UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ARKEMA, INC.

and

Cases 16-CA-26371
16-CA-26392

UNITED STEEL WORKERS OF AMERICA,
LOCAL 13-227

ARKEMA, INC.

Employer

and

GREG SCHRULL

Case 16-RD-1583

Petitioner

and

UNITED STEELWORKERS OF AMERICA,
LOCAL 13-227

Union

STEVENS CREEK CHRYSLER JEEP
DODGE, INC.

Cases 20-CA-33367
20-CA-33562
20-CA-33655

and

MACHINISTS DISTRICT LODGE 190
MACHINISTS AUTOMOTIVEE LOCAL
1101, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE
WORKERS OF AMERICA, AFL-CIO

CUSTOM FLOORS, INC.

and Case 28-CA-21226

J&R FLOORING, INC. d/b/A J. PICINI FLOORING

Case 28-CA-21229

and

FCS FLOORING, INC.

and Case 28-CA-21230

FLOORING SOLUTIONS OF NEVADA, INC., d/b/A FSI

and Case 28-CA-21231

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15

BRIEF OF ARKEMA, INC. IN RESPONSE TO NATIONAL LABOR RELATIONS BOARD'S INVITATION REGARDING *NORDSTROM* REMEDY

Arkema, Inc. ("Arkema" or "Company") files this Brief in Response to the National Labor Relations Board's ("NLRB" or "Board") invitation to address the issue of whether the Board should reconsider its decision in *Nordstrom, Inc.*, 347 NLRB 294 (2006).

I. ISSUE PRESENTED

This Board has set forth the following issue:

> Should the Board reconsider its decision in *Nordstrom, Inc.*, 347 NLRB 294 (2006), with respect to requiring electronic posting of Board-ordered remedial notices in unfair labor practice cases? If so, what legal standard should apply and at what stage of the proceedings should any necessary factual showing be required?

II.
SUMMARY OF THE ARGUMENT

The Board's decision in *Nordstrom, Inc.*, 347 NLRB 294 (2006) should not be reconsidered in the case of Arkema, Inc., 16-CA-26371 and 16-CA-26392 (collectively, the "Arkema Case"). First, unlike the issue presented in *Nordstrom*, Counsel for the General Counsel did not request posting a remedial notice to Arkema's intranet website. Rather, Counsel for the General Counsel requested that any remedial notice be affirmatively distributed to the employees at Arkema's Houston, Texas facility by e-mail. The Arkema Case is therefore factually distinguishable from *Nordstrom* and is an inappropriate vehicle through which to reconsider *Nordstrom*.

Moreover, the differences in electronic communications media and the potential differences in employers' capabilities with respect to such media, demand a case-by-case determination of what, if any, electronic notice posting is appropriate in a particular case. Depending on an employer's capabilities, a standard electronic posting remedy in one case could become an extraordinary remedy in another case. For these reasons, if the General Counsel requests electronic notice posting in his complaint, evidence regarding the employer's use of electronic communications media and its capabilities in this regard should be introduced during the unfair labor practice trial so that the Administrative Law Judge can determine (a) whether electronic notice posting is appropriate in a particular case, and, if so, (b) the form such electronic notice posting should take.

III.
BACKGROUND TO THE ARKEMA CASE

In the Counsel for the General Counsel's live complaint in the Arkema Case, he sought an order requiring Arkema to "promptly e-mail the notice to employees consistent with [Arkema's] normal method of communication with employees." Although the Administrative

Law Judge ("ALJ") found that Arkema violated the Act in various respects, he did not recommend that Arkema be required to distribute a remedial notice to its Houston employees via e-mail. Counsel for the General Counsel excepted to the ALJ's failure to order that the notice be distributed via e-mail and Arkema timely responded in opposition to the General Counsel's exception. Arkema's Answering Brief in Opposition to the General Counsel's Cross Exception (the "Answering Brief") is fully incorporated into this Brief by reference.

As set forth in Arkema's Answering Brief, there is evidence that Arkema's management communicated with its Houston employees via e-mail. There is also evidence, however, that Arkema management routinely met in person with its Houston employees. Further, the evidence establishes that Arkema's Houston employees physically work at the Houston plant. There is no evidence in the Arkema Case record regarding Arkema's capability, if any, to limit employees' abilities to forward e-mails, there is scant evidence in the record regarding Arkema's use of an intranet website, and there is no evidence in the record regarding the scope of Arkema's intranet website or Arkema's capabilities with respect to that intranet website. Finally, there is no evidence in the record regarding Arkema's use of an Internet website.

IV.
ARGUMENTS AND AUTHORITIES

The Board should not reconsider its decision in *Nordstrom, Inc.* through the Arkema Case. If it does, it should adopt a case-by-case approach to ordering electronic notice and it should require the General Counsel to introduce evidence of an employer's use of electronic communications systems and its capabilities with respect to such systems during the unfair labor practice proceeding.

A. The Arkema Case is an inappropriate vehicle for reconsidering Nordstrom.

First, the General Counsel did not request that a remedial notice be posted to Arkema's intranet website. Instead, Counsel for the General Counsel requested that Arkema be ordered to distribute the remedial notice by e-mail. As Arkema discusses in its Answering Brief, which is fully incorporated herein, and also below, there are substantial and significant differences between (1) distribution of a notice by e-mail and (2) posting of a notice on an intranet website. As a result, the Arkema Case is an inappropriate vehicle through which a change to the *Nordstrom* standards should be made.

Furthermore, beyond some evidence that Arkema communicates with its employees via e-mail, there is no evidence in the record setting forth Arkema's capabilities with respect to restricting employees' ability to forward e-mails or otherwise control the notices distributed by e-mail. Similarly, there is insufficient evidence regarding Arkema's use of an intranet website to order an intranet posting. The Arkema Case is therefore an inappropriate vehicle for reconsidering *Nordstrom* due to its undeveloped factual record on these issues.

B. A "one size fits all" electronic posting remedy does not reflect the realities of today's workplace and runs afoul of the Board's traditional notice-posting scheme.

Regardless of the significant differences between e-mail and intranet websites, the Board has indicated that these communications media are subsumed under the overly broad term "electronic communications" as far as electronic notice posting is concerned.[1] *See, e.g., Texas*

[1] In *National Grid USA Service Co.*, 348 NLRB 1235, n. 2 (2006), the Board even referred to posting a notice on "an Internet web site." If *National Grid's* reference to an "Internet" web site was not nomenclature error, this is a significantly different and an even more extraordinary remedy than posting on an intranet website. The most striking difference is that the world at large may have Internet access to the website of any enterprise which has one; there is neither restriction nor direction of such a posting to the employees affected by the found unfair labor practices. Internet posting is equivalent to directing a respondent to take out full page ads featuring the remedial notice in several local and national newspapers. Such a remedy would be punitive, in excess of the Board's authority, and not a remedial order designed to effectuate the policies of the Act in any view. *See NLRB v. Haberman Constr. Co.*, 641 F.2d 351, 361-62 and nn. 9-10 (5th Cir. 1981) (en banc) (and cases cited); *The Guard Pub. Co.*, 344 NLRB 1142, 1146 n.16 (2005) (noting that publishing notice in newspaper is special remedy). Further, the infirmities of

Dental Ass'n, 354 NLRB No. 57, slip op. at n.4 (2009) (noting that Chairman Liebman would grant e-mail distribution of remedial notice because there is evidence that the employer customarily communicates with its employees electronically); *Valley Hosp. Med. Ctr.*, 351 NLRB 1250, 1250 n.1 (2007), *enf'd*, 358 Fed. Appx. 783 (9th Cir. 2009) (noting that there is some evidence that the employer posted some policies on its intranet website, but this was not enough to establish that the employer customarily communicated with employees electronically, thus request to distribute notice via e-mail denied). Chairman Liebman and former Member Walsh have also set forth their belief that "electronic notices" should be required in all cases where an employer customarily communicates with its employees "electronically," and further that whether such notices are required in a particular case and the form of such notices should be left to the compliance stage of unfair labor practice cases. *See Valley Hosp. Med. Ctr.*, 351 NLRB at 1250 n.1; *Nordstrom*, 347 NLRB at 294 n.5. This "one size fits all" approach fails to take account of the realities of electronic workplace communications, however, and it should not be adopted by the Board in the Arkema Case or any other case.

1. The Board's discretion to fashion remedies under the Act is not unlimited.

The Board's authority to fashion remedies under the Act[2] is generally broad but is not unlimited. *See Hoffman Plastics Compounds, Inc.. v. NLRB*, 535 U.S. 137, 142-43 (2002). Any remedy imposed must effectuate the policies of the Act, and be appropriate and adapted to the matter which called for redress. *NLRB v. United Mine Workers of Am.*, 355 U.S. 453, 458 (1958)

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distributing a notice via e-mail also exist with Internet posting, such as the lack of control over copying and indiscriminate forwarding, with either unwarranted commentary or deliberate alteration of the notice by "cut and paste" procedures.

[2] 29 U.S.C. §160(c).

(to the extent the Board exceeds this limit, its order is punitive and is not enforceable). The Board has no authority to impose punitive measures rather than restore the conditions existing before the unfair labor practices occurred. *See United Bro. of Carpenters v. NLRB*, 365 U.S. 651, 655-56 (1961); *Republic Steel Corp. v. NLRB*, 311 U.S. 7, 11-12 (1940). Relief ordered "must be sufficiently tailored to expunge only the actual, and not merely speculative, consequences of the unfair labor practices." *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 900 (1984).

In light of these principles, the Board has fashioned both standard and extraordinary notice posting remedies. The standard notice posting order requires that a remedial notice be posted at the facility where the unfair labor practice took place for a period of 60 days.[3] This remedy is narrowly tailored to redress the precise unfair labor practices at issue because it is directly targeted to the impacted employee group. This remedy also assures predictability because all parties know exactly what is expected of them. *See, e.g., United Steelworkers of Am. v. NLRB*, 530 F.2d 266, 279 (3d Cir. 1976) (stating, "Industrial peace requires that companies and unions [a]like extract maximum stability, predictability, and reckonability from labor board decisions").

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[3] The Board's standard notice posting order, which was recommended by the ALJ in the Arkema Case, states:

> Within 14 days after service by the Region, post at its facility in Houston, Texas, copies of the attached notice marked as "Appendix B." Copies of the notice, on forms provided by the Regional Director for Region 16, 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 22, 2008.

See Arkema, Inc., JD (ATL)-23-09 at pp. 23-24 (Sept. 17, 2009); *see also Nordstrom*, 347 NLRB at 299.

The Board has also developed extraordinary or special notice remedies such as hand delivery of remedial notices to all affected employees, requiring that notices be read by a senior executive to employees assembled for that purpose, or that notices be posted company-wide. *See, e.g., Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007), *enf'd*, 273 Fed. Appx. 32 (2d Cir. 2008) (reading of notice ordered in view of serious and widespread unfair labor practices); *Smithfield Foods, Inc.*, 347 NLRB 1225, 1232-33 (2006) (declining to impose *Gissel* bargaining order despite pervasive unfair labor practices because it would likely engender further litigation and delays, imposing extraordinary remedies that notice be mailed to all employees in English and Spanish and that notice be read to assembled employees by a Board agent among others); *Domsey Trading Corp.*, 310 NLRB 777, 779-80 (1993) (flagrant and repeated unfair labor practices supported extraordinary remedy of reading notice to unit employees); *see also Torrington Extend-A-Care Employee Ass'n v. NLRB*, 17 F.3d 580, 585 (2d Cir. 1999) (addressing company-wide posting order). These extraordinary remedies are reserved for the most egregious cases, and some substantial factual predicate for going beyond the standard notice posting remedy is required before they can be imposed.[4] *See, e.g., Albertson's, Inc.*, 351 NLRB 254, 259-60 (2007); *Chinese Daily News*, 346 NLRB 906, 909 and 911 (2006) (noting standards for imposition of extraordinary remedies); *First Legal Support Servs., LLC*, 342 NLRB 350, 350 n.6 (2002) (denying special remedies such as reading notice to employees, mailing copy of the notice to employees on payroll at time when unfair labor practices commenced and publishing the notice in a local newspaper, where violations were neither substantial, serious and pervasive and no showing made why traditional remedies not sufficient). As discussed below, to

[4] An exception to a required showing of egregious conduct or multi-plant conduct is where an employer has a standard policy published to all employees at all of its facilities which has been found to be unlawful. In such a case, the employer-wide posting of a remedial notice disavowing that policy has been imposed

the extent the Board proposes to adopt an "electronic" posting requirement as a matter of course without any evidentiary showing as to need, scope or propriety, it would be imposing a punitive, extraordinary remedy without justification.

2. The "one size fits all" approach fails to take account of critical differences in the various forms of electronic communications used by employers.

Any order that an employer must electronically post a remedial notice must first take account of what electronic medium is to be used to post that notice. In the Arkema Case, the General Counsel requested that the notice be distributed (as opposed to posted) via Arkema's e-mail system. In *Nordstrom*, the Board addressed posting a notice to an employer's intranet website. In *National Grid*, 348 NLRB at 1235 n.2, the Board reversed an ALJ order that purported to require the employer to post a notice to its "Internet website." These cases illustrate the vast difference between the Board's standard notice-posting order, which everyone understands to mean posting a notice on a wall or bulletin board, and a general, undefined "electronic posting" order, which is highly dependent on what electronic communications systems employers have and the capabilities of those systems. E-mail is different from an employer's intranet website, which in turn is different from an employer's Internet website.[5]

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where the General Counsel has shown that traditional remedies are inadequate. *See Albertson's, Inc.*, 351 NLRB at 259 n.31, 260.

[5] E-mail is analogous in some instances to making a telephone call and to writing a note, letter or memorandum to an individual employee or a group of employees. *See, e.g., The Register Guard*, 351 NLRB 1110, 1116 (2007) *enf'd in part on other grounds*, 571 F.3d 53 (D.C. Cir. 2009) (noting that e-mail is in some respects analogous to telephone communication); *The American Heritage® Dictionary of the English Language, Fourth Edition.* Retrieved June 08, 2010, from Dictionary.com website: http://dictionary.reference.com/browse/intranet (defining e-mail as sending or receiving a message over a computer network). In contrast to e-mail, an intranet is "a privately maintained computer network that can be accessed only by authorized persons, especially members or employees of the organization that owns it." *The American Heritage® Dictionary of the English Language, Fourth Edition.* Retrieved June 07, 2010, from Dictionary.com website: http://dictionary.reference.com/browse/intranet. Finally, not to be confused with an intranet, the Internet is "an interconnected system of networks that connects computers around the world via the TCP/IP protocol." *The American Heritage® Dictionary of the English Language, Fourth Edition.* Retrieved June 07, 2010, from Dictionary.com website: http://dictionary.reference.com/browse/intranet. Indeed, the differences between an intranet and the Internet are well illustrated by their prefixes: "Intra" means "inside" or "within," and "inter" means "between" or "among."

Some employers may regularly communicate with employees via e-mail, others may use an intranet and some employers may not use either one. The only way to fashion an appropriately tailored electronic notice posting remedy, if one is to be imposed at all, on these issues, is to allow an ALJ to recommend an appropriate remedy, and then allow the parties to take exceptions to that remedy. This is exactly why the Board majority in *Nordstrom* declined to order posting of a remedial notice to an employer's intranet website. *Nordstrom*, 347 NLRB at 294. The majority stated that it would like the benefit of a concrete fact pattern before deciding whether to take the "unprecedented" step of requiring intranet or other electronic posting because there could be material differences among employers' intranet systems. *Id.* Such a factual record certainly does not exist in the Arkema Case and the development of such a record will be necessary in every case in order to properly tailor the electronic notice posting remedy.

3. The differences in various electronic communications mediums, and employers' capabilities with such mediums, will determine whether an electronic notice posting order is a standard or extraordinary remedy.

It is important to take account of the differences between e-mail and an intranet website, and an employer's capabilities with respect to these communications mediums because such differences will determine whether an electronic notice posting order is a standard or extraordinary remedy in a particular case.

a. Distributing remedial notices via e-mail will likely be an extraordinary remedy.

As Arkema pointed out in its Answering Brief, distributing a remedial notice via e-mail is very different than posting a remedial notice on a wall or bulletin board because ordering e-mail distribution imposes an affirmative requirement that an employer distribute a notice to each and every impacted employee at a facility. This remedy is therefore directly analogous to notice remedies that the Board has long considered to be extraordinary remedies. *See, e.g., First Legal*,

350 NLRB at 350 n.6 (noting that mailing notice to employees during work time was an extraordinary remedy); *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 473 (1995), *enf'd in part*, 153 L.R.R.M. 2617 (4th Cir. 1996) (setting forth various special notice remedies in addition to standard notice-posting); *see also American Standard Cos., Inc.*, 352 NLRB 644, 647, 658 (2008) (the ALJ refused to order extraordinary remedies such as reading the notice to employees and mailing the notice to former employees despite finding numerous unfair labor practices where there was an absence of prior unfair labor practices and the employer and union had a previous acceptable working relationship); *Ishikawa Gasket Am., Inc.*, 337 NLRB 175, 176 (2001) (refusing to order that a notice be read to employees where the General Counsel did not argue that the case was egregious and the Board found that it was not an egregious case).

Furthermore, e-mailing a copy of a remedial notice to employees means that the notice will leave the employer's and the Board's effective control. Depending on an employer's capabilities with respect to its e-mail system, employees may be able to forward a copy of the notice outside of the company, possibly could electronically alter or deface the notice, and could republish the altered or defaced notice in any number of places, including on Facebook and You Tube. Such a situation would mean that not only would an employer be unable comply with the directive to take reasonable steps to ensure that the notice is not altered or defaced, but also the employer and the Board could be faced with a situation where altered or defaced notices are in the public domain.[6]

For these reasons, ordering an e-mail distribution of a remedial notice to each and every employee is a broad expansion of the Board's traditional notice posting rather than a mere effort

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[6] While not directly addressed in *Nordstrom* and not at issue in the Arkema Case, posting a remedial notice an employer's Internet website is also an extraordinary remedy akin to requiring the employer to publish the notice in a newspaper. *See supra* n. 1.

to conform that remedy to the modern electronic workplace. It is also the type of expansion of remedies that both the Board and the courts have rejected absent a substantial showing of severe and egregious conduct demonstrating that the traditional remedies would be inadequate. *See* cases cited *supra*.

One possible solution to this problem would be to require sending an e-mail to impacted employees stating that notices have been posted and where they can be found at the employer's facility. For example, in *United Parcel Service, Inc.*, JD(SF)-12-09, slip op. at 6 (March 4, 2009), the ALJ ordered that the employer send a message to its employees via a hand-held device informing employees that a notice had been posted and in what locations. This decision is obviously very different than requiring the employer to send the notice itself to its employees. It also presumably addresses the Board's concern that employees be fully informed while at the same time, avoids veering into the realm of extraordinary remedies and the loss of control over the notice. Regardless of the merits of this approach, however, there is no evidence in the Arkema Case that sending an e-mail to Arkema's employees informing them that a notice had been posted is necessary because, unlike the employees in *United Parcel Service*, Arkema's employees have regular meetings with management, spend their entire work day at the plant and will see the notices during their daily travels through the plant.

b. Whether requiring a notice to be posted to an employer's intranet site is an extraordinary remedy depends on the facts and circumstances of each case.

As Chairman Liebman has observed, many employers and governmental organizations, including the Board, utilize an intranet website to post policies and other matters of interest to their employees. These intranet sites are usually not accessible by the public at large and are

solely for internal consumption and use.[7] Some employers also may have the capability to limit access to certain areas of an intranet website to certain employees. Thus, ordering that remedial notices be posted to an intranet website in lieu of e-mail distribution could avoid some, but not all of the punitive effects of an electronic distribution via e-mail. Once again, however, a factual inquiry into the employer's capabilities with respect to its intranet website is necessary so that the ALJ can make a determination whether posting a remedial notice to an intranet website is appropriate under the circumstances of a particular case. If, for example, a multi-facility employer has an intranet website to which all employees have access and it is not able to limit access based on location, posting a remedial notice to the intranet website would be tantamount to issuing a company-wide remedial notice—an extraordinary remedy. *See Torrington Extend-A-Care Employee Ass'n*, 17 F.3d at 585. Similarly, if an employer cannot limit its employees' ability to download and forward a notice via e-mail, then posting to an intranet website presents the exact same loss-of-control problem presented by e-mailing the notice. Once again, perhaps a practical solution to these problems would be posting a statement on an intranet website setting forth that remedial notices have been posted and the locations, but there is absolutely no factual predicate in the Arkema Case even to go this far.

4. Deferring the issue of whether or not to order electronic posting to the compliance stage is improper because ordering electronic posting goes to the nature of the remedy itself as opposed to compliance with an ordered remedy.

Finally, it is improper to defer a determination of whether to order electronic notice posting and, if so, in what form, to the compliance stage of an unfair labor practice case. For the reasons discussed above, a decision to order electronic posting is a substantive remedy given the

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[7] Most companies and government agencies also have a separate Internet website which customers, vendors and the public at large can access, extract information from and engage in interactive dialogue with the site.

differences in electronic communication formats and the possible variations in an employer's ability to control those formats. Ordering that an employer e-mail a notice to each and every impacted employee at a facility is a very different substantive remedy than ordering an employer to post a notice on an intranet website to which only certain employees have access. Such remedies are as different as ordering an employer to hand distribute a notice to individual employees versus posting it on a bulletin board.

The Board's regulations make clear that compliance proceedings occur after the Board has directed remedial action or a court has entered judgment enforcing a final order. 29 C.F.R. § 102.52. In other words, the compliance stage of an unfair labor practice proceeding is designed to carry out remedies already approved by the Board or the courts in an underlying unfair labor practice case, and are not a forum for imposing new or different remedies. *See International Union of Mine, Mill & Smelter Workers v. Eagle-Picher Mining & Smelting Co.*, 325 U.S. 335, 339-40 (1945) (stating "that the scheme of the Act contemplates that when the record has been made and is finally submitted for action by the Board the judgment 'shall be final,'" holding that such finality extends to remedies ordered by the Board and approved by the courts, and noting the unfairness of a situation where a remedy was deemed final only to be rewritten years later at a time when the right to review had expired). As a result, the imposition of electronic notice posting remedies must be recommended by the ALJ in the first instance, reviewed by the Board, and ultimately subject to appeal to a proper circuit court of appeals. Waiting until compliance to add such substantive remedies is not permissible. *See W.L. Miller Co. v. NLRB*, 988 F.2d 834, 836-37 (8th Cir. 1993) (holding that the Board was without jurisdiction to add a remedy after judicial enforcement of a Board order); *see also NLRB v. G&T Terminal Packaging Co.*, 246 F.3d 103, 123-25 (2d Cir. 2001) (noting that it was remanding case to the Board for

consideration of an alternative remedy rather than deferring the issue to the Board's "so-called compliance proceedings" because the remedial details deferred to the compliance stage must be "true details" needed to flesh out a remedy ordered by the Board as opposed to consideration of the remedy itself).

Similarly, deferring the decision of whether to impose an electronic notice posting remedy and the form of that remedy to the compliance stage would achieve nothing but further litigation and delay, and would create a situation where the Board and the courts have to engage in the piecemeal review of a case. *See Holo-Krome Co. v. NLRB*, 907 F.2d 1343, 1348 (2d Cir. 1990). It would be a far more efficient use of employer and Board resources to litigate the electronic notice issue during the unfair labor practice case.

V.
CONCLUSION

In short, addressing the issue of electronic posting should follow the same careful analysis and pre-imposition evidentiary evaluation that the Board has consistently followed, in both Democratic and Republican administrations, of assessing the particular factual setting and justifying the remedies imposed, including the scope of posting of its remedial orders and the use of "special" remedies, such as imposition of a visitorial clause. *See U.S. Marine Corp. v. NLRB*, 944 F.2d 1305, 1324-25 (7th Cir. 1991) (dealing with the concerns of "abuse inherent in" such orders with no time limits and declaring such to be an "extraordinary" remedy) (citing *Cherokee Marine Terminal*, 287 NLRB 1080 (1988)).

In sum, the Board historically has viewed and handled electronic posting, and other unique, "special" remedies (such as home mailing, reading of notice by management, corporate wide posting, etc.) as extraordinary remedies which should be imposed only when their use is clearly demonstrated by evidence of egregious and pervasive violations making necessary

supplements to the traditional notice posting requirements to remedy the violations found. *See, e.g., Cintas Corp.* 353 NLRB No. 81 (2009), *enf'd on other grounds*, 589 F.3d 905 (8th Cir. 2009). No rationale or justification exists for departing from this approach in any of the three cases involved here. A "burning desire" to address the "modern workplace" through the imposition of remedies heretofore found to be "extraordinary" and "punitive" without sufficient factual support, will simply result in more, additional litigation and delays – a pyrrhic victory indeed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this the 11th day of June, 2010, a true and correct copy of the foregoing was forwarded by electronic mail to:

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