DTM Corporation *and* Security, Police, Fire Professionals of America, Local 48. Case 16–CA–027094

August 31, 2012

DECISION AND ORDER

BY MEMBERS HAYES, GRIFFIN, AND BLOCK

On June 30, 2010, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Acting General Counsel filed an answering brief and cross-exceptions.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order. The issue is whether the no-strike clause in the Respondent's collective-bargaining agreement with the Union violates Section 8(a)(1) of the Act because, in the judge's words, it "clearly and explicitly bans and/or prohibits the distribution of literature (leaflets and handbills) without limitation." For the reasons explained below, we disagree with the judge's interpretation of the no-strike clause. Accordingly, we dismiss the complaint.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Respondent provides security services to the air traffic controllers at the Dallas/Fort Worth Airport. The Security, Police, Fire Professionals of America, Local 48 (Local 48) represents the Respondent's security guards employed at the site. On September 21, 2009, Local 48's parent union signed a collective-bargaining agreement with the Respondent covering these guards. Article IX of the agreement, entitled "No Strike and No Lockout," reads in relevant part:

> The Employer agrees not to cause, permit, or engage in any lockout of its employees during the term of this Agreement. The Union agrees that neither it nor the employees it represents covered by this Agreement will, during the term of this Agreement, cause, permit, or take part in any strike, including sympathy strike, picketing*, leafleting, informational picketing or any other work action that has the purpose or effect of slowing down or interfering with work.* [Emphasis added.]

The judge interpreted article IX to prohibit employees from engaging in "leafleating" and "informational picketing" generally, although such activities are protected by Section 7 of the Act. Applying the standard set forth in *Lutheran Heritage Village—Livonia*, 343 NLRB 646 (2004), which addresses unilaterally issued employer rules, the judge found that article IX was unlawfully overbroad. Citing *NLRB v. Magnavox Co.*, 415 U.S. 322, 325 (1974), the judge also found that article IX constituted an impermissible waiver by the Union of employees' Section 7 rights.

II. ANALYSIS

Section 7 of the National Labor Relations Act gives employees the right to engage in concerted activities for the purpose of collective bargaining or for other mutual aid or protection. However, unions, in their representational capacity, may collectively bargain a waiver of certain Section 7 rights. Rights that may be waived include the right to engage in strikes and the right to encourage or sanction strikes. See, e.g., *Lear Siegler, Inc.*, 293 NLRB 446, 447 (1989).

In contrast, a union may not broadly waive the right of employees to distribute literature on nonworking time in nonworking areas. *Magnavox*, supra. Here, the judge clearly erred by lifting the collective-bargaining agreement's prohibition against "leafleting, informational picketing, or any other work action" out of its context in the no-strike clause. As part of its prohibition of strikes, article IX prohibits "leafleting, informational picketing or other work action that has the purpose or effect of slowing down or interfering with work." The most reasonable construction of this language is that the phrase "that has the purpose or effect of slowing down or interfering with work" modifies each of the three terms in the preceding series: "leafleting," "informational picketing," and "other work action." In other words, the only leafleting, informational picketing, or other work action prohibited by article IX is that with the proscribed "purpose or effect of slowing down or interfering with work." To the extent that such activity would be protected by Section 7, the Union was permitted to waive employees' right to engage in it, as part of its lawful waiver of the right to strike.[1]

Neither protected distribution in nonworking areas among employees during their nonworking times, nor informational picketing by off-duty employees on public property for any other purpose, would be covered by this

[1] We do not believe that art. IX can reasonably be interpreted to prohibit mere employee discussion, written or oral, of a work stoppage.

prohibition. Thus, *Magnavox*, supra, cited by the judge, is distinguishable.[2]

Based on the foregoing, we find that the Respondent did not violate Section 8(a)(1) as alleged.[3]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. August 31, 2012

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Becky Mata, Esq., and *Sharon L. Steckler, Esq.*, for the Government.[1]

Scott Kamins, Esq., for the Company.[2]

Lloyd A. Tyson, Union Representative, for the Union.[3]

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This case involves the Company's promulgating and maintaining alleged unlawful rules in its collective-bargaining agreement restricting employees' ability to handbill, ability to leaflet and ability to engage in work actions that constitute protected, concerted activities. I heard this case in trial in Fort Worth, Texas on April 28, 2010. The case originates from a charge filed on October 26, 2009 by Security, Police, Fire Professionals of America, Local 48 (the Union). The prosecution of the case was formalized on January 26, 2010, when the Acting Regional Director for Region 16 of the National Labor Relations Board (the Board), acting in the name of the Board's General Counsel, issued a complaint and notice of hearing (the complaint) against DTM Corporation (the Company).

The Company, in a timely filed answer to the complaint, denied having violated the Act in any manner alleged in the complaint.

The three allegations litigated are that since September 21, 2009, the Company has promulgated and maintained an unlawful rule in its collective-bargaining agreement that restricts employees' ability to handbill, ability to leaflet and ability to engage in work actions that constitute protected, concerted activities in violation of Section 8(a)(1) of the National Labor Relations Act (the Act).

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified. I have studied the whole record, the post trial briefs, and the authorities cited therein. Based on more detailed findings and analysis below, I conclude and find the Company violated the Act as alleged in the complaint.

Findings of Fact

I. JURISDICTION, LABOR ORGANIZATION STATUS, AND AGENCY STATUS

The Company is a Washington corporation engaged in the business of providing security solutions, facility management and automation resources throughout the United States including the FAA ARTCC site in Fort Worth, Texas. During the past fiscal year, a representative period, the Company performed services valued in excess of $50,000 in states other than the State of Texas. The parties admit, and I find, the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties admit and/or do not dispute, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act.

Company Chief Operating Officer Margo Briggs is a supervisor and agent of the Company within the meaning of Section 2(11) and (13) of the Act. Captain Chad Riley is site supervisor for the Company and Lloyd Tyson is vice president of the Union.

II. THE FACTS

The Company provides security services for the Federal Aviation Administration (ARTCC) at its Fort Worth, Texas site (site), 24 hours per day, 7 days per week. Specifically, the Company provides security service for the air traffic controllers at the Dallas/Fort Worth Airport. The security officers control the access gate, check identification badges of those entering and leaving and for automobile parking decals. The security officers escort vendors and visitors on the premises as well as patrol the site and prepare daily activity reports for the site. The Company and Union are parties to a collective-bargaining agreement, effective by its terms, from September 21, 2009 to September 30, 2012. Although the representative status of the Union was not alleged in the complaint, the Company, in the collective-bargaining agreement, recognizes the Union as the

[2] There was no dispute that the rule at issue in *Magnavox* prohibited all employee distribution anywhere on the employer's property. Id. at 322.

[3] In light of our analysis, we find it unnecessary to pass on whether it was correct for the judge to apply the *Lutheran Heritage Village* standard to a collectively-bargained rule. Because we are dismissing the complaint, we also find it unnecessary to pass on the Respondent's contention that the judge erred by finding that the International Union was not a necessary party, or on the Acting General Counsel's contention that the judge's recommended notice should be modified.

[1] I shall refer to counsel for the General Counsel as counsel for the government and the General Counsel as the government.

[2] I shall refer to counsel for the Respondent as counsel for the Company and shall refer to the Respondent as the Company.

[3] I shall refer to the Charging Party as the Union and to its representative as Union Representative.

exclusive bargaining representative "for all of its full-time and part-time security guards employed at [the site]," but excluding Officers and Directors of the Company; all office clerical, all managerial and supervisory employees and all other employees who are not security guard employees, [and] all employees who are not regularly scheduled to work at the site as part of their normal work duties." There are approximately 11 guards in the bargaining unit.

Union Vice President Tyson testified that at some point in October 2009, the Union's acting site steward prepared and sent to Company management, and others, a "Notice" type flyer addressed "To Whom It May Concern" advising of certain action the Union would be taking. The Notice reads as follows:

> On November 02, 2009 at or about 1100, the Security Officers working for DTM Corporation will be performing an Informational Picket and/or Strike in front of the FAA/ARTCC in Fort Worth, Texas. This is due to DTM Corporation's lack of dealing with the SPFPA, Local # 48 in good faith.
>
> On October 1, 2008, DTM Corporation was awarded this contract at this location and has yet to pay anyone of the Security Officers everything that was stated in the CBA that the FAA handed to them and DTM Corporation agreed to.
>
> October 1, 2009 started a new pay raise, stated in the current CBA and none of these Security Officers even know what they are being paid, due to DTM Corporation's efforts to keep all information away from these Security Officers, as well as not following the CBA.
>
> Thank you,
> SPFPA, Local #48

Vice President Tyson thereafter spoke by telephone with Site Supervisor Captain Riley about the Union's notice to engage in informational picketing and "told him that I did not like the language in the notice about the strike because I believed the strike according to our CBA [collective-bargaining agreement] was unlawful. But we planned to do an informational picket across the street on public land by non-duty officers." Tyson told Riley he was concerned for his officers and for the operations of the facility and he "would in no way allow any activity that would endanger the safety of either the officers or the operations of the facility." Site Supervisor Riley said he spoke several times with Tyson about the notice "just to confirm that it was legit and, you know, and should I be concerned". Riley asserted it "never came clear" to him that the security officers were not going to strike.

On October 21, 2009 Company Chief Operating Officer Briggs prepared a letter to the security officers at the site regarding "SPFPA Union Contract Update CBA Contract Ratified." The letter states:

> Dear Security Team:
>
> DTM Corporation has been informed that there has been some misinformation circulating around the security facility relating to the new Collective Bargaining Agreement (CBA). As you are aware, a new CBA was ratified between DTM Corporation and the International Union Police Fire Professionals of America and Amalgamated Local #48.
>
> DTM has been diligently working with the Union and its members to work through any issues coming to the attention of the Company, or the Union.
>
> With the ratification of the new CBA, officers can expect to receive an increase in their hourly wage. The new wage rate is $19.67, plus health and welfare. Officers can expect to see the increases effective November 1, 2009.
>
> DTM fully understands that there may have been some questions relative to this new agreement. If anyone has any questions relative to the new agreement, or needs clarification on any issues, please do not hesitate to share your concerns with your site supervisor, Captain Chad Riley. He, in turn, will either resolve the issue, or forward the information to the DTM Corporate Office for resolution.
>
> A copy of the new CBA is on site, in the hands of Captain Riley.
>
> DTM wishes to thank all of the fine officers working at the FAA/ARTCC for their efforts in making the FAA facility a model place to work, and one that DTM can be proud of.
>
> Respectfully,
> */Margo H. Briggs*
> Margo Briggs
> Chief Operations Officer

Site Supervisor Captain Riley distributed a copy of Briggs letter and a paper copy of the parties' collective-bargaining agreement to each of the unit employees. Union Vice President Tyson testified the Company did not have any meetings with the unit employees to notify them not to picket. Tyson said the unit employees did not picket because the collective-bargaining agreement reflected if they did they could be discharged. Tyson said quite a few of the unit employees considered their job as their primary source of employment "and they were afraid of losing their jobs" if they picketed. Tyson testified that according to the collective-bargaining agreement there was no time or place where the unit employees could leaflet, at no time conduct informational picketing or hand bill nor any time where they could engage in any other work stoppage for any reason.

Site Supervisor Captain Riley testified unit employees have scheduled breaktimes during their shifts and their activities during breaktimes are not regulated. The employees' activities before and after worktimes are not regulated and the employees could discuss whatever they desired and could distribute materials related to the Union. Riley explained the Company does not regulate employee activities or restrict distribution in the parking lot. Riley explained the collective-bargaining agreement has not been strictly enforced and that the agreement only states the employees need permission for certain activities. Riley stated that in fact the employees could engage in such activities so long as it did not interfere with the FAA's business.

It is undisputed that no strike or informational picketing ever occurred at the site herein.

Union Vice President Tyson testified he, on October 28, 2009, found in the access gate guard house a printed copy of an email with attachment dated October 27, 2009 from Company

Vice President Elliot W. Gibson. Tyson made a copy of the email and attachment because it contained a copy of the Company's plan of action in case the unit employees engage in informational picketing. Site Supervisor Captain Riley testified employees were not allowed to remove documents from the guardhouse without permission and added Tyson did not obtain permission to remove the copy of the email with attachment he took from the guardhouse.

Tyson fully realized the email and attachment he took were not addressed to him. The email was, in fact, addressed to certain FAA officials, among others; and the attached letter was addressed to the Contracting Officer for the FAA/ARTCC site setting forth the Company's plan of action regarding the Union's proposed job action announced for November 2, 2009. In his letter Gibson explains what actions the Company was planning if a strike occurred noting the allocation of personnel as well as obtaining and training supplemental workers to ensure the security of the site. Gibson indicated in his letter the Company would be proactive in working with the International Union to negate any type of job action. Gibson summarized the Company's plans stating in part:

> Since the inception of the contract award (contract #DTFASW–09–R–00002), DTM Corporation has understood its duty and responsibility to provide safety and security at the FAA facility, in Fort Worth, Texas. Moreover, DTM has also understood its responsibility to ensure that its employees understand that any kind of Union job action, (strike, sick–out, blue flu, work slowdown) will not be tolerated.
>
> DTM sent a copy of its CBA to its employees at the FAA/ARTCC informing them that strikes violate the contractual agreement between the Union and DTM Corporation.
>
> Further, DTM aggressively continues its work behind the scenes to work a viable settlement with the Union on any provisions of the Collective Bargaining Agreement that may be in dispute.
>
> The technical aspects of this plan will still move forward to ensure that any proposed threats of a job action will not compromise the safety and security of the Federal Aviation Administration.

The parties collective-bargaining agreement at article IX, "No Strike and No Lockout" reads as follows:

> The Employer agrees not to cause, permit, or engage in any lockout of its employees during the term of this agreement. The Union agrees that neither it nor the employees it represents covered by this Agreement will, during the term of this Agreement, cause, permit, or take part in any strike, including sympathy strike, picketing, leafleting, informational picketing or any other work action that has the purpose or effect of slowing down or interfering with work. It shall be a violation of this Agreement, and it shall be cause for discharge in the event an employee refuses to enter upon any property involved in a labor dispute involving other employee organizations or refuses to go through or work behind any picket lines involving other employee organizations at the Employer's place or places or business. The Union and Employer agree to take all steps possible to ensure that the site is properly secured and protected in the event of labor disputes involving other employee organizations at the site.

Article XXI, miscellaneous, section 4 reads:

> Union representatives shall not conduct Union–related business with any employee during the time the employee is on duty, nor shall any employee conduct Union–related business during the time he/she is on duty without permission. Employer property, equipment and office facilities shall not be used to conduct any form of Union–related business. Employees who violate this section will be subject to disciplinary action.

Article XXIII, access, reads:

> One Union Business Representative, or any duly authorized representative of the Union, shall have admission to the establishment of the Employer only after giving a minimum of seventy–two (72) hours advance written notice of his desire to be on the premises to the Employer's Project Manager or duly authorized designee, except in cases of emergency making such advance notice impossible, in which case as much advance notice as is possible must be given. While on the premises, the Business Representative or any duly authorized union representative shall only be allowed to meet with bargaining unit employees for the purpose of ascertaining whether or not this Agreement is being observed by the parties hereto or for assisting in the adjustment of grievances. Any meetings can only take place in non–work areas, during non–work time. Such visits shall not interfere with the orderly and efficient operation of the Employer's business. There shall be no Union business or solicitations during work time and/or in work area of either the person doing the soliciting, or the person being solicited, unless such solicitations are expressly permitted under the terms of this Agreement.

III. ANALYSIS, DISCUSSION, AND CONCLUSIONS

It is helpful to consider certain court and Board precedents in deciding the issues herein. The Board in *Lafayette Park Hotel,* 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999), set forth the standard for determining whether the mere maintenance of certain work rules violate Section 8(a)(1) of the Act, noting, "the appropriate inquiry is whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights." In determining whether a challenged rule is unlawful the Board does not read phrases in isolation nor does it presume interference with employee rights. Id. at 825, 827. The Board in *Lutheran Heritage Village–Livonia,* 343 NLRB 346 (2004), set forth a two-part inquiry for determining whether an employer's maintenance of a work rule violates the Act. First, if the rule "explicitly" restricts Section 7 activities it is unlawful. Where, however, the rule does not explicitly restrict Section 7 activities, the Board looks for a showing of one of the following: "(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." Id. at 646. The mere presence of a rule that has the effect of chilling em-

ployees exercise of their Section 7 rights can be a violation of the Act and "the finding of a violation is not premised on mandatory phrasing, subjective impact, or even evidence of enforcement, but rather on the reasonable tendency of such a prohibition to coerce employees in the exercise of fundamental rights protected by the Act." *Radisson Plaza Minneapolis,* 307 NLRB 94, 94 (1992), enfd. 987 F.2d 1376 (8th Cir. 1993).

From the facts herein, this case came about as a result of the Local Union not being fully informed of the terms or aware of the fact that the International Union and the Company had finalized a collective-bargaining agreement covering the employees here. Those concerns prompted the Union's acting steward to prepare and send to Company management a "Notice" type flyer "To whom it May Concern" advising the Company, in part, that the Union at 11 a.m. on November 2, 2009, would: "be performing an Informational Picket and/or Strike in front of the FAA/ARTCC in Fort Worth, Texas."

Union Vice President Tyson and Company Site Supervisor Captain Riley thereafter spoke several times about the Notice with Tyson telling Riley he did not like the language in the notice regarding a strike which he believed was unlawful but that the Union only planned to conduct an informational picket across the street on public land with nonduty employees. Thereafter, on October 21, 2009, Company Chief Operating Officer Briggs, sent a letter to, among others, the unit employees concerning any "misinformation circulating around the security facility relating to the new Collective Bargaining Agreement." Briggs attached a copy of the new collective-bargaining agreement to her letter. Company Site Supervisor Riley, distributed a copy of Briggs letter and the new collective-bargaining agreement to each unit employee. Union Vice President Tyson explained the unit employees did not engage in the planned picket because of language in the new collective-bargaining agreement that reflected if they did they could be discharged. Tyson said the employees were, "afraid of losing their jobs." Tyson testified that according to the collective-bargaining agreement there was no time or place where the unit employees could conduct informational picketing, leafleting or hand billing nor could the employees engage in any other work stoppage for any reason.

I turn now to that portion of the language in the parties collective-bargaining agreement at issue here. Article IX, "No Strike and No Lockout" in part reads:

> The Union agrees that neither it nor the employees it represents covered by this Agreement will . . . cause, permit, or take part in any strike, including sympathy strike, picketing, leafleting, informational picketing or any other work action that has the purpose or effect of slowing down or interfering with work.

The first question is whether the contract language at issue "explicitly" restricts activities protected by Section 7 of the Act. If it does, the provision is unlawful. I find the language unlawfully over broad and ambiguous. There are no limitations to the rule. There are no exceptions or explanations regarding when or under what circumstances the rule will be applied. An employee reading the rule would reasonably understand he or she could not engage in, for example, informational picketing, even while off duty and on public property without possibly running afoul of the rule and its consequences, namely discipline. That portion of the rule stating, "that has the purpose or effect of slowing down or interfering with work" only adds confusion and ambiguity to the rule and does not limit the rule's application. Ambiguities are resolved against the promulgator of the rule rather than those required to obey it. The challenged rule clearly chilled the unit employees' exercise of their protected Section 7 rights in as much as they chose not to engage in the scheduled November 2, 2009 informational picketing because they feared losing their jobs.

The challenged rule clearly and explicitly bans and/or prohibits the distribution of literature (leaflets and hand bills) without limitation. Such an overly broad rule against the distribution of literature for or against a union or in support of other concerted protected activity coerces employees in exercising their Section 7 rights. The Supreme Court in *NLRB v. Magnavox Co.,* 415 U.S. 322 (1974), found a ban on distribution in an agreement to be invalid because it stifled the organizational rights of employees which rights are at the core of the representation and bargaining provisions of the Act. The Court in *Magnavox* made it clear that banning the distribution of literature was not a right that could not even be bargained away by the union. The Supreme Court in *Magnavox* further noted*:*

> The place of work is a place uniquely appropriate for dissemination of views concerning the bargaining representative and the various options open to the employees. So long as the distribution is by employees to employees and so long as the in–plant solicitation is on nonworking time, banning of that solicitation might seriously dilute Section 7 rights. For Congress declared in Sections 1 of the Act that it was the policy of the United States to protect 'the exercise by workers of full freedom of association, self–organization, and designation of representatives of their own choosing.' 29 U.S.C. Section 151.

The rule herein placed no limitation on its application. More specifically it did not limit, for example, the ban on leafleting to actual working times, thus the ban would include employees' break or lunch times. Simply stated the Company never in any manner conveyed a clear intent to the employees that the rule was in any way limited in its application. The Supreme Court in *Beth Israel Hospital v. NLRB,* 437 U.S. 483, 491 (1978), stated: "We have long accepted the Board's view that the right of employees to self-organization and bargain collectively . . . necessarily encompasses the right effectively to communicate with one another regarding self-organization at the job site." Accordingly, any ban that is overly broad and precludes employees from distributing information at any time or place on the jobsite, as the case herein, has the stifling effect of explicitly preventing employees from exercising their Section 7 rights.

The Company failed to present valid evidence that the challenged rule in the collective-bargaining agreement was necessary for compelling and/or legitimate business justifications. Specifically, the Company failed to demonstrate any legitimate business reason or justification for attempting to interfere with or prohibit its unit employees from engaging in informational

picketing for one day with off-duty employees on public property.

The defense of waiver is not available to the Company because, as noted elsewhere herein, the parties cannot waive or bargain away core Section 7 rights guaranteed to employees.

Other selected provisions of the parties collective-bargaining agreement does not explain, clarify or establish justification for the Company's promulgating and maintaining the challenged overly broad rule. While article XXI, miscellaneous, section 4, and article XXIII, access, outlines rights, and some restrictions, for union representatives and employees in conducting union related business on the Company's premises the articles do not provide clarification of the challenged rule nor provide additional rights or privileges with respect to other protected Section 7 rights.

I specifically reject the Company's contention that the limitation on leafleting and handbilling is simply part of the lawful no–strike provision of the challenged rule. While it is clear no strike provisions in collective-bargaining agreements may be lawful, *NLRB v. Magnavox Co.,* 415 U.S. 322 (1974), no reasonable reading of the challenged rule herein could lead one to conclude that the prohibition against leafleting and handbilling is inextricably intertwined with the no-strike portion of the challenged rule.

Finally, the fact the rule may not have actually been enforced is no defense for the Company for a number of reasons. First, the very existence of the rule chills employees' exercise of their Section 7 rights and violates Section 8(a)(1) of the Act. Second, although the Company took no action against the employees regarding their stated intention to engage in informational picketing it is clear the employees never, in fact, picketed. Third, the failure of the Company to enforce the challenged rule does not somehow extinguish the existence of its overly broad and ambiguous rule. The fact the Company provides the employees and Union access to, and use of, a bulletin board does not demonstrate the employees should have known they could leaflet or handbill without running afoul of the challenged rule.

In summary, I find the Company has promulgated and maintained a rule in its collective-bargaining agreement that unlawfully restricts employees' ability to handbill, ability to leaflet and ability to engage in work actions that constitute protected concerted activities and that such violates Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. The Company, DTM Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Security, Police, Fire Professionals of America, Local 48 is a labor organization within the meaning of Section 2(5) of the Act.

3. The Company and Union have been the parties to a collective-bargaining agreement, effective by its terms, from September 21, 2009, to September 30, 2012, for all full-time and part-time security guards employed at the Company's FAA/ARTCC Fort Worth, Texas site.

4. By, since on or about September 21, 2009, promulgating and maintaining a rule in its collective-bargaining agreement restricting employees ability to handbill, restricting employees' ability to leaflet and restricting employees' ability to engage in work actions that constitute protected, concerted activities the Company has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The Company's unfair labor practices specified in 4 above, affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found the Company has engaged in certain unfair labor practices, I find it necessary to order the Company to cease and desist there from and to take certain action designed to effectuate the policies of the Act. Specifically, the Company is to rescind those portions of the collective-bargaining agreement article IX, "No Strike and No Lockout" that unlawfully restricts employees' ability to handbill, unlawfully restricts employees' ability to leaflet and unlawfully restricts employees' ability to engage in work actions that constitute protected, concerted activities and notify the employees in writing that this has been done.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Company, DTM Corporation, its officers, agents, successors and assigns shall

1. Cease and desist from

(a) Promulgating and maintaining a rule in its collective-bargaining agreement unlawfully restricting employees' ability to handbill, unlawfully restricting employees' ability to leaflet and unlawfully restricting employees' ability to engage in work actions that constitute protected, concerted activities.

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

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

(a) Rescind those portions of the collective-bargaining agreement article IX, "No Strike and No Lockout" that unlawfully restricts employees' ability to handbill, unlawfully restricts employees' ability to leaflet and that unlawfully restricts employees' ability to engage in work actions that constitute protected, concerted activities and notify its employees in writing that this has been done.

(b) Post at its Fort Worth, Texas FAA ARTCC location copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region

[4] 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.

[5] 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."

16 after being signed by the Company's authorized representative shall be posted by the Company and maintained for 60 consecutive days in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken 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 Company has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the Notice, to all employees employed by the Company on or after September 21, 2009.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 16 of the National Labor Relations Board a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Company has taken to comply.

Dated, Washington, D.C. June 30, 2010

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 promulgate and maintain a rule in our collective-bargaining agreement that unlawfully restricts our employees ability to handbill, that unlawfully restricts our employees ability to leaflet and that unlawfully restricts our employees ability to engage in work actions that constitute protected, concerted activities.

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

WE WILL rescind those portions of the collective-bargaining agreement article IX, "No Strike and No Lockout" that unlawfully restricts employees' ability to handbill, unlawfully restricts employees' ability to leaflet and that unlawfully restricts employees' ability to engage in work actions that constitute protected, concerted activities.

DTM CORPORATION