dissatisfied with the outcome of the grievance procedure or who has been involuntarily terminated to submit the matter to arbitration.

The handbook also lists many examples of unacceptable activities that can result in discipline including termination. Among those activities are:

Spreading malicious gossip and/or rumors; engaging in behavior which creates discord and lack of harmony; interfering with another employee on the job; restricting work output or encouraging others to do the same.

Soliciting during working hours and/or in working areas: selling merchandise or collecting funds of any kind for charities or others without authorization during business hours, or at a time or place that interferes with the work of another employee on company premises.

Another portion of the guidebook reads:

³ In April Respondent began offering a combination of salary and commission but this applied mostly to new employees and the details of this program are not material to this decision.

Solicitations and Distributions

Solicitation for any cause during working time and in working areas is not permitted.

5

You are not permitted to distribute non-company literature in work areas at any time during working time. Working time is defined as the time assigned for the performance of your job and does not apply to break periods and meal times. Employees are not permitted to sell chances, merchandise or otherwise solicit or distribute literature without approval from the Human Resources, Legal

10

Department, or Activities Committee.

Employees are required to sign and date a receipt and acknowledgment form indicating, among other things, that they have received and read the guidebook. Included on the form is:

15

Complaint Resolution Procedure and Arbitration Policy

My signature on this document acknowledges that I understand the Arbitration Policy and agree to abide by its conditions. I agree that, in accordance with the Debt Settlement USA's Arbitration Policy, that I will submit any dispute – including but not limited to my termination – arising under or involving my employment with Debt Settlement USA to binding arbitration within thirty (30) days from the date the dispute first arose. I agree that arbitration shall be the exclusive forum for resolving all disputes arising out of or involving my employment with Debt Settlement USA or the termination of that employment. I agree that I will be entitled to legal representation, at my own cost, during arbitration. I further understand that I will be responsible for half of the cost of the arbitrator and any incidental costs of arbitration.

20

25

30

In the original answer Respondent filed in this case, it asserted a number of affirmative defenses, including:

Respondent's claims are subject to the terms of an arbitration agreement, through which Sweet has not sought remedy.

35

C. Employees Talk about Pay Cuts and other Working Conditions

In July some employees were talking on the floor about how the changes were taking money away from them. Sweet, Keran, and Boettcher were among these employees. Sorells told these employees to stop talking about the matter and that they should not be talking about it on the floor; he told them to come to him directly. Sorells also spoke to Elland about this matter in his office. He told her that they should just deal with the matter because he had suffered a \$2000 per month pay cut and there was nothing they could do about it. He told her that she should talk about these matters with him privately and not talk about them on the sales floor. Sorells testified: "That was my biggest thing was that they we were openly discussing all the changes on the floor, which was not good. Not on the sales floor anyway." On another occasion Sorells encountered Sweet, Keran, and Alex Cordero, another debt consultant, talking about the pay reductions. Sorells told them that that was the last time he wanted to hear anybody speaking openly about the pay cut and if they needed to talk about it they should come in and discuss it with him. The foregoing facts are based on Sorells' credible testimony, as corroborated in part by Boettcher. I have considered the testimony of George Thomas who worked as a debt consultant for Respondent; in about March 2008 he was promoted to sales

40

45

50

manager. Among other things, he testified that he attended a meeting in June where Sorells discussed the sales commission; he denied hearing Sorells say at that meeting that employees were forbidden from discussing the changes with each other or that they were told to shut up and not talk about the changes anymore. But based on the content of his testimony as a whole
 5 as well as his demeanor I got the impression that his first objective in testifying was to please management.

On August 1 Danny Cullom, director of sales, sent an e-mail message to debt consultants pointing out that July had been record month for Respondent and offering a prize to
 10 the top two debt consultants for August. He listed several notable performers including Sweet. He also listed several employees labeled as “Notable Improvements” and several as “Notable Drop-Offs” whose production had declined from the previous month. The names of the good performers were in green ink while the names of the “drop-offs” were in red. Many employees, including Keran who was listed as a drop-off, were upset with Cullom's email message and
 15 expressed their concerns to each other and to Sorells. Elland also was upset by the email; she too talked to other employees. She also talked to Cullom about it. Elland told Cullom that several people were upset after reading the email and were upset by it. Cullom replied that they should be upset, that anyone on the bottom three of the red list should be concerned for their jobs; Cullom said those were the people he was looking to fire. Elland explained how it was
 20 difficult to keep up the pace after a really good month. Cullom said that if employees had a problem with it they can deal with it. Sweet also took exception with the notion of listing the drop-offs and talked to other employees about it. She sent Cullom a reply email message that read:

25 Obviously, you and I differ notably on our business philosophies. As a consistently strong performer, I can tell you that it is virtually impossible, especially when you have an exceptional month, to repeat that performance monthly. You are exhausted and your pipeline is depleted. I think it is, at the very least, insulting and demotivating to have your “drop-off” category. Giving
 30 you the benefit of the doubt, I guess you think there is some positive effect. I **STRONGLY** disagree. (Emphasis in original.)

Cullom replied inviting Sweet to talk to him about the matter and she did so that same day. They met in Cullom's office. Also present was Sweet's supervisor Casey Sorells. Sweet told
 35 Cullom that she was concerned that the email had a negative impact on the sales floor and that she and Cullom had different styles. Cullom asked whether Sweet had ever worked for a Fortune 500 company. Sweet answered that she had worked for six of them and began to list them, but Cullom interrupted her and asked if she knew what deviation was. After Sweet said that she did, Cullom explained that a good and consistent salesperson will not deviate more
 40 than 10 percent from month to month. He said that he was not going to tolerate more than a 10 percent deviation in sales. Cullom then asked Sweet whether she was there, in fact, to protect Robert Adams, another debt consultant who was one of the employees listed as a “drop-off”. Sweet replied that she was not, but was there because she felt that all the performers were in jeopardy if this became the standard. Cullom said that he had talked directly with Robert
 45 Adams and Adams said that he did not have a problem with the email message. Sweet responded that what Adams told Cullom and what Adams really feels might be two different things. Sweet protested that Cullom's attitude and tone were not very polite and she found his manner offensive; with that the meeting ended. Cullom admitted that Sweet told him that she thought his email was demoralizing for the entire sales floor and that the drop-off category was
 50 insulting. He admitted that he asked Sweet why she was upset since she was one of the notable performers and that he told her that coming to him was the proper way to address concerns employees may have about policy. Sweet then raised the matter with in a meeting

with Craven, complaining that she thought Cullom's email message was condescending. Craven voiced his disagreement. Craven stated in his pretrial affidavit that he found it odd that Sweet would complain about Cullom's message because it listed Sweet as one of the top performers that month. The foregoing facts are based on the credible testimony of Sweet and Elland as well as the admissions against interest made by Cullom and Craven. The testimony of Elland and Sweet concerning these events was rich in detail and their demeanor was convincing; their testimony was mostly uncontradicted.

On August 28 Sweet sent an email message to Craven expressing her concern about broken promises made over the installation of a new server that Sweet felt would improve her productivity and ability to earn more money. She ended the message:

I can't emphasize strongly enough that these broken commitments are critical in the deterioration of the health of my relationship with debt settlement.

Craven replied that he understood Sweet's frustration but explained that the new system would not become operational until he was absolutely certain that it would be 100 percent successful; he provided some details about his concerns about the new system that needed to be addressed before the conversion to the new server. Sweet replied:

I appreciate your caution. I am deeply concerned, however, that critical problems are not anticipated or planned for or resolved on a timely basis. If it takes this long, then new hires should be delayed to allow those producing to perform at reasonable speed. If it was going to take this long, then we need telephone lines in the mean time. In addition, other basic issues have remained unresolved. Duplicate leads have cost me money and should be prevented with the database performing its basic functions. Our payroll system is archaic, and I am paying dearly for cancellations. My pay has been reduced and our bonus program replaced with one I have grave doubts about. I am a straight shooter. Debt Settlement is failing grossly in providing a work environment that allows optimal production.

Craven and Sweet then met to discuss this matter. According to Craven's uncontradicted testimony, he explained the complications that had arisen in implementing the new server and he expressed his concern that all problems were resolved first before attempting to convert to the new system. According to Craven, Sweet said that she did not care about the problems and that the delay was affecting her performance.

D. The Terminations

The events on August 29 lead to the discharge of the four employees. That day Cullom met with Sorells' team, including Sweet, Boettcher, Keran, and Elland; Sorrel and Bruno Mauer, who had been hired a sales manager on August 20 and was in the process of taking over Sorells' team, were also present. The meeting was held in the conference room; that room is about 25 feet by 15 feet and has a big table and chairs. Typically during meetings such as this the manager has an agenda of items to be discussed and employees raise their hands if they have questions or comments. As Cullom was moving down his agenda in this meeting Shannon Coyne, an employee, raised her hand and asked a question about the bonus program. Using a whiteboard Cullom explained the bonus program to the employees. Sweet, Boettcher, Keran, and Elland all voiced their disagreement with Cullom's explanation of the bonus program. In particular they challenged Cullom when he stated that the second payment from the customer had to be received by a certain date or else the sale would not count in the bonus

program. They said that the company was trying to take more money away from them. This much of the meeting is largely undisputed, but the nature of the comments of the four is at issue. Cullom testified that he tried to explain to them how the bonus plan worked for five to ten minutes but the “outbursts” of the four employees continued as they threw up their hands. But
 5 Cullom was forced to admit later that he saw only Boettcher, and not all four employees, throwing up her hands at the meeting. Cullom’s testimony seemed exaggerated and I do not credit it. Mauer testified that at the August 29 meeting “they started to shout” and “quite honestly, I couldn’t even hear [Cullom] over how loud it got there.” But on August 29 Mauer prepared a written account of the events that had occurred that day; he made no mention in that
 10 account of any shouting or yelling at the meeting. Instead, he referred to “several loud negative statements.” I do not credit Mauer’s testimony at trial. Similarly, Sweet’s testimony that the four employees spoke in normal tones at the meeting was unconvincing. I questioned Sorells about the meeting, attempting to get a more factual recitation of what occurred rather than his characterizations. He testified that as he and Cullom were explaining the bonus program the
 15 four employees interjected:

No, no, no, that’s not the way it works. All you keep doing is changing your story. All you keep doing is taking money from us. There was a lot of cross talking that was going on. And that once that had gone on for a couple of minutes, we were
 20 actually holding up the meeting, so [Cullom] had decided to dismiss everybody. . . . They were raising their voices because everybody was talking over everybody. Not one person who raised their voice in that meeting was the only person talking. So to tell you that they were raising their voice would probably be inaccurate. To tell you that they were over talking amongst each
 25 other would be accurate. . . . No. They were not screaming.

I have considered the testimony of all the witnesses about what occurred at the meeting regarding the conduct of the four alleged discriminatees and I conclude Sorells’ description is likely the most accurate. I note he was a supervisor at the time, was no longer employed by
 30 Respondent at the time of hearing and has no direct stake in this case. Although he was fired by Respondent and apparently was on friendly terms with some of the four employees, I could not detect any anger or bitterness in his testimony. Returning to meeting, an employee asked if they could get go back to work. Cullom finally told everyone to go back to work; he did not finish discussing the other matters on his agenda for the meeting.

The employees returned to the work floor as directed; Cullom, Sorells, and Mauer remained in the conference room for a minute or two. Mauer then left the conference room and went to the sales floor. Meanwhile, Keran return to her desk area and while standing behind her
 40 chair she dropped on her desk the yellow pad and pen she had taken to the meeting. Elland looked for a copy of the written explanation of the bonus program but could not find it. She walked over to Boettcher’s desk and asked Boettcher if she had a copy. Boettcher was upset and tearful. Another employee had the written explanation; Elland photocopied it. After talking to Boettcher again for a minute or two, Elland returned to her desk. Meanwhile Sweet comforted Boettcher and asked how she was doing.⁴ Adrian Leyva, called as a witness by
 45 Respondent, described the activity of the four employees after the meeting as complaining about the bonus to other employees and “trying to . . . get other people on their side. . . .”

⁴ Boettcher testified Mauer approached her in the presence of, among others, Sweet and Elland and said that they could not be talking about this on the floor. Neither Sweet nor Elland corroborated Boettcher on this point. Under these circumstances I conclude the General
 50 Counsel had failed to meet his burden of persuasion that this statement was made.

Mauer then returned to the conference room and told Cullom and Sorells that Boettcher was crying as Sweet was talking to her and Keran was throwing things on her desk; this was all that Mauer reported to Cullom.⁵ I have considered Mauer's testimony concerning what he observed when he left the conference room after the meeting. Mauer testified:

5

Christa Keran was at her desk, standing in front of her desk, throwing papers down and throwing her stapler down and things like that, and then I saw Randi Sweet standing up, and then Ann Boettcher was sitting at her desk moving things around on her desk, slamming things down, and she was muttering to herself and it was as [sic] starting to get louder and I could see that she was starting to cry.

10

He testified that he made these observation 10–15 minutes after the meeting ended, thereby giving the impression that the employees conduct had continued for this period of time. I conclude this testimony is exaggerated to say the least. I was not impressed by his demeanor, especially when I questioned him about these subjects, and do not credit Mauer's testimony where it is inconsistent with the facts described above.

15

Cullom, Mauer, and Sorells decided to call Sweet, Boettcher, Keran, and Elland individually to speak with them. Sweet was the first person to be summoned. Cullom said that he did not want this discussed on the sales floor. Sweet replied that Cullom could not stop people from talking; Cullom said he could and asked what Sweet was going to do. Sweet answered that she did not know, that she was still trying to understand what was going on. Cullom said that Sweet was being negative. Sweet denied being negative; she said she was trying to understand the bonus program and that management itself did not seem to understand how it worked and she gave some details. Cullom then looked at Mauer, who then said Sweet was being negative. Cullom next looked at Sorells, who also agreed that Sweet was being negative. Cullom admitted that he told Sweet that the negativity that she displayed at the meeting and on the sales floor was not going to be tolerated and could not happen again. Sweet said that she had to consider her future with the company and Cullom said she could take the time and do it right there, but Sweet said she would not do it right then.⁶ At the hearing Cullom attempted to clarify that he meant primarily the negativity that Sweet displayed at the meeting they had with her rather than on the sales floor after the meeting of the debt consultants. Cullom also admitted that he did not equate talking to a crying worker with being negative. Elland was next. Cullom told her that her attitude and actions at the meeting were unacceptable and would not be tolerated. Elland explained that there were a couple different ways to interpret the bonus program and she was confused. Cullom said he disagreed. Cullom said that only she, Sweet, and Keran were confused about the bonus program. Elland replied that she disagreed and that she spoke to several employees after the meeting and they all agreed that Cullom's explanation was not the way it was originally explained to them. During the meeting Cullom told Elland that she was not dressed appropriately and he sent her home to change her clothing. Elland left the facility, purchased new clothing, and returned to work. Cullom then summoned Keran, who brought with her the written description of the bonus plan that Respondent had earlier given to the debt consultants. Keran referred to the written description and explained why she thought Cullom's description of the bonus plan at the

20

25

30

35

40

45

⁵ Sweet denied talking or comforting Boettcher, but Boettcher testified that Sweet did so and Mauer corroborated this testimony. I do not credit this portion of Sweet's testimony. Boettcher testified that only Sweet talked to her after the meeting; I conclude Keran also spoke with her.

50

⁶ Sweet denied saying that she had to reconsider her future at the company, but seeing how she had done so in writing in the past I do not credit her testimony on this point.

meeting was incorrect. Keran said she thought the written explanation was confusing and Cullom said it was not confusing. An argument ensued when Keran challenged Mauer's statement that the bonus was "free money;" Cullom ended the meeting by telling Keran that there would be no discussion regarding the conversion bonus program on the sales floor and he
5 wanted no negativity on the sales floor. As Keran was returning to her work area another employee asked her what was going on. Keran replied that she could not talk to the employee about this and that the company was going to fire them. Sweet then whispered to Keran, asking what was going on; Keran made the same reply. Boettcher was next, and she too brought the written explanation with her. Boettcher explained why she and the others had disagreed with
10 Cullom's interpretation of the bonus plan. Boettcher was tearful during the meeting. Both Cullom and Mauer told her that in the future if she had something to say she needed to go to her manager and speak with him individually. In his pretrial affidavit Cullom admitted:

15 I explained that the behavior in the meeting was unacceptable. It was the wrong forum to do so. The right forum was to have them come in individually and discuss their concerns. That was the intent of the second meeting with the employees, to show them the right way to voice their concerns.

20 The foregoing facts are again based on the credible portions of the testimony of the four employees combined with admissions by Cullom.

25 Later that same day Cullom described these events to Craven who then called Ted Brauer, Respondent's owner. Brauer then came to the facility and a meeting took place with Michael Accunzo, Respondent's human resources director, Brauer, Craven, and Cullom. At the hearing Craven admitted that they were "very, very concerned" that Sweet in particular would continue her activity. They decided to fire the four employees.

30 Craven admitted that when employees began talking about issues or complaints to each other he wanted them off the floor. He explained:

35 The reason why I say that is because the issue that one person has is not somebody else's issue and they don't have the right to disrupt other people. So you take them off the floor to understand what the issue is and then clarify it and solve it if you can. It's not proper to discuss that in front of the other people who are trying to do their job.

40 In his pretrial affidavit, Craven stated that the four employees were fired because they did not like the bonus structure that was in place and were not able to go back on the floor and do their job without disruption either overtly or covertly. At the hearing Craven admitted that the employees disrupted the workplace because they disagreed with the policy and voiced those disagreements to each other and other employees. Craven's testimony was generally quite credible until he began to describe the reports concerning the conduct of the four employees at the meeting and afterwards; at that point it seems he began exaggerating. His demeanor, especially when I asked him questions on the matter, was entirely unconvincing.

45 Boettcher, Keran, and Elland were again called in individually; Cullom, Brauer, and Sorells were present; by this time Sweet had left for the day. Each of the three had a form in their personnel files indicating that they were fired for "inappropriate behavior, insubordination, and a negative attitude during after a team meeting." Cullom told Elland and Boettcher that they
50 were fired for their disruption and negativity at the meeting. Keran was told that she was fired for her disruption and negativity at the meeting and for throwing things. Sorells escorted the employees individually out of the building after they were fired. As he walked Boettcher to the

door he told her that “the next time you put yourself in a situation like this, handle it yourself and go directly to your manager.” He told Keran as they went to the door that she got herself caught up in a mess with the other three employees and that she should have handled it on her own and the next time she should keep her mouth shut. As Sorells escorted Elland to her desk and then out of the facility Elland asked if Sorells could help her find another job; Sorells said he would call her later.⁷ Sorells called Elland later that night and she asked if Sorells knew anyone who was hiring. Sorells asked her why she had gotten herself into a situation that cost her job and that she should have kept her mouth shut. Elland said that she did not know and that she was sick and had a headache. Sorells said he felt badly too because he had lost his top producers. Sorells later gave Elland the telephone numbers of employers that might be hiring employees. Sorells also called Keran that evening and asked her why she had to open her “f-ing mouth.” Sorells told her she was fired because of what she said at the team meeting. Respondent fired Sweet the next day; her termination form listed the same reasons for termination as described above.

Respondent contends that it would have fired Sweet in any event because she left work early on August 29 without telling her manager. Earlier, on August 10 Sweet left work early without informing her supervisor; Respondent apparently instructed employees to work until 4 p.m. that day because Respondent was filming an advertisement and wanted the sales floor to look full. Instead of working until 4 p.m., Sweet went home after lunch. On August 14 she received a verbal warning for this conduct. Cullom admitted that on August 29 he knew Sweet was gone at the time they made the decision to fire the four employees. But no one told Sweet she was being fired because she allegedly had left work early on August 29 and this was not listed as a reason on her termination form. I conclude that this a classic example of a justification created after the fact. Moreover, Cullom testified that Sweet’s shift ended at 4 p.m. But Keran, who sits near Sweet, credibly testified that in January Respondent enlisted a few employees to begin work at 6 a.m. Keran explained that because she was a single mother with children she could not start that early but that Sweet and two other employees agreed to do so. Since that time Sweet started and left work early each day. Sweet also credibly testified that Respondent began a marketing campaign on the east coast and needed employees to start work at 6 a.m. to answer calls. She volunteered and since then started work at that time and left at 2 p.m. or 3 p.m. Sweet explained that her email continued to list her old schedule even after the change because she did not know how to revise it. She asked Sorells, who had set-up her schedule as part of her automatic computer signature, for help in updating it. Sorells said he would get on it but the schedule was not changed. Sweet denied leaving early on August 29. I conclude that Sweet has not worked the 8 a.m. to 4 p.m. shift since December 2006 and that Respondent knew this and she did not leave work early on the 29th.

III. Analysis

The Complaint alleges that Respondent’s rule concerning arbitration is unlawful. That rule required the employee to agree that, in accordance with the Debt Settlement USA’s Arbitration Policy that the employee will submit any dispute – including but not limited to the employee’s termination – arising under or involving the employee’s employment with Debt Settlement USA to binding arbitration within thirty (30) days from the date the dispute first arose. The employee was required to agree that arbitration shall be the exclusive forum for resolving

⁷ Elland also testified that Sorells asked why she had to say anything, that she was his top producer. But that statement was not included in her pretrial affidavit and while being cross-examined on the matter Elland’s demeanor appeared uncertain. I do not credit this portion of Elland’s testimony.

all disputes arising out of or involving the employee’s employment with Debt Settlement USA or the termination of that employment. Employees, of course, have a Section 7 right to file a charge with the Board and have it adjudicate their claims. *Bill’s Electric, Inc.*, 350 NLRB No. 31 (2007); *U-Haul Co. of California*, 347 NLRB No. 34 (2006). In its brief, Respondent points out
 5 that in *Bill’s Electric*, supra, fn. 15, the Board stated:

Our decision is limited to the specific provisions and policy at issue in this case. We do not otherwise pass on the lawfulness of mandatory arbitration provisions in an unorganized work force. *U-Haul Co. of California*, 347 NLRB No. 34 (2006).

10 Respondent argues that this statement indicates the Board considers this matter an open question. But both *Bill’s Electric* and *U-Haul* involved nonunion work places such as Respondent’s. By maintaining a grievance-arbitration procedure as a condition of employment that interferes with employee access to the Board’s processes, Respondent violated Section
 15 8(a)(1).⁸ *Bill’s Electric, Inc.*, supra; *U-Haul Co. of California*, supra. In a related allegation the General Counsel alleges that raising of the affirmative defense in the answer, described above, itself independently violated Section 8(a)(1), but the General Counsel in its brief does not argue in favor of an independent violation and cites no authority that supports such a finding. Respondent argues:

20 Counsel for the General Counsel also seems to argue that in raising the arbitration provision as an affirmative defense, Debt Settlement took the position that the provision prohibited the filing of unfair labor practice charges. Not so. The affirmative defense was intended as a damages defense. Some argue that
 25 the administrative agencies should defer the question of damages to arbitration if there is an arbitration agreement.

Under these circumstances I conclude that the raising of the defense alone is insufficient to violate the Act. Under these circumstances I shall dismiss that allegation of the Complaint.

30 The Complaint alleges that the provision in the guidebook banning “behavior which creates discord and lack of harmony” violates Section 8(a)(1). Related allegations in the Complaint assert that Respondent enforced that rule by discharging the four alleged discriminatees thereby violating Section 8(a)(1). The General Counsel correctly argues in his
 35 brief:

40 It has long been recognized by the Board that the exercise of rights protected by the Act frequently produces “some irritation to employees, or unrest in the plant...” *Stuart F. Cooper Co.*, 136 NLRB 142, 144 (1962).

45 With this in mind, I analyze the validity of the rule using the framework described in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Because the rule does not explicitly restrict Section 7 activity, I examine whether the employees could reasonably construe that language to restrict their Section 7 activity. Although there is no case directly on point, I agree with Respondent that cases such as *Lutheran Heritage*, id., (rule prohibiting “abusive language”) and
 50 *Southern Maryland Hosp. Ctr.*, 293 NLRB 1209, 1222 (1989) (rule restricting malicious gossip) are most nearly on point. In both those cases the Board concluded that employees could not reasonably conclude that the cited rules might restrict protected activity. I next examine whether the rule has been enforced in a manner which restricts protected activity as the

⁸ The General Counsel does not also allege a violation of Section 8(a)(4).

Complaint alleges in the related allegations. I have concluded above that the four employees were told they were terminated for “inappropriate behavior, insubordination, and a negative attitude during after a team meeting.” There is no direct or indirect indication that the employees were told or could reasonably conclude they fired for violating the rule at issue; certainly the employees did not so testify. The General Counsel would equate being “negative” with creating “discord and lack of harmony.” But I understand *Lutheran Heritage* to bar this type of parsing of words to find a violation not otherwise apparent. In support of his argument the General Counsel cites *Aerodex, Inc.*, 149 NLRB 192, 199 (1964). In that case the employer maintained a rule that read “An employee who creates discord and lack of harmony jeopardizes the efficiency of the plant and the happiness of his fellow workers. Such an employee cannot be retained.” The Board found that an employee was unlawfully discharged. The employee’s discharge slip referred to the employee’s protected solicitation and indicated the solicitation “resulted in discord and lack of harmony among your fellow employees.” Contrary to the assertion by the General Counsel, the Board did *not* find the rule unlawful; the rule’s legality was not challenged by the General Counsel. In any event, *Aerodex* shows what is missing in this case: the enforcement of the rule against protected activity. I shall dismiss these allegations of the Complaint.

The Complaint also alleges that the maintenance of the rule banning soliciting during working hours and/or in working areas violates Section 8(a)(1).⁹ The Board has long ago settled the matter that a rule forbidding solicitation during “working hours” as opposed to “working time” is unlawful. *Our Way, Inc.*, 268 NLRB 394 (1983). In its brief Respondent argues that the reference to working “hours” is merely a typographical error but there is no evidence or any effort to inform the employees of this. Respondent also argues that another section of its guidebook states “Solicitation for any cause during working time and in working areas¹⁰ is not permitted” and that this cures the earlier reference to working “hours.” But that provision suffers from its own infirmity because it also states: “Employees are not permitted to sell chances, merchandise or otherwise solicit or distribute literature without approval from the Human Resources, Legal Department, or Activities Committee.” As the General Counsel points out, employees are not required to seek permission before engaging in conduct protected by the Act. *Ivy Steel & Wire Co.*, 346 NLRB 404 (2006).¹¹ By maintaining a rule prohibiting solicitation during working hours, Respondent violated Section 8(a)(1).

The Complaint alleges that in or about July and again in and about August, Respondent through Sorells promulgated an overly broad and discriminatory rule prohibiting employees from discussing their wages and terms and conditions of employment and threatened employees with unspecified reprisals if they violated this rule. I have concluded above that in July some employees were talking on the sales floor about the wage cuts and Sorells told these employees to stop talking about the matter and that they should not be talking about it on the floor; he told them to come to him directly. Sorells also told Elland that she should talk about compensation matters with him privately and not talk about them on the sales floor. Sorells testified: “That was my biggest thing was that they we were openly discussing all the changes on the floor, which was not good. Not on the sales floor anyway.” On another occasion Sorells encountered employees talking about the pay reductions and told them that that was the last

⁹ But in his brief the General Counsel only argues that the ban on solicitation during “working hours” is unlawful; he does not challenge the ban of solicitation in work areas even during nonworking time.

¹⁰ Again, the General Counsel does not challenge the ban on solicitation in working areas.

¹¹ The General Counsel did not allege in the Complaint that this portion of the guidebook was unlawful nor does it seek any remedy pertaining to this section in his brief.

time he wanted to hear anybody speaking openly about the pay cut and if they needed to talk about it they should come in and discuss it with him. I have also concluded that Respondent allows employees to talk about a wide range of non-work related matters on its sales floor. Under these circumstances Respondent may not forbid employees from discussing their pay and other working conditions on the sales floor. *Emergency One, Inc.*, 306 NLRB 800 (1992). 5 *United States Postal Service*, 350 NLRB No. 43 (2007), cited by Respondent is inapposite. The Board upheld a rule barring a union steward from soliciting grievances during his working time, but there was no evidence that the Postal Service allowed others type of solicitation during 10 working time. By prohibiting employees from discussing working conditions while allowing discussion of other non-work related matters, and by threatening employees with unspecified reprisals if they did so, Respondent violated Section 8(a)(1). The Complaint also alleges that on August 29, the day the employees were discharged, Sorells also made a number of similar unlawful statements but I find it unnecessary to pass on those allegations because they are 15 cumulative and do not affect the remedy. *Management Consulting, Inc*, 349 NLRN No. 27 (2007), fn. 2.

The Complaint alleges that on about August 1, Respondent through Cullom unlawfully interrogated an employee about the employee's protected, concerted activities and the 20 protected, concerted activities of other employees. This allegation relates to the conversation Cullom had with Sweet on August 1 concerning the "drop-off" e-mail he had sent. During that meeting Cullom asked Sweet whether she was talking to Cullom on behalf of another debt consultant who had been listed as a "drop-off" in the that email. Sweet replied that she was not, but was there because she felt that all the performers were in jeopardy if this became the 25 standard. Cullom said that he had talked directly with the employee in question and that employees did not have a problem with the email message. Sweet responded that what the employee told Cullom and what the employee really felt might be two different things. In the context of the Cullom's email message and the concerns and discussions that it caused among the employees, Cullom's question went to Sweet's protected concerted activity. Such 30 interrogations are not per se unlawful; all surrounding circumstances must be assessed to determine whether the interrogation was coercive. *Rossmore House*, 269 NLRB 1176 (1984), *aff'd. sub nom. Hotel Employees, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). On the one hand, Sweet asked to speak with Cullom about the email message. On the other hand, the questioning was by a high-ranking official in his office. More importantly, the questioning 35 occurred in the context of Cullom's resentment towards Sweet's protected concerted activity and Respondent's unlawful conduct towards other protected concerted activity by Sweet and others. Under these circumstances I conclude that the questioning was coercive. Respondent argues that because Sweet was indeed outspoken and thereafter pursued this matter with Cullom's superior Sweet was not coerced. But of course the test is not whether an employee 40 subjectively felt coerced; rather, the test is whether under an objective standard the interrogation could reasonably coerce an employee in the exercise of their rights under the Act. By coercively interrogating an employee concerning the employee's protected concerted activity Respondent violated Section 8(a)(1).

Continuing, the Complaint alleges that Cullom, on August 29 promulgated an unlawful 45 rule prohibiting employees from discussing wages. I have described above how Cullom told the employees that they should not be discussing their concerns about wage cuts with each other on the sales floor but instead should bring those concerns directly to him. The Board recently reiterated that:

50 An instruction, admonition, or warning to an employee, express or implied, not to get involved in activities protected by the Act interferes with, restrains, and coerces employees in the exercise of their under the Act.

5 *Management Consulting*, supra. By doing so Respondent again violated Section 8(a)(a)(1) of the Act. Cullom also told the four employees in various ways that they were forbidden to raise their concerns during the meeting held earlier that day. I conclude below that the conduct by the four employees during the meeting was protected under the Act. It follows that Respondent violated Section 8(a)(1) by telling employees that they could not engage in the concerted activity that is protected under the Act. The Complaint alleges that on that same day Cullom unlawfully threatened employees with unspecified reprisals. Cullom admitted on the witness stand that he told Sweet that the “negativity” that she displayed on the sales floor was not going to be tolerated and could not happen again. He similarly told Elland that that her actions at the sales meeting would not be tolerated. Cullom was referring to conduct that I conclude below was concerted activity protected by the Act. By threatening employees with unspecified reprisals if employees continued to engage in protected concerted activity, Respondent violated Section 8(a)(1). The Complaint alleges that on that same day Cullom unlawfully told employees that they were being fired because they engaged in concerted activity. As described above I have found that during the discharge meeting Cullom told the employees they were being fired their conduct during and after the meeting. I conclude below that he was referring to conduct protected by the Act. By telling employees that they are being fired for engaging in protected concerted activity Respondent violated Section 8(a)(1).

20 The Complaint alleges that on August 29 Mauer promulgated an unlawful rule and threatened employees with unspecified reprisals, but as explained above I have not credited the testimony presented by the General Counsel in support of this allegation; I dismiss it.

25 I turn now to assess the legality of the discharges of the four employees. The employees were fired for their conduct during and after the August 29 meeting. Their conduct during the meeting – voicing their objections to a perceived wage reduction – was concerted activity protected by the Act. *Neff-Perkins*, 315 NLRB 1229, fn. 1.¹² Respondent argues that this activity lost the protection of the Act. I apply *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979). I have concluded above that while their statements were loud, there was no screaming or yelling. The conduct lasted only a few minutes. I note the Cullom himself accepted the deviation from his prepared agenda when he responded to a question about the bonus program and began to explain the program. I also note the Cullom did not instruct the employees to desist from their comments so that he could return to his agenda; rather he dismissed the meeting. Their conduct after the meeting – continuing to discuss the perceived wage reduction – likewise was concerted activity. Respondent again argues that the activity lost the Act’s protection, but again this argument has no merit. I have not credited the testimony that the employee’s conduct disrupted the work of others who were unconcerned about the matter. I have concluded above that Respondent allows a wide range of talking among employees on the sales floor. In neither instance were customers present nor is there credible evidence that the conduct of the employees on the sales floor was such that customers on the telephone would have heard. I have considered the cases cited by Respondent, but the employees’ conduct in this case does not remotely approach the type of conduct described in those cases. Rather, I agree with the General Counsel’s observation that “The instant case presents facts well within the Board’s recognized sphere of protected conduct.” By firing Randi Sweet¹³, Ann

12 In his brief the General Counsel cites *Winston-Salem Journal*, 341 NLRB 124 (2004), but he omits the fact that the Court of Appeals declined to enforce the Board order. 394 F. 3d 207 (4th Cir. 2005). The General Counsel is reminded that incomplete case cites are misleading.

13 I have concluded above that Sweet did not leave early on August 29; it follows that Respondent has not shown that it would have fired anyway her for leaving early.

Boettcher, Krista Keran, and Jennifer Elland because they engaged in protected concerted activity Respondent violated Section 8(a)(1).

5 Based upon the testimony elicited by Respondent at the hearing I granted the General Counsel's motion to amend the Complaint to allege that the warning given to Beckblissinger violated Section 8(a)(1). On February 7, 2008, Beckblissinger was given a written warning for "Inappropriate Behavior." The warning notice, signed by Cullom, stated:

10 I personally heard [Beckblissinger] being negative and disruptive on the sales floor complaining about the new dialing system and the policies and procedures behind them.

15 Earlier that day, according to Cullom, Beckblissinger arrived 15 minutes late for his shift. Cullom summoned him to his office warned him to watch his attendance and that if Mauer were there Mauer would probably write him up. Cullom then monitored Beckblissinger's calls and heard Beckblissinger complaining about Cullom to two or three other employees. Beckblissinger was not talking to a client at this time. This sparse evidence is insufficient to support a finding that Beckblissinger was engaged in protected concerted activity. Was he complaining to himself? Were other employees nearby? Was this mere "griping?" I dismiss this allegation.

25 Finally, the General Counsel in his brief moves to amend the Complaint to allege that a written warning given to employee Michael Arce was unlawful. Respondent opposes the motion. I deny that motion. Respondent has not been given the notice essential to satisfy due process.

Conclusions of Law

30 By the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

1. Maintaining a grievance-arbitration procedure as a condition of employment that interferes with employee access to the Board's processes.

35 2. Maintaining a rule prohibiting solicitation during working "hours."

40 3. Prohibiting employees from discussing working conditions while allowing discussion of other non-work related matters, and by threatening employees with unspecified reprisals if they did so.

4. Coercively interrogating an employee concerning the employee's protected concerted activity.

45 5. Telling employees that they cannot engage in the concerted activity that is protected under the Act and threatening employees with unspecified reprisals if they do.

6. Telling employees that they are being fired for engaging in protected concerted activity.

50 7. Firing Randi Sweet, Ann Boettcher, Krista Keran, and Jennifer Elland because they engaged in protected concerted activity.

Remedy

5 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. I shall require Respondent to revise the grievance-arbitration procedure so that it does not interfere with employee access to the Board's processes and also revise rules so as not to prohibit solicitation during working "hours" and notify employees in writing that these changes have been done. The Respondent having discriminatorily discharged employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

15 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.¹⁴

ORDER

20 The Respondent, Debt Settlement, Inc. Scottsdale, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

25 (a) Maintaining a grievance-arbitration procedure as a condition of employment that interferes with employee access to the Board's processes.

(b) Maintaining a rule prohibiting solicitation during working "hours."

30 (c) Prohibiting employees from discussing working conditions on the sales floor while allowing discussion of other non-work related matters, and by threatening employees with unspecified reprisals if they do so.

35 (d) Coercively interrogating employees concerning the employees' protected concerted activity.

(e) Telling employees that they cannot engage in the concerted activity that is protected under the Act and threatening employees with unspecified reprisals if they do so.

40 (f) Telling employees that they are being fired for engaging in protected concerted activity.

(g) Firing or otherwise discriminating against employees because they engaged in protected concerted activity.

50 ¹⁴ 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.

(h) 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.

5

(a) Revise the grievance-arbitration procedure so that it does not interfere with employee access to the Board's processes and notify employees in writing that this has been done.

10

(b) Revise the solicitation rule so that it does not prohibit solicitation during working "hours" and notify employees in writing that this has been done.

15

(c) Within 14 days from the date of the Board's Order, offer Randi Sweet, Ann Boettcher, Krista Keran, and Jennifer Elland full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

20

(d) Make Randi Sweet, Ann Boettcher, Krista Keran, and Jennifer Elland whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

25

(e) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

30

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

35

(g) Within 14 days after service by the Region, post at its facility in Scottsdale, Arizona, copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 28, 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 July 1, 2007.

45

50

¹⁵ 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."

(h) 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.

5

IT IS FURTHER ORDERED that the Complaint is dismissed insofar as it alleges violations of the Act not specifically found.

10 Dated, Washington, D.C., August 8, 2008.

15

William G. Kocol
Administrative Law Judge

20

25

30

35

40

45

50

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 maintain a grievance-arbitration procedure as a condition of employment that interferes with employee access to the Board's processes.

WE WILL NOT maintain a rule prohibiting solicitation during working "hours."

WE WILL NOT prohibit employees from discussing working conditions on the sales floor while allowing discussion of other non-work related matters, and WE WILL NOT threaten employees with unspecified reprisals if they do so.

WE WILL NOT coercively interrogating employees concerning the employees' protected concerted activity.

WE WILL NOT tell employees that they cannot engage in the concerted activity that is protected under the Act and WE WILL NOT threaten employees with unspecified reprisals if they do.

WE WILL NOT tell employees that they are being fired for engaging in protected concerted activity.

WE WILL NOT fire or otherwise discriminate against employees because they engage in protected concerted activity.

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

WE WILL revise our grievance-arbitration procedure so that it does not interfere with employee access to the Board's processes and advise our employees in writing that this has been done.

WE WILL revise the solicitation rule so that it does not prohibit solicitation during working "hours" and notify employees in writing that this has been done.

WE WILL, within 14 days from the date of this Order, offer Randi Sweet, Ann Boettcher, Krista Keran, and Jennifer Elland full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Randi Sweet, Ann Boettcher, Krista Keran, and Jennifer Elland whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of Randi Sweet, Ann Boettcher, Krista Keran, and Jennifer Elland, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

DEBT SETTLEMENT USA, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

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

2600 North Central Avenue, Suite 1800

Phoenix, Arizona 85004-3099

Hours: 8:15 a.m. to 4:45 p.m.

602-640-2160.

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, 602-640-2146.