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Making the Bird Sing: Remedial Notice Reading Requirements and the Efficacy of NLRB Remedies

Thomas C. Barnes†

“[T]he law appears to have been long since settled that a bird that can sing and will not sing must be made to sing.”

De Rivafinoli v. Corsetti, 4 Paige Ch. 264, 270 (N.Y. Ch. 1833).

In addition to its traditional notice-posting remedy, the National Labor Relations Board (NLRB) has reserved as an “extraordinary remedy” the ability to require an employer to read a remedial notice aloud to its assembled employees. Despite the remedy’s effectiveness, notice reading has traditionally been reserved for the most egregious or severe unfair labor practices. Utilizing social science research on the importance of face-to-face communication, this Note argues that mandated notice reading is the most effective tool toward ensuring that the notice’s message is “adequately communicated” to affected employees. The Note then explains the various methods through which the notice-reading requirement has been implemented by the NLRB and the courts, and suggests ways in which the remedy can be crafted to ensure its efficacy.
INTRODUCTION

The nation’s labor protections, established by the National Labor Relations Act (NLRA or “the Act”) in the New Deal era, are enforced through the administrative powers wielded by the National Labor Relations Board (NLRB or “the Board”). Allegations of unfair labor practices are presented before the Board, which decides whether the conduct in question violates the terms and intent of the Act, and fashions an appropriate remedy to redress the issue.¹ One remedy that the Board has developed and utilized from its inception is remedial notice posting.² This remedy typically requires that a transgressor employer or labor union post physical (or more recently, electronic) notice in a conspicuous place for the affected employees to read.³ The notice traditionally includes a boilerplate description of the employees’ rights under federal labor law, and affirmative statements by the transgressor that it will not violate these rights or engage in similar unfair labor practices in the future.⁴

Accordingly, the notice-posting remedy attempts to rectify labor injustices through an information campaign, based heavily on the belief that an employer or union’s harmful conduct can be mitigated through ensuring that employees are fully aware of their rights under federal labor law. By enlightening employees as to the lawful boundaries of their employer’s (or union’s)⁵ conduct, and assuring them of their own workplace protections,

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³ See, e.g., One Call Locators, Ltd., Cases 28-CA-125749, 28-CA-126145, 2014 WL 6068585, at *2-3 (N.L.R.B. Nov. 13, 2014) (“The Respondent . . . its officers, agents, successors, and assigns, shall . . . within 14 days of service by the Region, post at its facilities in the Phoenix metropolitan area, copies of the attached notice . . .”).
⁴ A sample remedial notice from the case One Call Locators, Ltd., 2014 WL 6068585, at *4-6, is attached herein under the Section marked “Appendix.”
⁵ A union which violates any of the provisions contained in section 8(b) of the Act can also be ordered to post a remedial notice, typically in its office and union halls. See, e.g., United Ass’n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus., Local 32, 346 N.L.R.B. 1095, 1098 (2006). However, an argument for requiring unions to read a remedial notice aloud would be complicated by the fact that unions do not possess the same control as employers over workers’ time, and could not force employees to attend a union meeting so that notice could be read. For the sake of
the remedial notice remedy seeks to provide employees with the information they need to ameliorate the coercive effects of past unfair labor practices, and spot future unfair labor practices when they occur. Further, notice-posting requirements also have a deterrent component, as the humiliative effect of forcing an offending employer to broadcast its violations publicly is thought to discourage such practices in the future. However, the efficacy of these remedial purposes—restorative and deterrent—is entirely dependent on how broadly and thoroughly such notice is conveyed to the aggrieved employees. Drawing from the age-old adage: If notice is posted and no one is around to hear it, does it really make a sound?

This Note argues that the traditional notice-posting remedy mandated by the NLRB—physical notice posted in a break room or on a bulletin board—does not adequately convey the remedy’s intended message. Similarly, although recent advancements have been made in the enforcement of electronic notice posting, in which employers are required to send notice via e-mail or on the firm’s website, this alone is not enough to ensure that remedial notice will serve the remedy’s purposes. If employees do not read an abstrusely worded NLRB notice poster, often hidden or partially obscured in their employer’s break room, it is similarly unlikely that they will read an abstrusely worded NLRB e-mail buried within their inbox. Instead, this Note argues that further progressive advancements to NLRB notice-posting remedies are required. One significant advancement that could be undertaken by the Board includes mandating “read” or “spoken” notice, where the offending employer is forced to read the contents of the Board order aloud to the aggrieved employees. Using social science research concerning effective communication in the workplace, this Note argues that reading notices aloud is more effective than physically or electronically posting notices when it comes to fostering understanding and ensuring widespread communication among affected employees. Finally, this Note examines the various ways that such “spoken notice” is implemented, and their respective advantages and drawbacks in promoting the restorative and deterrent purposes of the remedy.

I. HISTORY OF REMEDIAL NOTICE POSTING

The practice of imposing a notice-posting requirement on transgressors of federal labor law does not arise from a statutory mandate. In fact, the
remedial powers afforded to the Board under the NLRA are vague and ambiguous. Section 10(c) of the Act simply provides:

[I]f . . . the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall . . . issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action . . . as will effectuate the policies in this subchapter.7

The only affirmative actions explicitly contemplated by the statute are reinstatement and the award of backpay, if warranted.8 However, this “rather vague statutory command” also gives the Board the authority to fashion other, more creative remedies, so long as the “proposed remedy [is] tailored to the unfair labor practice it is intended to address.”9 One of the remedies the NLRB has used since its inception is the requirement that a transgressor post remedial notice.10 Traditionally, this notice, much like a poster or sign, is required to be posted in conspicuous places around the workplace, most often in a place where similar notices (for company parties, calendars, work schedules, and so on) are customarily posted.11 The notice sets out information about the rights of the affected employees under federal labor law, and affirmative statements from the transgressor stating that it will not commit these unfair labor practices in the future.12

The Supreme Court approved of this remedy just a few years after the Board’s creation, finding in 1941 that “the posting of notices advising the employees of the Board’s order and accounting the readiness of the employer to obey it is within the authority conferred on the Board by [section] 10(c) of the Act.”13 In fact, the first published decision by the NLRB, issued shortly after the passage of the Act in 1935, required that the employer post remedial notice.14 In that case, Pennsylvania Greyhound Lines was found to have illegally dominated or interfered with the formation of a labor union, in violation of section 8(2) of the Act (now section 8(a)(2), as amended).15 Greyhound had openly encouraged the formation of an illegal company union, the Employee Association of

8. Id.
11. See id. at *4-6.
12. See id. at *4-6.
15. Id. at 50.
Pennsylvania Greyhound Lines, stating in a letter that management would set up the Association and choose its employee representatives.\textsuperscript{16} To remedy this unfair labor practice and the harmful effects caused by recognizing this company union, the Board required that the employer “[p]ost notices in conspicuous places in all of the places of business wherein [its] employees . . . are engaged, stating that said Association is so disestablished and that respondents will refrain from any such recognition thereof.”\textsuperscript{17} In this manner, the notice-posting remedy was tailored specifically to address the employer’s wrongdoing. Since then, nearly all unfair labor practice decisions have similarly included some requirement that the party committing the unfair labor practice, be it union or employer, communicate notice of its transgressions to affected employees. The Board’s purpose for fostering such communication is explained in detail below.

II. PURPOSES OF PUNISHMENT

As stated above, the statutory language granting the Board the authority to fashion remedies is quite broad, necessitating only that the remedy “effectuate the policies” of the Act.\textsuperscript{18} A thorough reading of the case law on remedial notice reveals, however, that the Board and the federal courts recognize two main purposes behind a notice-posting requirement: one restorative and one deterrent.

A. Restorative Effect

The Board has long recognized that remedies for unfair labor practices serve a restorative function, and therefore “must be tailored to restore the wronged to the position he would have occupied but for the action of the wrongdoer.”\textsuperscript{19} For example, upon a finding that an employee is unfairly terminated based on protected concerted activity, the Board has the authority to grant the terminated employee the “make whole” relief of reinstatement with backpay, in an attempt to return them to the same economic standing as if they had never been terminated at all.\textsuperscript{20} The Board has extended this restorative “make whole” doctrine to apply to funds that are not traditionally considered “back wages,” including lost profit shares that would have likely been earned by the discriminatorily-discharged

\textsuperscript{16} Id. at 8.
\textsuperscript{17} Id. at 52.
\textsuperscript{18} 29 U.S.C. § 160(c) (2012).
\textsuperscript{20} Nabors v. NLRB, 323 F.2d 686, 690 (5th Cir. 1963) (“In effectuating the policies of the Act, the Board has taken the position that the ‘make whole’ concept does not turn on whether the pay was wholly obligatory or gratuitous, but on the restoration of the status quo ante.”).
employee,\textsuperscript{21} overtime that employees would have been eligible for had they not been discriminatorily transferred,\textsuperscript{22} and even the value of a Christmas gift given to employees that was lost because of the employee’s pre-holiday termination.\textsuperscript{23} Similarly, a make-whole remedy is also applied in cases where the employer unlawfully made unilateral changes, resulting in an order that the employer not only rescind these changes and begin bargaining with the union, but also make the employees whole for any benefits lost in the interim. This make-whole doctrine has been applied retroactively to provide employees with holiday bonuses that had been unilaterally cut,\textsuperscript{24} as well as to potential earnings lost due to the employer’s unilateral adjustments to shifts and pay grades.\textsuperscript{25}

In a like manner, the notice-posting remedy serves a remedial function in rectifying the transgressor’s unfair labor practices. The Board has reiterated that the “purpose of remedial notice is to convey to employees information about their rights and the employer’s obligation not to interfere with those rights.”\textsuperscript{26} In assuring employees that an employer is bound by federal labor law and cannot interfere with their free exercise of protected rights, a posted notice has been seen as “a means of dispelling and dissipating the unwholesome effects of a respondent’s unfair labor practices.”\textsuperscript{27} For example, if an employer terminated an employee because he or she engaged in protected union activities, in violation of section 8(a)(3) of the Act, the traditional notice would inform all employees that they had the right to “[f]orm, join, or assist any union . . . [c]hoose representatives to bargain with [the employer] on your behalf . . . [a]ct together with other employees for your benefit and protection.”\textsuperscript{28} In addition to providing employees with information about what they can do, the notice would then go on to inform employees as to what the employer cannot do, with statements such as, “WE WILL NOT discharge or otherwise discriminate against our employees because they . . . engaged in concerted activities.”\textsuperscript{29} In addition to notifying employees about their employer’s legal duties and prohibitions, these “WE WILL” and “WE WILL NOT” statements can also be used in contempt proceedings to enforce compliance with the Board’s orders if such actions are not

\textsuperscript{24} Am. Fire Apparatus Co. v. NLRB, 380 F.2d 1005, 1006 (8th Cir. 1967).
\textsuperscript{25} Wellman Indus., Inc., 248 N.L.R.B. 325, 344 (1980).
\textsuperscript{27} Chet Monez Ford, 241 N.L.R.B. 349, 351 (1979).
\textsuperscript{29} \textit{Id.}
followed. These affirmative statements allow the federal courts to clearly
determine if the Board’s order has been violated, and to hold recalcitrant
employers in contempt.

B. Deterrent Effect

The federal courts have recognized that the remedial authority granted
by the NLRA is not limitless; a remedy imposed by the Board must be
“truly remedial and not punitive.” For example, the Supreme Court
overturned a Board order which had not only required the employer to pay
back wages to its affected employees, but also required the employer to pay
a portion of the award to New Deal-era government agencies. The Court
found this penalty more akin to a punitive fine, and explained that under the
NLRA, the Board is restricted to awarding relief that is remedial, not
punitive. However, there is an understanding in labor jurisprudence that
remedies that seek to undo past violations of law may also deter future
unfair labor practices, at least if the remedy is sufficiently severe. The
Supreme Court has noted that the “threat of contempt sanctions” for failure
to comply with a Board’s order “provides a significant deterrent against
future violations of the Act.” Expounding, the Court recognized that
“reinstatement and backpay awards afford both more certain deterrence
against unfair labor practices” as well.

Much like the above remedies, the Board has explicitly recognized that
the notice-posting remedy, in addition to its remedial function, “also
serve[s] to deter future violations” by employers. Further, the Supreme
Court has deemed the imposition of a notice-posting remedy as a
“significant sanction” against a transgressor employer. Thus, while a
Board remedy cannot be wholly punitive, there is at least some recognition
that the Board does not always exceed its authority when it imposes
remedies that may have unpleasant consequences for employers; it is
precisely because of these consequences that employers may be deterred
from committing future unfair labor practices.

31. Capital Cleaning Contractors, Inc. v. NLRB, 147 F.3d 999, 1009 (D.C. Cir. 1998) (citing
 NLRB v. Strong, 393 U.S. 357, 359 (1969)).
32. Republic Steel Corp. v. NLRB, 311 U.S. 7, 10 (1940).
33. Id. at 12.
35. Id.
III. THE NOTICE REQUIREMENT IN PRACTICE

At least in theory, the Board’s chosen remedy of mandating posted notice dispels fear and misinformation spread by the employer by reminding employees of their rights while simultaneously deterring future violations of the Act. However, these dual purposes—deterrent and restorative—are not effectuated if this notice is not adequately communicated to the affected employees. Today’s generally dispersed and fissured workplaces are much different from the industrial shop floors that were prevalent at the time of the Act’s passage. Accordingly, a notice remedy designed for the “traditional” workplace may not serve its purpose in the modern age, where telecommuting is common and some workers may never step foot in a central office. Stapled up on a crowded bulletin board in the corner of a breakroom and shrouded in baroque legalese, these notices may never even be seen by affected employees, much less understood by them.

The Board recently recognized this troublesome issue, noting that in the modern age, employees may be hard-pressed to check a bulletin board at all. Instead, most employees currently receive important information electronically. From birthday invitations to work schedules, many employees now expect most of their work-related communications to come in the form of e-mails and internet postings. In making this determination, the Board looked at a broad survey of nearly 900 employers, finding that only a quarter of employers still used posters or flyers to communicate to their employees, with the vast majority instead using a combination of e-mail or postings on a company intranet. Analyzing this trend, the Board reasoned that the traditional “bulletin-board notice” remedy was too outdated to continue serving its remedial purposes in the modern age.

Emphasizing that “the Board, like all administrative agencies, has a duty to adapt its rules and policies to the demands of changing circumstances,” the majority decided to implement a much-needed update to its notice-posting requirement in J&R Flooring. In this and subsequent cases, the Board has required that transgressor employers who ordinarily

41. Id.
42. Id.
43. Id. at 3 n.7.
44. Id. at 1, 3.
45. Id. at 1.
communicate with their employees via e-mail or through an intranet must *also* distribute remedial notice through these electronic formats. 46 This requirement does not replace the traditional requirement that physical notice be posted in conspicuous places around the worksite, but rather complements it. 47 Enforcing such a policy, the Board reasoned, “will improve the administration of the Act by ensuring that remedial notices are *adequately communicated* to the employees or members affected by the unfair labor practices.” 48

This new posting requirement is a significant advancement toward improving the efficacy of NLRB remedies and toward ensuring that notice is actually communicated to employees. However, lingering questions still remain about the effectiveness of NLRB notice, even when it is posted on an intranet or e-mailed to employees. While the Board suggests that electronic notice is more visible than traditional “bulletin-board” notice, there have been no studies or insight into how often employees actually read or fully understand the electronic notices that are sent to them.

First, as with bulletin-board notice, these e-mailed notices are similarly couched in legalese that is sometimes difficult even for a lawyer to decipher. For example, in *Federated Logistics & Operations*, the Board’s required notice mandated that the employer state, “We will not maintain an unlawful no-solicitation/distribution rule and disparately enforce it against union supporters.” 49 Such opaque language may make it difficult for employees to recognize exactly what rights and actions are being protected by the Act.

Next, there are no assurances that employees will even read these notices, even if they are e-mailed to their work addresses or posted on a company intranet. With more than eighty-eight percent of all e-mail traffic in 2010 consisting of spam, 50 it is likely that employees ignore or delete many of the e-mails they receive, especially ones as relatively unexciting and impersonal as an NLRB notice. Further, the Board made a misstep in its *J&R Flooring* decision by declining to require that employers provide employees with the opportunity “to read electronic notices on paid work time.” 51 Accordingly, in its attempt to communicate the employer’s unfair labor practices to employees, the Board is relying on the far-fetched hope that employees will choose to use their *own free time* to check their e-mail and read through a dry, abstruse notice bulletin. Employees may additionally be dissuaded from opening electronic notices sent to their

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46. *Id.* at 7.
47. *Id.*
48. *Id.* at 3.
workplace e-mails out of fear that their employer would take adverse action against them if it found out that they had inquired into the employer’s illegal activity. This fear is entirely reasonable, as an employer who owns the workplace e-mail system can choose to engage in electronic surveillance.52 Accordingly, there is no assurance that electronic postings will “adequately communicate” notice to the aggrieved employees, as envisioned by the J&R Flooring Board.53

Further, the J&R Flooring majority is not entirely logically consistent in choosing electronic delivery as the ideal medium for communicating with employees, as Member Hayes pointed out in his dissent.54 Turning the majority’s own logic on its head, Hayes points out:

The majority opinion equates the traditional notice of “where notices are customarily posted,” with the notion of “how employers customarily communicate with employees.” Those two things are not the same—if they were, reading the notice would be required in every case because the most customary means of communication is oral.55

While attempting to devalue the majority’s argument using reductio ad absurdum, Hayes actually advances a significant argument as to why reading the notice aloud to aggrieved employees is actually the most effective and logical means of ensuring that notice is adequately communicated. In arguing against the expansion of notice-posting remedies, Hayes inadvertently makes the case for why spoken notice should actually become a “traditional” remedy utilized by the Board. The advantages of adopting spoken notice as such a remedy are explained in detail below.

IV. SPOKEN NOTICE—A MORE EFFECTIVE REMEDY

Spoken notice offers several advantages over traditional posted and electronic notice. As explained above, posted notices can easily be passed over by employees who are unaccustomed to looking for communications on bulletin boards, and electronic notices can be similarly be deleted or ignored. However, reading the notice aloud to the assembled employees ensures that those impacted by the unfair labor practices actually hear and understand the Board’s remedial message. This serves the restorative purposes of the remedy, guaranteeing that the victims of the unfair labor practice are notified about their rights, and countering any intimidation or

52. See Sarah DiLuzio, Comment, Workplace E-Mail: It’s Not As Private As You Might Think, 25 Del. J. Corp. L. 741, 746 (2000) (noting that under the “provider exception,” to the Electronic Communications Privacy Act, many private employers who provide their own workplace email system may be able to survey employee emails without risk of liability).
54. Id. at 8 n.1 (Member Hayes, dissenting).
55. Id.
misinformation spread by the employer. Further, spoken notice may persuade employers not to commit further unfair labor practices, lest they are forced to read a remedial notice aloud to their employees. It is likely that very few employers would want to appear in front of their employees and publicly admit that they broke the law, and even fewer would want to inform their employees about their rights to organize and to challenge the employer’s authority.

Currently, however, a Board order mandating that the employer read the notice aloud to its employees is considered an “extraordinary” remedy, “imposed only where required by the particular circumstances of a case.” Extraordinary remedies are generally not granted unless a showing is made that “traditional remedies will not sufficiently ameliorate the effect of the unfair labor practices found.” However, as will be shown, spoken notice, rather than posted or e-mail notice, is the most effective means to guarantee that notice is adequately communicated to employees. By utilizing a spoken notice requirement as a traditional remedy, not just an extraordinary remedy reserved for the worst of cases, the Board will ensure that the espoused purposes of the remedy are actually served.

This would not be the first time the Board has adapted its remedies to improve their efficacy. As mentioned above, in J&R Flooring, the Board rejected the argument that electronic delivery of notice should remain an extraordinary remedy, instead focusing on the efficacy of electronic communication and its customary use in the workplace. However, as Member Hayes’s explains, oral communication is oftentimes the most customary form of communication between employers and employees in the workplace. Further, while a recent global survey undertaken by NFI Research suggested that e-mail has become a more predominant method of supervisor-employee interaction in the polled workplaces, sixty-seven percent of executives and managers surveyed believed their workplaces could enhance productivity by fostering more face-to-face communication. One survey respondent explained the benefits of in-person interaction, stating, “I often find that when I look the other person in the eyes and ask them something I get far more than I ever would over e-

56. Ishikawa Gasket Am., Inc., 337 N.L.R.B. 175, 176 (2001); see also J & R Flooring, Inc., 356 N.L.R.B. No. 9, slip op. at 8 n.1 (Member Hayes, dissenting) (“[U]nder Board precedent a remedial notice reading requirement has been and continues to be a special remedy reserved for egregious unfair labor practices.”); Jason Lopez’ Planet Earth Landscape, Inc., 358 N.L.R.B. No. 46, slip op. at 2 (May 22, 2012) (ordering reading when unfair labor practices were “sufficiently serious and widespread”).
59. Id. at 8 n.1 (Member Hayes, dissenting).
60. Chuck Martin, The Importance of Face-to-Face Communication at Work, CIO (March 6, 2007, 7:00 AM), http://www.cio.com/article/2441851/it-organization/the-importance-of-face-to-face-communication-at-work.html.
As spoken communication is more effective and perhaps even more commonplace than its electronic counterpart, requiring spoken notice should be the logical next step in the progression of the Board’s remedial notice doctrine.

A. Efficacy of Spoken Notice

Compared to physically posted or electronically delivered notice, spoken notice is far better at effectuating the restorative and deterrent purposes intended by the remedy.

First, reading the notice aloud is the most effective way to transmit the Board’s intended message to aggrieved employees. At its core, the remedial message intended by the Board is one of organizational change. In effect, the notice’s “WE WILL” and “WE WILL NOT” statements express to the employees the employer’s newfound (and legally imposed) commitment to change its procedures and no longer violate the law. Numerous organizational behavior studies, discussed in greater detail below, have found that face-to-face communication is the most effective way to communicate and enact this organizational change.

Behaviorists have noted that “[t]aken by itself, face-to-face communication has a greater impact than any other single medium.” While pioneering new advancements in electronic communication has been the focus of business development in the modern era, commentators note that this mindset often results in “overemphasis on expensive, often ineffective, equipment and oneway communication to an audience that is demanding an opportunity for dialogue.” In fact, research has shown that employees find that face-to-face communication with their employer is far more satisfying than communication by telephone or written communication. These researchers found that face-to-face communication between employers and their supervisors was perceived by employees as being more open and effective than these other methods of communication. These findings have persisted in the digital age, with research confirming that study participants communicating face-to-face display greater satisfaction and achieve better outcomes in certain tasks than

61. Id.
63. For example: listservs, e-mail blasts, texting, and more recently, Twitter.
64. Roger D’Aprix, The Oldest (and Best) Way to Communicate with Employees, 60 HARV. BUS. REV. 30, 30 (1982).
66. Id. at 50.
teams using computer-mediated communication. Similarly, while recognizing the benefits and increasing use of computer-mediated communication in the workplace, other researchers have suggested that in a number of settings, face-to-face communication remains a “superior method of communication for many business and organizational-related activities.”

A number of factors are responsible for the greater effectiveness of face-to-face communication. First, as Stuart Klein notes, spoken communication has the benefit of immediacy, instantly assuring the speaker that the message has been transmitted to the intended party. If an employer is forced to read an ordered notice aloud to its assembled workforce, for instance, the affected employees are immediately exposed to the remedial message. Compare this to a notice poster, which employees might only read if they happen to be in the breakroom with some free time, or an e-mail, which can sit in an inbox for days (or years) without ever being opened.

Second, face-to-face interaction allows for two-way communication, which is vital to ensuring that the intended message is effectively communicated. Posting notice via a physical poster or electronic mail, by contrast, is an entirely one-sided form of communication: the employer unilaterally transmits a message and does not necessarily provide an opportunity for employees to respond. This severely hinders effective communication, as the receiver of the message does not have an opportunity to clarify any ambiguities in the intended message or to feel actively involved in the communication process.

Finally, face-to-face communication allows the receiver of the message to pick up on the sender’s nonverbal cues, which are often vital to comprehension and understanding. Much of the force and emotion behind

67. Andrea B. Hollingshead et al., Group Task Performance and Communication Technology: A Longitudinal Study of Computer-Mediated Versus Face-to-Face Work Groups, 24 SMALL GRP. RES., 307, 324-27 (1993) (finding that face-to-face groups performed better at negotiation tasks and intellective tasks, and had sufficiently higher levels of satisfaction than computer-mediated groups); Merrill E. Warkentin et al., Virtual Teams Versus Face-to-Face Teams: An Exploratory Study of a Web-based Conference System, 28 DECISION SCI. 975, 986 (1997) (finding that face-to-face groups conveyed a similar level of information but had higher levels of satisfaction than computer-mediated groups).


69. Klein, supra note 62, at 34.


71. Klein, supra note 62, at 34; Bonnie A. Nardi & Steve Whittaker, The Place of Face-to-Face Communication in Distributed Work, in DISTRIBUTED WORK 83, 84 (Pamela Hinds & Sara Kiesler eds., 2002) (noting that face-to-face communication fosters effective exchange of information as it provides opportunity for “repairing misunderstandings”).

72. Klein, supra note 62, at 34.
Communication is conveyed nonverbally, through things like tone of voice, body language, and volume. These cues are lost when communicating in writing, as on a notice poster or e-mail. For example, the only emotion or gravitas the traditional Board notice expresses is through writing the “WE WILL” and “WE WILL NOT” statements in large capital letters, perhaps attempting to show their employee-victims that the employer is serious about following the law in the future. However, research on the effectiveness of e-mail has shown that the inherent lack of ability to view emotional and nonverbal cues may contribute to miscommunication and distortion of the intended message. This miscommunication can be especially troublesome when employees are trying to digest “information-rich” communications, like those involving “values, attitudes, expectations and commitments.” Face-to-face communication has been shown to be the “most information-rich medium,” making it well suited for conveying the detailed information about rights and responsibilities contained in these notices. Reading the notice aloud allows employees to witness the reader’s emotional and nonverbal cues, helping them to accurately interpret the employer’s intent behind the notice, as well as its future commitment to refrain from violating its provisions.

B. Spoken Notice in Practice

Having argued that spoken notice should be the preferred remedy to effectuate the purposes of the Act, I will now examine the ways the Board and federal courts have administered the spoken notice requirement. A thorough study of Board and circuit court precedent reveals three different methods through which the Board’s spoken notice requirement has been enforced. In the first method, the Board requires that the perpetrator of the unfair labor practice reads the notice. In the second, the employer can choose any of its authorized agents to read the notice aloud. In the third, the Board takes it upon itself to have one of its own officials read the notice. Each method has its own advantages and drawbacks in fulfilling the Board’s restorative and deterrent functions.

73. See Warkentin, supra note 67, at 978 (suggesting that the comparative inefficacy of computer-mediated communication compared to face-to-face communication may be due to the lack of conversational cues afforded by the digital medium).

74. See Kristin Byron, Carrying Too Heavy a Load? The Communication and Miscommunication of Emotion, 33 ACAD. MGMT. REV. 309, 311-12 (2008) (“Because emotions tend to be expressed and perceived nonverbally rather than verbally, the relative dearth of cues in email, compared with some other channels, makes the miscommunication of emotion in emails more likely.”) (internal citation omitted).

75. Hollingshead, supra note 67, at 313.

76. Nardi, supra note 71, at 84.
1. Making the Bird Sing

In the first circumstance, the Board’s remedial order contains a provision requiring that the agent who perpetrated the unfair labor practices be the one who reads the notice aloud to the employees affected by his or her unlawful conduct. For example, in Conair Corp. v. NLRB, the “special circumstances” of the case led the D.C. Circuit to affirm a Board order requiring that the company president personally read notice aloud to an assembled group of his employees, in the presence of a Board official. In holding the company president personally accountable, the court found that such a remedy was necessary “to dispel the atmosphere of intimidation created in large part by the president’s own statements and actions.”

In singling out the actual culprit of the unlawful activity as the individual most affected by the sanctions, this method of enforcement has a strong deterrent effect. Being forced to stand before an assembled group of one’s employees and admit that you broke the law has a humilative component, and many business owners and supervisors would not relish the opportunity to do so. Accordingly, if this remedy were more readily and openly enforced, some would-be transgressors of federal labor law might be discouraged from committing future unfair labor practices, wary of the personally embarrassing repercussions. Some detractors of this method decry that such a remedy is too punitive for the Board’s purposes. However, the spoken notice requirement has been upheld by some circuits despite its coercive aspects, since the remedy is not “a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act.” Further, although the forced reading of the notice does utilize shame as a component of the remedy’s efficacy, courts have recognized that this does not disqualify it as a remedy, reasoning that “even posting a notice may be of some embarrassment to the [c]ompany.” Rather than a punishment, a spoken notice requirement has instead been considered an “effective but moderate way to let in a warming wind of information and, more important, reassurance.”

77. Conair Corp. v. NLRB, 721 F.2d 1355, 1386-87 (D.C. Cir. 1983).
78. Id.
79. While some employers may not be aware of the Board’s remedies, and accordingly not deterred by them, other employers may be represented by experienced counsel and made aware of the consequences of their unfair labor practices. Further, all employers who have been found to have committed an unfair labor practice will be made aware of the Board’s remedial authority, and may be deterred from committing future violations depending on the severity of the remedy.
80. See Conair Corp., 721 F.2d at 1401 (Ginsburg, J., dissenting as to the remedy).
81. See J.P. Stevens & Co. v. NLRB (J.P. Stevens I), 417 F.2d 533, 540 (5th Cir. 1969) (quoting Va. Elec. & Power Co. v. NLRB, 319 U.S. 533, 540 (1943)).
82. J. P. Stevens & Co. v. NLRB (J.P. Stevens II), 380 F.2d 292, 304-05 (2d Cir. 1967) (emphasis added).
83. J.P. Stevens I, 417 F.2d at 540 (emphasis added).
However, other courts have agreed with the method’s detractors, finding that singling out individuals and subjecting them to the public embarrassment of a notice reading violates the principle that the Board should not enact punitive or coercive remedies. 84 Even the D.C. Circuit has wavered on the issue, previously stating in *International Union of Electric, Radio & Machine Workers v. NLRB* that “[t]he ignominy of a forced public reading and a ‘confession of sins’ by any employer, any employee, or any union representative makes such a remedy incompatible with the democratic principles of the dignity of man.” 85 Furthermore, some have been wary about enforcing similar “specific performance decrees,” refraining from singling out individuals and forcing them to perform even where they are otherwise bound by contract or duty. 86 While mandating performance by a specific party may have the greatest deterrent effect, some see these requirements as violations of individual freedom. 87

In addition to its deterrent effect, requiring the actual perpetrator of the unfair labor practices to read the notice may have a greater restorative impact on the affected employees than if a different party were to read it. As stated above, social science research suggests that face-to-face communication is especially important when “handling sensitive issues or managing largescale changes.” 88 It is certainly not a stretch to say that an employer’s admission of “guilt” is a sensitive issue, one that could best be handled by frank, face-to-face communication with employees. Similarly, the enforcement of a Board order can oftentimes involve the implementation of large-scale changes, as the remedy may involve the reinstatement of laid-off employees, the rescission of a unilateral change to working conditions, or even the recognition of a union without the need for a workplace election. 89 When faced with taxing situations, employees strongly appreciated “the chance to take a measure of you, look you in the eye, ask some questions and see how you responded.” 90

In addition, targeting the transgressor to read the notice aloud may improve the likelihood that employees will actually listen to and understand the notice. Organizational behavior research suggests that statements from

84. *Federated Logistics & Operations v. NLRB*, 400 F.3d 920, 938-39 (D.C. Cir. 2005) (Henderson, J., dissenting in part) (“As the Board has shown no particularized need for a public reading to dispel the atmosphere of intimidation . . . the public reading appears, at least to me, wholly punitive.”) (internal quotation omitted).
86. *See Conair Corp. v. NLRB*, 721 F.2d 1355, 1401 (D.C. Cir. 1983) (Ginsburg, J., dissenting as to the remedy).
87. *See id.*
88. *Young*, supra note 70, at 37.
89. *See e.g., NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969) (affirming the Board’s authority to force employers who commit certain unfair labor practices to bargain with a union, even without needing to prove the union had the votes of a majority of the bargaining unit’s employees).
90. *Young*, supra note 70, at 37.
those in authority, like supervisors or owners, are afforded greater credibility by employees. “People expect to hear important, officially sanctioned information from their immediate supervisor or boss,” not a third party like the Board. Accordingly, communications from those higher up in the organizational hierarchy generally have a greater impact. Even though a public notice-reading may not be considered the “ideal” office get-together, survey data shows that “[p]eople want to hear news from their boss,” perhaps even if it is “bad news” being communicated.

Conversely, however, some have suggested that targeting the specific wrongdoer to read the notice may actually hinder, not improve, effective communication of the intended message. Judge Ginsburg shared this apprehension in his dissent to the forced reading remedy in *Conair Corp. v. NLRB*, stating that “a reading of the notice by the president may be less effective than a reading by another responsible officer. The former, humiliated and degraded by the personal specific performance order, may demonstrate ‘by inflections and facial expressions, his disagreement with the terms of the notice.’” A recalcitrant employer who does not take the notice-reading mandate seriously may similarly encourage the employees to disregard the notice’s message. This may be mitigated, in part, by having a Board official present to ensure a fair reading, as described below in Part IV.B.3.

2. *A Chorus of Birds*

The second method of implementation attempts to avoid these pitfalls by refraining from singling out the individual party who committed the unfair labor practice. In *Teamsters Local 115 v. NLRB*, the D.C. Circuit refused to affirm the Board’s targeted remedy, stating, “Giving due regard to personal dignity and the limitations on the Board’s discretion, we think such a specific reading order is unjustified.” Accordingly, the court modified the order, allowing the employer to appoint “a responsible officer” of the company to read the notice instead. Similarly, Judge Ginsburg recommended such a remedy in his partial dissent in *Conair Corp.*, stating, “I would not single out the president here, or any other named individual, hand him lines, and make him sing.”

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91. Klein, supra note 62, at 35.
92. Id.
93. Young, supra note 70, at 38-39.
94. Conair Corp. v. NLRB, 721 F.2d 1355, 1401-02 (D.C. Cir. 1983) (Ginsburg, J., dissenting as to the remedy) (quoting Conair Corp., 261 N.L.R.B. 1189, 1195 n.28 (1982) (Chairman Van De Water, concurring in part and dissenting in part)).
96. Id.
97. Conair Corp., 721 F.2d at 1402 (Ginsburg, J., dissenting as to the remedy).
Allowing the actual perpetrator of the unfair labor practices to avoid any personal ramifications for their actions weakens this method’s deterrent effect. Owners and supervisors may be less motivated to follow the law when they know that, even if caught, they can avoid individual punishment and delegate the responsibility to another. However, because this method does not attempt to single out and shame a specific individual, it is more likely to be considered “truly remedial and not punitive,” as is required under federal precedent. Further, this remedy sidesteps nuanced concerns about the legality of specific performance decrees, as it does not mandate action by any specific individual, which some courts may consider an infringement on personal liberty. Instead, the remedy simply seeks to ensure that someone employed by the respondent reads the notice aloud, focusing on the communication of the message, and not the messenger.

This method has its own benefits and drawbacks in regards to effectively transmitting the notice to employees. As stated above, employees prefer to hear important information from their superiors, lending more credibility to statements made by those higher up the chain of command. If the transgressor is able to pass this responsibility off to a low-level supervisor, whom the affected employees may not even have interacted with, then the significance of the notice and its promise of change may be lost on the employees. However, if the individual appointed by the respondent to read the notice is truly a “responsible officer,” as is the usual requirement in these circumstances, then the notice’s message may be more effectively communicated to the employees than if the transgressing party were to read it. As noted above, many have expressed concern about placing the responsibility to read the notice in the hands of the wrongdoer, reasoning that a recalcitrant owner or supervisor might not read the notice with the gravitas that the remedy deserves. The appointment of a neutral officer, untainted by any connection to the unfair labor practice, helps to ensure that the notice is communicated with the requisite seriousness such a remedy requires to be truly effective. However, whether any company officer is able to detach herself from her close ties to management is unclear. Even a supposedly “neutral” officer may refrain from giving the notice its proper weight, seeking to please their employer or avoid its retaliation.

100. See Conair Corp., 721 F.2d at 1401 (Ginsburg, J., dissenting as to the remedy).
102. See Conair Corp., 721 F.2d at 1401-02 (Ginsburg, J., dissenting as to the remedy); Conair Corp., 261 N.L.R.B. 1189, 1195 n.28 (1982) (Chairman Van De Water, concurring in part and dissenting in part).
3. The Big Bird

Accordingly, courts have developed a third method, seeking to avoid the moniker of a “punishment” while still ensuring that the notice is actually and effectively communicated to employees. In *J.P. Stevens & Co. v. NLRB*, the Second Circuit recognized that the Board’s forced reading contained some element of “humiliation in having Company officials personally and publicly participate.” 103 The court reasoned that the purpose of the remedy was not to embarrass the company, but instead to ensure that the notice’s remedial effects helped to counter the employer’s unfair labor practices. 104 Accordingly, the court modified the Board’s remedy, giving the employer a choice to either read the notice aloud itself, or instead have a Board representative read the notice to its employees. 105 In providing the employer with this choice, the Second Circuit reasoned that “[t]his alternative eliminates the necessity of participation by the Company, if it so desires, and still guarantees effective communication of the Board’s order to the Company’s employees.” 106

Having a Board official come to the employer’s workplace and read the notice aloud retains a significant deterrent effect, while avoiding the prohibition against Board remedies that seek to punish the wrongdoer. 107 By allowing the transgressor employer to eschew any participation in the remedy, this method ensures that no company official has to feel the humiliating effects of admitting the company’s illegal behavior before an assembly of employees. 108 At the same time, this remedy still possesses a substantial deterrent effect, as many employers would be reluctant to invite a Board official to come into their workplace, read the notice aloud, and answer questions from their workers about their rights and protections under the NLRA. An analysis of the unbridled backlash the Board faced in response to its 2011 proposed rule that would require employers to display a poster of employee rights under the NLRA shows just how vehement employers are against furnishing employees with a greater understanding of their rights. 109 As a result, many employers may be encouraged to follow federal labor law simply to avoid having a Board official come in to the workplace and enforce this remedy.

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103. *J. P. Stevens & Co. v. NLRB (J.P. Stevens II)*, 380 F.2d 292, 304 (2d Cir. 1967).
104. *Id.* at 305.
105. *Id.*
106. *Id.*
107. *See* Capital Cleaning Contractors, Inc. *v. NLRB*, 147 F.3d 999, 1009 (D.C. Cir. 1998) (“[T]he Board’s remedy must be truly remedial and not punitive.”).
108. *See* J.P. Stevens II, 380 F.2d at 304-05.
Similarly, having a Board official read the notice ensures that it is read with the sincerity that the situation warrants, avoiding any concern that an intractable employer might make light of the notice through inflections or tone.\textsuperscript{110} While the notice may not have the same weight as if it were read by someone with direct authority over the employees,\textsuperscript{111} the Board official may appear to harness the authority and clout of the federal government. This may motivate employees to listen to and appreciate the notice. Furthermore, compared to the employer, who may still be obstinate from its recent legal defeat, a Board official is likely much more willing to answer questions from the employees, clarifying issues they may have over their employer’s conduct or the notice’s intended purpose. Research suggests that this opportunity for face-to-face, two-way communication is vital to effective transmission of the intended message, as it “clarifies ambiguities, and increases the probability that the sender and the receiver are connecting appropriately.”\textsuperscript{112} Accordingly, a case study of over five hundred NLRB cases, commissioned by the Chairman in 1966, strongly advocated for the adoption of such a remedy, recommending that the Board “provid[e] an opportunity on company time and property for a Board agent to read the Board notice to all employees and to answer their questions.”\textsuperscript{113}

However, it is unclear whether employees would truly feel comfortable asking questions to a Board official about their rights when their employer is present in the same room. Employees may rightfully fear that the employer will take adverse action against them for this activity, so may be chilled into silence. This effect could be alleviated by ensuring that the employer’s agents are asked to leave the room when the time for questions is allotted.

This method has its drawbacks, however. A Board official’s reading may not provide employees with the same assurance that their federal labor rights will be protected in the future as an employer’s reading would. The traditional notice comports more readily with being read by the transgressor employer, containing “WE WILL” and “WE WILL NOT” statements that are meant to serve as binding promises by the employer, both to their employees and to the courts. Having a third party read these statements detracts from these promises, and employees may have difficulty believing that their company will not commit similar unfair labor practices in the future. However, the presence of a federal Board official in the workplace

\textsuperscript{110.} See Conair Corp. v. NLRB, 721 F.2d 1355, 1401-02 (D.C. Cir. 1983) (Ginsburg, J., dissenting as to the remedy); Conair Corp., 261 N.L.R.B. 1189, 1195 n.28 (1982) (Chairman Van De Water, concurring in part and dissenting in part).

\textsuperscript{111.} Klein, supra note 62, at 35.

\textsuperscript{112.} Id. at 34.

may help to counter these effects, as employees may recognize that although the employer may not be serious about complying with federal labor law, the NLRB will work vigilantly to ensure compliance.

Next, having a Board official read the notice creates additional costs. The agency or another party would have to pay for the time and expense of commuting Board officials to various worksites throughout the country. To avoid having to internalize these costs, however, the Board could instead mandate that the employer pay for the reasonable costs of transporting the Board official to and from the job site. While employer advocates might decry this imposition of costs as an unlawful “fine,” many Board orders require that the employer pay small amounts to ensure that Board remedies are adequately enforced. For example, the Board’s oft-utilized notice posting remedy almost always contains a provision stating:

In the event that, during the pendency of these proceedings, the Respondent has sold, gone out of business or closed any of the facilities involved . . . 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 such facilities at any time since [the unfair labor practices first occurred].

Likewise, the Board could simply insert a provision in its orders requiring that the employer cover, at its own expense, the reasonable costs of having a Board official present to read the notice. Such a remedy would simply be restorative, not punitive, unlike the retaliatory fines overturned by the federal courts. Compared to a fine for a wrongful action, this cost would simply be equitable indemnification for an expense that was necessary to fully rectify that action’s effects.

Even if the Board did not seek to collect for the added expense of imposing this remedy, these increased costs may be insignificant. First, in most of the cases that mandate a remedial reading notice, the order already contains a provision requiring that a Board official be in attendance when the notice is read, so the Board can ensure compliance with the order. For example, in Conair Corp., the remedy required that “[t]he Board shall be afforded a reasonable opportunity to provide for the attendance of a Board agent at any assembly of employees called for the purpose of reading such notices.” In this case, having a Board official read the notice would incur no additional costs for the agency, as these expenses would have already been accrued in sending an agent to witness the proceedings.

115. See Republic Steel Corp. v. NLRB, 311 U.S. 7, 10 (1940).
116. See, e.g., Taylor Motors, Inc., Case 10-CA-105174, 2014 WL 2965336, at *2 (N.L.R.B. July 1, 2014) (requiring that the employer read the notice in the presence of a Board agent); Ozburn-Hessey Logistics, LLC, 361 N.L.R.B. No. 100, slip op. at 3 (Nov. 17, 2014).
Additionally, the aforementioned report the Board commissioned in 1966 found that “if [its notice-reading recommendations were] carried out, the data suggest[s] that an awareness of the added implications of breaking the law may very well result in a diminution of the unlawful behavior and a consequent reduction in the Board’s caseload.” Accordingly, depending on the effect’s magnitude, the deterrent effect caused by the Board’s stricter notice-reading remedy may reduce or even entirely offset the added costs incurred in sending Board officials to sites in the field.

V. LINGERING ISSUES

Regardless of which of the three methods the Board chooses to enforce a remedial notice-reading requirement, some issues with the remedy persist. First, in comparison to the relative permanence of a physically or electronically posted notice, which is generally required to be posted for a minimum of sixty days, a notice reading is a finite temporal event that can only be witnessed once. Any employees who are not present at the notice reading, because of vacation, sick days, leave, or scheduling, will not be exposed to the Board’s remedial message. Accordingly, in order to ensure that all of the affected employees properly receive the notice, the notice reading would have to be accompanied by more traditional notice remedies, like physical posting, electronic delivery, or home mailing to absent employees. Conversely, the Board could require that the notice be read multiple times, to give employees who might be absent on a certain day an additional opportunity to attend the event, or allow employees to record the reading, so they could share it with their absent coworkers upon their return.

Another unresolved issue remains as to who exactly should be present at the notice reading. As explained above, having a Board official present ensures that the notice is given a fair reading, and could give the assembled employees the chance to have their questions answered without fear of being retaliated against by their employer. Similarly, an argument could be advanced that the Board should also require that a union agent be allowed to attend the notice reading, provided that the workforce is represented or in the midst of a representation campaign. Like the Board official, the presence of a union agent may ensure that the employer reads the Board’s remedial message with the proper weight, giving the union, who is often the charging party, the opportunity to see that its remedy is being adequately enforced. This requirement may implicate some concerns

118. Ross, supra note 113, at 32.
119. See, e.g., Ozburn-Hessey Logistics, LLC, 361 N.L.R.B. No. 100, slip op. at 2.
120. Provided, again, that the employer’s agents are asked to leave the room before time is made available for questioning.
over property rights, however, as the Supreme Court’s decision in *Lechmere, Inc. v. NLRB* allows employers to exclude non-employee union agents from their private property, provided such exclusion was not discriminatory or otherwise prohibited under state law. Nonetheless, there are other instances where union agents are allowed on the employer’s premises to ensure the Act’s protections, like when assisting an employee who faces a disciplinary meeting and who invokes their *Weingarten* rights to have a union representative present. Accordingly, while issues with the notice-reading requirement persist, they can be mitigated through careful crafting of the Board’s remedial order.

**CONCLUSION**

The Board has recognized that it, “like all administrative agencies, has a duty to adopt its rules and policies to the demands of changing circumstances if the Act is to remain meaningful.” Since its passage, commentators have criticized the Board for the inefficacy of its remedies, and its failure to adapt these remedies to better serve the purposes of the Act. The notice-posting remedy is a prime example of this inaction. The restorative and deterrent functions of notice-posting remedies are only served to the extent that the affected employees actually read and understand the notice, an unfounded assumption upon which the Board relies. In *J & R Flooring*, the Board made a significant advancement to its outdated notice-posting remedy, expanding the remedy from the backroom bulletin board to the inbox. In that case, the Board rejected the notion that electronic notice posting should remain an “extraordinary remedy,” instead emphasizing that the method was how employers “customarily communicate” with employees, and was the “most efficient and cost effective way to disseminate important information.” However, face-to-face interactions are often the most preferred and customary method of communication between supervisors and employees. Further, as explained above, social science research shows that these face-to-face, verbal conversations are the most efficient and effective ways to communicate in the workplace.

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121. *See Lechmere, Inc. v. NLRB, 502 U.S. 527 (1992).*
124. *See ROSS, supra note 113, at 2 (“The major shortcoming of the NLRB lies in its failure to adopt adequate and realistic remedies in those cases where the employer has unmistakably demonstrated a continuing intent to frustrate the Act.”).*
126. *Id. at 5.*
127. *See id. at 8 n.1 (Member Hayes, dissenting); Martin, supra note 60.*
Requiring that the notice be read aloud, rather than posted and ignored, capitalizes on these benefits, ensuring that the notice’s remedial message is actually and effectively transmitted to the very employees the remedy is supposed to serve. Further, the remedy also provides a significant deterrent effect, discouraging future violations of federal labor law. By reserving the notice-reading requirement as an “extraordinary remedy,” the current doctrine unfairly constrains the Board in its discretion, preventing it from implementing the notice remedy that would best effectuate the policies of the NLRA.128 This must change if the Board’s remedies are to serve as more than a simple “slap on the wrist.” As one commentator stated in his evaluation on the inefficacy of Board remedies, “We need more inventive minds to fashion new remedies which make it more advantageous to the parties for them to obey the law than to violate it.”129

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD
ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative 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 do anything to prevent you from exercising the above rights.

YOU HAVE THE RIGHT to join with your fellow employees in concerted activities. These activities include discussing with each other, and complaining to us, about your workloads, benefits, safety equipment, and other terms and conditions of employment.

YOU HAVE THE RIGHT to support and engage in activities on behalf of the International Brotherhood of Electrical Workers, Local 387, AFL-CIO (the Union).

WE WILL NOT do anything to interfere with these rights.

WE WILL NOT threaten you if you select the Union as your bargaining representative.

WE WILL NOT solicit complaints and grievances from you and promise to remedy them in order to restrain your support for the Union.

WE WILL NOT promise you increased benefits and improved terms and conditions of employment if you refrain from supporting the Union.

WE WILL NOT threaten you if you engage in Union and concerted activities.

WE WILL NOT unilaterally grant wage increases because employees engaged in activities in support of the Union, and in order to discourage membership in the Union or in any other labor organization.

WE WILL NOT unilaterally reinstate paid holidays or other benefits to employees because they engaged in activities in support of the Union, and in order to discourage membership in the Union or in any other labor organization.

WE WILL NOT unilaterally order and announce delivery of new equipment for employees because they engaged in activities in support of the Union, and in order to discourage membership in the Union or any other labor organization.

WE WILL NOT fire, suspend you, or issue you discipline because you engaged in Union or concerted activities, or because of your Union support or membership.

WE WILL NOT fail and refuse to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of employees.

WE WILL NOT change the terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.
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, on request of the Union, bargain with the Union as the exclusive representative of unit employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. The unit is:

All full-time and regular part-time locate technicians and splice technicians who work out of Respondent’s Phoenix, Arizona facility, excluding all other employees, gas shut off and gas starter technicians, maintenance employees, office clericals, guards, managers and supervisors as defined in the Act.

WE WILL offer reinstatement to Garrett Forrest (Forrest) and Daniel Polley (Polley) 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 they previously enjoyed, and make them whole for any loss of earnings and other benefits suffered, with interest.

WE WILL remove from our files any reference to our discharges of Forrest or Polley, as well as the discipline issued Forrest and Polley, and WE WILL notify them in writing that this has been done and that our conduct will not be used against them in any way.

ONE CALL LOCATORS, LTD d/b/a ELM LOCATING & UTILITY SERVICES

The Board’s decision can be found at www.nlrb.gov/case/28-CA-125749 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.