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**ADT, LLC and International Brotherhood of Electrical Workers, Locals 46 and 76.** Case 19–CA–216379

February 5, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN  
AND EMANUEL

On July 9, 2019, Administrative Law Judge John T. Giannopoulos issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and Charging Party each filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions<sup>1</sup> and briefs and has decided to affirm the judge’s rulings, findings,<sup>2</sup> and conclusions<sup>3</sup> and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, ADT, LLC, Seattle, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. February 5, 2020

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>1</sup> The Respondent generally excepts to the judge’s recommended Order, but it fails to argue that the recommended Order is deficient in any specific way. There are no exceptions to the judge’s finding that the allegation that the Respondent discriminatorily applied its no-recording rule was “encompassed” in the violation found.

<sup>2</sup> The Respondent has excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Angelie Chong, Esq., for the General Counsel.

Daniel A. Adlong, Esq. (Ogletree, Deakins, Nash, Smoak & Stewart, P.C.), for the Respondent.

David A. Hannah, Esq. (Law Office of David A. Hannah), for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN T. GIANNOPOULOS, Administrative Law Judge. This case involves the suspension and discharge of two employees who worked for ADT, LLC (ADT or Respondent), at their facility in Bothell, Washington. Both employees recorded captive-audience meetings that Respondent held for employees in the runup to a decertification election. Respondent asserts the suspensions and discharges were lawful and made pursuant to a company rule prohibiting the audio or video recording of coworkers. The General Counsel alleges that the Company’s disciplinary actions violated Section 8(a)(1) and (3) of the Act, and further asserts that Respondent enforced its no-recording rule selectively and discriminatorily against the employees. The case was tried before me in Seattle, Washington, on August 22–24, 2018.

Based upon the entire record, including my observation of witness demeanor, and after considering the briefs filed by all the parties, I make the following findings of fact and conclusions of law.<sup>1</sup>

I. JURISDICTION AND LABOR ORGANIZATION

Respondent installs and services residential and commercial security systems throughout the United States, including the State of Washington. It derives annual revenues exceeding \$500,000 and purchases and receives goods and materials valued in excess of \$5000 directly from points outside of Washington. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that International Brotherhood of Electrical Workers (IBEW) Local 46 and IBEW Local 76 are labor organizations within the meaning of Section 2(5) of the Act (referred to collectively as the Union).<sup>2</sup>

II. FACTS

A. General Background

ADT’s corporate offices are in Boca Raton, Florida. Amelia Pulliam (Pulliam) is Respondent’s vice president of human resources, working out of the corporate office. Also working out of the Boca Raton office is Edward McDonough (McDonough),

<sup>3</sup> We adopt the judge’s finding that the suspension and discharge of Patrick Cuff and Mohammed Mansour violated Sec. 8(a)(3) and (1) because we find that they engaged in protected union activity during the captive audience meetings and did not lose the protection of the Act. We emphasize, however, that we do so in light of the unique facts and circumstances presented in this case.

<sup>1</sup> Testimony contrary to my findings has been specifically considered and discredited. Witness demeanor was the primary consideration used in making all credibility resolutions.

<sup>2</sup> As discussed below, both locals jointly represent Respondent’s employees.

Respondent's chief security officer. In his position as the chief security officer McDonough is responsible for the physical security of Respondent's property, along with overseeing and managing internal investigations. James Nixdorf (Nixdorf) is Respondent's director of labor relations. He is responsible for negotiating and administering all of Respondent's approximately 35 collective-bargaining agreements throughout the United States and Canada. Nixdorf is also responsible for implementing and approving any discipline involving employees covered by a collective-bargaining agreement. While he is an attorney, Nixdorf's role as labor relations director is considered nonlegal.<sup>3</sup> (Tr. 333, 391–94, 435, 465–468.)

Regarding ADT's facilities in northwest Washington, service manager Steve Foster (Foster) oversees the service technicians working in Respondent's Tacoma and Bothell facilities. Jim Terry (Terry) is the installation manager, in charge of the technicians who install Respondent's alarm systems. Eric Isakson ("Isakson") is the area general manager, overseeing both offices. And, Dawn Ross ("Ross") serves as the Seattle region human resources manager. (Tr. 19, 69–70, 138, 244, 398, 496, 517–519)

The Union represents a unit of ADT's residential and small business installation and service technicians employed at Respondent's facilities in Tacoma and Bothell, Washington. Respondent and the Union were parties to a collective-bargaining agreement (CBA) covering the service technicians and installers which expired on May 31, 2017.<sup>4</sup> The CBA contained a union-security clause, requiring employees to maintain membership in the Union as a condition of their employment. Mark Samuelsen (Samuelsen) is the Union's business representative responsible for overseeing the contract with ADT. (Tr. 108, 141; JX. 1, 2.)

#### *B. Decertification Petition and Captive-audience Meetings*

In September 2017, Jason Achberger (Achberger), who worked as an installer in Respondent's Bothell office, filed a petition seeking to decertify the Union. Charges were then filed, and litigation ensued regarding the ability of certain employees to vote in the election; eventually an election date was set for January 31, 2018. (Tr. 141–42, 239, 276; JX. 1.)

In the runup to the election, Respondent held a series of captive-audience meetings with employees. The first such meeting was held on January 9, 2018. Two meetings were scheduled in the Bothell office that day, one from 7 to 9 a.m., and another from 9 to 11 a.m. Terry and Foster sent emails to employees telling them specifically which meeting they were scheduled to attend. (Tr. 142–146, 154; GC 5.)

Patrick Cuff (Cuff) worked as a lead service technician in Bothell and was also a union steward. On January 8, 2018, Cuff and his coworkers received an email from Foster informing them of which mandatory meeting they were required to attend. It appeared to Cuff that the technicians who were generally considered prounion were scheduled to attend one meeting, while those

who were on the fence or against the Union were scheduled for the other meeting. Cuff discussed the matter with JD Wilson (Wilson), the other shop steward in Bothell. Although the email did not discuss the topic of the mandatory meeting, they both assumed it had to do with the upcoming election. Both Cuff and Wilson were scheduled to attend the 9 a.m. meeting, which meant there was no union steward scheduled to be in the 7 a.m. meeting. (Tr. 137, 140–149, 277; GC 5.)

After their discussion, Wilson emailed Foster, with a copy to Cuff, requesting that he and Cuff be split up between the two meetings. In the email, Wilson stated his suspicion that the meeting had to do with the upcoming election, asked that he be allowed to attend both meetings, and said there should be at least one shop steward in each meeting. Foster replied to Wilson and Cuff saying that he had been given a directive as to what was supposed to occur, and asked they attend the specific meeting they were previously scheduled to attend. (GC 6.)

Installation technician Jeremiah Dunn (Dunn) received a similar email from his manager regarding the January 9 meetings. (Tr. 279.) Dunn also thought the meetings were "stacked" with prounion employees scheduled to attend one meeting and anti-union employees the other. He also noted that both Cuff and Wilson were scheduled to attend the same meeting, meaning there was no shop steward scheduled to be in the 7 a.m. meeting. Dunn spoke with both Cuff and Wilson about the matter. He asked them whether a shop steward was going to be in each of the meetings. Cuff told him they were still trying to get this accommodation, that Wilson had sent an email making the request, but they were told that the meetings were set and would go forward as scheduled. Dunn pressed both Cuff and Wilson on the need to have a steward in each meeting saying that, if the company was presenting the same information, it should be presented in the same manner to all employees. As a union member, Dunn wanted a steward available in each meeting to verify and validate that the same information was being presented to employees. Dunn said there was no reason to not allow a steward in each meeting unless the company was not going to communicate the same information and wanted to hide something. (Tr. 277–283.)

#### *C. Employees record the two January 9 meetings*

The two captive-audience meetings occurred on January 9 as scheduled. Cuff arrived at the Bothell office at his usual starting time, around 6 a.m. At some point, before the first meeting started, Cuff was with Wilson and they ran into Nixdorf. Nixdorf had known Cuff since at least 2012; Cuff was on the Union's negotiating committee and the two had engaged in negotiations regarding the recently expired CBA.<sup>5</sup> Cuff and Wilson asked Nixdorf if they could be split up, with each steward attending a separate meeting. Nixdorf told them that the meeting schedules were arranged by operations and could not be changed. (Tr. 151–52, 205–206, 473–474.)

The January 9 meetings went forward as planned. Cuff and

<sup>3</sup> Transcript citations are denoted by "Tr." with the appropriate page number. Citations to the General Counsel, Respondent, Union, and Joint Exhibits are denoted by "GC," "R," "U" and "JX" respectively. Transcript and exhibit citations are intended as an aid only. Factual findings are based upon the entire record as a whole and may include parts of the record that are not specifically cited.

<sup>4</sup> At the time of the hearing, the parties were in the process of bargaining for a successor agreement. (Tr. 260.)

<sup>5</sup> The record shows that Nixdorf also knew that Cuff was present during the NLRB pre-election hearing and was the Union's observer at the decertification election. (Tr. 474–475.)

Wilson were correct about their suspicions that the topic of both mandatory meetings was about the Union and the decertification election. In both meetings Respondent presented its position as to why the Union should be voted out.

#### 1. The 7 a.m. captive-audience meeting

Mohammed Mansour (Mansour) attended the 7 a.m. meeting. Mansour worked for Respondent in Bothell as an apprentice technician, a position covered by the CBA. He was hired in December 2016 and reported to Terry. (Tr. 19–23, 25, 78, 80–81, 104.)

Mansour is dyslexic. English is his second language and Somali his primary language. About 15 employees were present at the 7 a.m. meeting but none of the union stewards were in attendance. Nixdorf ran the meeting, and a manager from Dallas named Jonah Suri (Suri) was also there and spoke on behalf of the company. (Tr. 25–28, 65, 88; GC 2, 3.)

Nixdorf started the meeting by speaking to employees regarding the Union, what the Union was about, what it does and does not do for workers. He also showed a PowerPoint presentation to the employees regarding the Union and the upcoming decertification election. Suri spoke about his experiences with unions and what happened when his employees in Dallas voted the union out. During the meeting various employees also asked questions or made statements. And, at one point during the meeting, Nixdorf asked Achberger to address the group and tell them what happened during the NLRB's pre-election hearing that had occurred a week earlier; Achberger did so. (Tr. 27, GC 2, 3; R. 15.)

Because of his dyslexia, and his English language issues, about half-way into the presentation Mansour decided to record the meeting.<sup>6</sup> Before he started working for ADT, Mansour had never previously been in a union. He wanted to get a better understanding of what the meeting was about, what Nixdorf was saying, and the point of the presentation. So, Mansour took out his personal cell phone, placed it on the table in front of him, and started recording. (Tr. 27–29, 51, 87–88; GC 2, 3.)

Mansour did not tell anyone beforehand that he was going to record the meeting, did not receive permission from anyone to record the meeting, and other than himself, nobody in the meeting knew he was recording. He simply made the recording for his personal use, so he could listen to it later and get a better understanding of what was being discussed so he could be informed on the issues. After the meeting, Mansour listened to the recording. (Tr. 29–30, 43, 51, 62–63, 66, 88, 95.)

#### 2. The 9 a.m. captive-audience meeting

About 20 employees attended the 9 a.m. meeting, including both Cuff and Wilson. Present for Respondent were Nixdorf and Suri. Isakson was also present briefly and started the meeting by congratulating employees for their good work. He then turned the meeting over to Nixdorf and left the room. While Isakson was still speaking, Cuff put his personal cell phone into his front shirt pocket, with the camera lens sticking out, and he started videotaping the meeting with his phone. Cuff recorded the meeting with the intention of trying to compare what was said during

the 9 a.m. meeting with what occurred during the 7 a.m. meeting; he thought the company's presentations were going to be different and wanted to compare them. When he got home that night, Cuff watched the recording; he also transferred it from his phone to a flash drive. (Tr. 153, 155–162, 192–93, 217–18; G 7, 10.)

A review of the recordings, along with the transcripts, show that certain aspects of the two meetings were different, as different questions were asked by employees. Also, there was more push-back to Respondent's talking points from some of the employees in the 9 a.m. meeting. That being said, the same PowerPoint presentation was shown at both meetings, and the general subject matter of both meetings were similar. Both meetings concerned the Union and the decertification petition/election; no confidential, proprietary, or customer information was discussed.<sup>7</sup> (Tr. 213–14; GC 2, 3, 7, 10; R. 15.)

It is not disputed that neither Cuff nor Mansour told anyone that they were going to record before they did so. Also, neither let it be known to the meeting participants that they were recording, nor did they receive consent from anyone to record the meeting. Similarly, at no time did Respondent tell employees that they were prohibited from taking notes during the meeting, nor did Respondent tell the gathered employees that recording the captive-audience meeting was prohibited.

#### D. Cuff gets a copy of Mansour's Recording

A few days after the January 9, Mansour had a telephone conversation with Dunn where they discussed the meetings. During this conversation Mansour told Dunn that he had made a recording of the 7 a.m. meeting, saying that he wanted to record the meeting to listen to it and make sure he had a clear understanding of what was discussed. After his call with Mansour, Dunn also had a conversation with Cuff. Dunn told Cuff that Mansour had recorded the 7 a.m. meeting, and Cuff asked Dunn to get a copy of the recording. That evening, Dunn called Mansour and told him that Cuff asked for a copy of the recording; Mansour agreed to give him a copy. Within a day Mansour gave Dunn a flash drive with a copy of his recording. A few days later Dunn met Cuff for lunch and gave him the flash drive with Mansour's recording. Cuff copied Mansour's recording onto the same flash drive that contained his recording of the 9 a.m. meeting. At some point Cuff gave the flash drive with the recordings of both January 9 meetings to Samuelsen. (Tr. 45–49, 158–162, 299–305)

#### E. Cuff mentions to coworkers that he has recordings of both meetings

Employees had been discussing issues concerning the decertification election amongst themselves in an email chain; about 13 employees, including Achberger and installation technician Nick Rutter (Rutter participated in the exchange. Rutter and Achberger were the two employees pushing heavily in favor of decertification; it was no secret that both wanted the Union voted out. (Tr. 195–196, 211, 238; GC 8.)

In these email discussions, employees were talking about trying to set up a meeting of just unit employees to discuss the decertification election. On January 14, Cuff wrote an email to the

<sup>6</sup> Two hours were set aside for each meeting. Mansour's recording is 47 minutes long. The recording of Cuff's meeting is just over 120 minutes. (Tr. 39; GC 5, 10.)

<sup>7</sup> After the election, Respondent ultimately provide the Union with copies of the PowerPoint presentation shown at the January 9 meetings. (Tr. 481–482; U. 1.)

group saying that he supported such a meeting. In this email Cuff also told his coworkers “I want you all to know that I have recordings of both Bothell meetings and they were definitely to [sic] different meetings. The first was a definite antiunion meeting, maybe that is why shop stewards were kept out of it, the second was more neutral. Anyone [sic] who wants to hear both for comparison you can ask and I will provide it.” (GC 8, p. 4.)

When Rutter learned from the email that Cuff had these recordings he went to Terry, who was Rutter’s manager. He told Terry about the recordings, showed him Cuff’s email, and said he did not feel comfortable being recorded at a meeting. Rutter said that he needed to know who he could talk to. Terry directed him to Nixdorf and Ross. (Tr. 340–341; 505–506, 531, 533.)

On January 26, 2018, Rutter sent an email to Nixdorf, and attached a screenshot of Cuff’s email. In his email, Rutter copied Terry along with Respondent’s labor attorney, who was also counsel of record for ADT in this in this proceeding. In the email, Rutter tells Nixdorf that he learned through Cuff’s email that the captive-audience meeting “was recorded by a technician for the union.” Rutter further states that he had a “major problem with that,” and was told to “let you and one of our [a]ttorney’s [sic] know about this.” Rutter also says in the email that he confronted a union representative at the union hall, specifically asked if the representative had asked the shop steward to record the meeting, and that the union representative said, “yes”, “we told them [I] thought it would be a good idea.” In the email, Rutter asserted that what happened was “illegal,” in violation of Washington State law, and wanted to know from Nixdorf “is there something I can do or should do on this.” (R. 3.)

That same day Nixdorf replied to Rutter’s email. In his response, Nixdorf also copied Terry and the attorney. Nixdorf wrote that:

I’m not familiar with the WA statute, but if you believe (and since they admitted it to you it seems you do) you can speak with someone in law enforcement. I will forward this to our head of security. Since they admitted it to you, you would have the best knowledge of the incident.

Please feel free to call me . . . if you’d like to discuss this further.

Rutter replied to Nixdorf at 8:49 p.m., again copying Terry and the attorney, saying he was sorry they could not connect that day via telephone, but he was in a location with bad service. Rutter further said that the more he thought about the situation the “more irate I get,” and he believed that “something needs to be done.” (R. 11.)

On January 29, Nixdorf forwarded the email chain to Dante Hawkins (Hawkins) saying, “[p]lease see below as discussed.” (R. 11; Tr. 438–439.) Hawkins is an investigator in Respondent’s security division. Hawkins conducted some initial interviews and told Nixdorf that it appeared further investigation was needed. Accordingly, Nixdorf contacted McDonough and asked him to go to Washington to conduct an investigation into what occurred regarding the recordings. (Tr. 394, 397, 438–439.)

#### F. Mansour discloses that he Recorded the Meeting

The decertification election was held on January 31, 2018; employees voted 49–37 in favor of continued union

representation. On February 2, Mansour saw Rutter at work. They started talking about the election, and Rutter said that he was one of the people that wanted to vote the Union out. Mansour replied saying that he was sorry Rutter did not get what he wanted. Rutter told Mansour that he was putting together a petition and needed signatures because he heard that someone had made a recording of the January 9 meeting. Rutter asked Mansour if he would sign the petition. Mansour told Rutter that he had recorded the meeting. Rutter asked Mansour why he had done so, and Mansour told him that he was dyslexic, and English was his second language. Therefore, Mansour recorded the meeting because he wanted to listen to it and get a better understanding of what the meeting was about. Rutter asked whether Mansour knew that it was illegal to record someone without their knowledge; Mansour did not. Rutter asked Mansour if he gave the recording to anyone, and Mansour told him that he gave it to Dunn. Rutter said that he did not know whether Mansour was going to get into trouble, but that Rutter was going to speak with Terry, and when he was finished doing so Mansour needed to call Terry and tell him what happened. (Tr. 50–52, 142; JX 1.)

Rutter then called Terry and told him what occurred. After he finished his phone call Rutter then told Mansour that he could go ahead and call Terry. Mansour did as Rutter instructed. He called Terry and told him that he recorded the January 9 meeting for his personal use and learning purposes because he did not understand unions. He told Terry that, because of his dyslexia, and the fact English was his second language, he recorded the meeting for a better understanding and to try and figure out what decision he needed to make. Mansour asked Terry if he needed to report the matter to human resources, and Terry told him “don’t worry about it. I’ll take care of it.” (Tr. 54.) During the call Mansour also told Terry that he gave the recording to Dunn, and that Dunn said he was going to give it to Cuff. Terry again told Mansour not to worry about it. The conversation ended, and Mansour then went back to work. (Tr. 54–56, 505, 534–537.)

#### G. Respondent’s Policy on Recording in the Workplace

At the time the January 9, 2018 meetings were recorded, Respondent’s policies and procedures included a “Standards of Conduct General Guidelines” with a provision covering recording coworkers or managers. The policy reads, in part, as follows:

Numerous forms of behavior are considered unacceptable in the workplace. The following are examples of behavior that violate the Code and may result in disciplinary action, up to and including termination of employment:

- Conduct that is in violation of any one of the Company’s policies relating to treatment of others, treatment of Company property, or one’s conduct while on duty, including EEO/Harassment, Use of Equipment and Vehicles, Driver Safety Standard, Drug and Alcohol, and No Solicitation and Distribution.
- Theft or inappropriate removal or possession of property. Negligence or improper conduct leading to damage of Company-owned or customer-owned property or misappropriating Company funds or assets.
- Fraud, falsification of Company records,

falsification of information, misstatement of facts or any other dishonesty on Company premises, while on duty, or relating to Company business.

- Insubordination, unprofessional conduct, refusal to comply with instructions, or failure to perform reasonable duties to which assigned.
- Call avoidance and/or excessive or unprofessional conversations with a customer.
- Audio or video recording of coworkers or managers is prohibited where (1) such recording occurs without explicit permission from all parties involved in those states with laws prohibiting nonconsensual recording; (2) such recording violates company policies prohibiting threats, acts of physical violence, intimidation, discrimination, harassment, stalking, and/or coercion; (3) the recording occurs in areas where employees have reasonable expectations of privacy such as restrooms and changing rooms; (4) such recording creates a safety hazard; and/or (5) such recording otherwise violates applicable law.
- Gambling or violation of criminal laws on Company premises.
- Failing to report overpayment of wages, benefits or perquisites.

This specific policy was effective as of August 1, 2017, and superseded a March 1, 2017 policy. (GC 9.) Previously, Respondent’s policy, which was revised on January 1, 2015, prohibited all “[a]udio or video recording of coworkers or managers without explicit permission from all involved.” (R. 18.)

Both Mansour and Cuff testified that they were unaware of any company policy prohibiting the recording of coworkers or managers. When employees are first hired, Respondent conducts training on its policies and procedures, including its standards of conduct, as part of its “onboarding” process. The training is conducted online. When employees complete the training, a certificate of completion is printed out and placed in the employee’s file. Respondent introduced into evidence Mansour’s certificate of completion showing that he successfully completed ADT’s “HR Policy–Standards of Conduct” training on December 5, 2016.<sup>8</sup> (R. 18.) There is no evidence that Cuff was ever given, or completed, such a training; he testified that he was never shown nor asked to sign off on any such policy when he was hired. That being said, Respondent’s policies, including the Standards of Conduct General Guidelines, are on the company’s intranet which is available to all employees. A few days after his suspension, Cuff accessed ADT’s intranet and was able to find Respondent’s policy on recordings. (Tr. 71–72, 82–83, 185–187, 202–04, 216; GC 9.)

#### H. McDonough’s Investigation into the Recordings

Based on Nixdorf’s request, McDonough made arrangements

<sup>8</sup> Notwithstanding, given his dyslexia and his English language skills, I credit Mansour’s testimony that he was not aware of a company policy on recordings. (Tr. 71–72.) While he completed the online training, he clearly did not understand all aspects of the online course.

<sup>9</sup> All states, except Vermont, have enacted wiretap statutes. Hannah Clarisse, Note, *Wiretapping in A Wireless World: Enacting A Vermont*

to go to Bothell and investigate the matter. McDonough testified that when the incident was first reported to him he looked at the Washington statutes and saw that the State of Washington was a two-party consent state.<sup>9</sup> In doing his research he did not go beyond looking at the statute. However, he also had a conversation with Phil Marchione (“Marchione”), who was Respondent’s labor and employment counsel. (Tr. 408, 430, 432, 439.)

McDonough traveled to ADT’s Bothell office and conducted his interviews on February 16, 2018. According to McDonough, the interviews were based on information received that certain meetings had been recorded, which would have violated both company policy and Washington State law. Various employees were interviewed as part of Respondent’s investigation including Achberger, Rutter, Dunn, Terry, Cuff, and Mansour. Ross sat in on all the interviews McDonough conducted and took notes; Ross also conducted some interviews on her own. Samuelson was also present in the interviews McDonough conducted with Cuff and Mansour. (Tr. 59, 117–118, 128–131, 181, 392–393, 397–398; JX. 3; R. 10.)

##### 1. McDonough’s interview with Cuff on February 16

Cuff’s interview with McDonough occurred at about 9 a.m. McDonough told Cuff that he was investigating an accusation that Cuff had recorded the January 9 meeting, and asked if Cuff had made a recording. Cuff admitted doing so. McDonough then asked Cuff why he recorded the meeting. Cuff told him they had requested that a union steward be allowed to attend both meetings, but the request was denied. Therefore, he decided to record the meeting because there were concerns about what was being said in the meetings and he wanted to be able to verify what information was being disseminated at both meetings. McDonough asked whether there were any copies of the recording and Cuff told him that he gave the only copies he had to Samuelson. McDonough asked Samuelson if he had listened to the recording and Samuelson said that he had tried to do so briefly but could not make out what was on the recording. McDonough then said there was an allegation that a transcript had been made from the recording and it was used to generate a letter drafted by the Union. Both Cuff and Samuelson said that, as far as they knew, there were no transcripts made. At McDonough’s request, Cuff explained how he made the recording by putting the phone in his front pocket. He also told McDonough that he did not tell anyone that he was making the recording and did not ask anyone for permission to record. Finally, Cuff told McDonough that Mansour had recorded the other meeting, that he had discussed the recordings with Dunn, and that Dunn gave Cuff a copy of Mansour’s recording. (Tr. 118, 181–184, 207–208, 398–399; JX. 3.)

##### 2. McDonough’s interview with Mansour on February 16

Mansour’s interview occurred around 11:30 a.m. Mansour told McDonough that he had recorded the January 9 meeting, and

*Wiretap Statute to Protect Privacy Against Modern Technology*, 43 VT. L. REV. 369, 379 (2018). Most states have one-party consent laws, where only one party needs to consent to the recording for it to be valid. *Id.* Some states have two-party consent laws which prohibit recordings unless all parties to the communication consent to it being recorded. *Id.*

that he shared the recording with Dunn who said he wanted to listen to it and see if anything different was said in the meeting Mansour attended. McDonough asked Mansour whether he gave the recording to a union steward and Mansour denied doing so. He said that he only gave a copy to Dunn, but that Dunn told him he was going to listen to it and then give it to Cuff. When asked why he made the recording, Mansour explained that English was his second language and he is dyslexic. He said that he made the recording for personal use as he was trying to understand what the meeting was about and wanted to go back and refer to the recording to help him understand. Mansour explained that he recorded the meeting with his cell phone which he placed on the desk in front of him. McDonough asked Samuelsen if he had Mansour's recording. Samuelsen replied that he may have Mansour's recording but was not sure as he was having problems playing both recordings, so he did not know for sure. During the interview Mansour said that he did not know that Cuff was going to record the second meeting. Mansour told McDonough that he did not tell anyone he was making the recording beforehand, and during the meeting did not ask anyone for permission to record what was being said. (Tr. 58–62, 88, 95–96, 118, 161, 400–401, 399 JX. 3.)

After his interview with McDonough had concluded, Mansour went to the warehouse where he had a conversation with a coworker. Terry walked in, stood next to Mansour, and told him not to worry about anything; Mansour was worried he might lose his job. Terry said that Mansour was not trying to hurt anyone and was just trying to understand as English was his second language. Terry told him that he did not believe anything was going to happen when the investigation was completed because they were going to find out that he did not do anything purposefully. Later that day, after McDonough had finished all of his interviews, Cuff and Mansour were both placed on suspension pending the outcome of the investigation into the recordings. (Tr. 62–68, 185–186, 200–201; R. 8.)

### 3. McDonough submits a report with his findings

On February 22, 2018, McDonough drafted a report with a summary of his interviews and his factual findings regarding the allegations against Cuff and Mansour. The report included the following paragraph:

#### Investigation Findings:

The allegation that unauthorized recordings were made of employee meetings taking place between ADT employees of the Bothell WA SSO is confirmed. Additionally, the individuals who made the recordings, Mohamoud [sic] Mansour and Patrick Cuff, stated in their interviews they did not provide any required notification to other parties in the meeting as required by Washington state statute.

It was also learned from the interviews that Patrick Cuff, an ADT employee and shop steward for IBEW Local 46, provided copies of the meetings [sic] to Mark Samuelsen, the Business Representative for the union. (R. 8.)

The report also notes that Cuff and Mansour recorded the meetings conducted by Nixdorf in which issues relating to the decertification election were discussed. (R. 8.)

Regarding Mansour, the report explains that he admitted

making the recording and said he made it for his personal use, so he could review it later as English was not his first language. The report further notes that Mansour did not try to hide the fact he was recording the meeting, but he did not ask for permission to make the recording and did not inform anyone that he was doing so. Finally, it notes that Mansour told Dunn about the recording, that Dunn asked for a copy, and Mansour gave him a flash drive with the recording. However, Mansour did not know what Dunn did with it.

Regarding Cuff, the report says that Cuff admitted recording the meeting with his personal cell phone which was in his front shirt pocket and not visible to others. It states that Cuff did not ask permission to make the recording and did not inform anyone that he was recording the meeting. The report notes that Dunn said he was approached by Cuff who asked him to get a copy of Mansour's recording. Dunn did so and gave a flash drive with the recording to Cuff. Finally, the report states that the interviews showed Samuelsen received a thumb drive from Cuff, which he kept on his office desk, that contained both recordings. (R. 8.)

When he completed his report, McDonough sent the document to Nixdorf, Ross, and to Gray Finney. McDonough reports to Finney, who is Respondent's chief legal officer. He also sent the report to Marchione. The record evidence shows that McDonough's role was solely that of a factfinder—to gather facts and present them to the relevant decision makers. He made no recommendation as to what should occur to Cuff or Mansour. After he submitted his report, McDonough role in the matter was completed. (Tr. 408, 415, 432, 472.)

### *I. Nixdorf Decides to Terminate Mansour and Cuff*

Nixdorf was the sole decision maker in determining whether Cuff and Mansour should be disciplined and, if so, what level of discipline was appropriate. After Nixdorf received McDonough's report, which included Ross's interview notes, he testified that his first responsibility was to determine whether there was a violation of Respondent's recording policy. According to Nixdorf "it was pretty clear that the conduct violated our policy." (Tr. 442.) Nixdorf testified that he believed Cuff and Mansour violated Respondent's policy because "it was clear" and "admitted, that [the] recordings were made without consent. And it was in a state where there's a two-party consent law." (Tr. 442.) According to Nixdorf, because, the recordings by Mansour and Cuff occurred in a state that required consent, and they did not receive consent when they recorded, this was a violation. Therefore, according to Nixdorf, his next step was to determine the appropriate level of discipline. (Tr. 433, 440–445; JX3, R. 9,10, GC 9.)

According to Nixdorf, this was the first time that he had dealt with issue of discipline involving secret recordings. Therefore, Nixdorf testified that sometime in "early February" (Tr. 446) he contacted human resources vice president Pulliam to ask if there were any other similar types of cases involving employees who were not unionized. Pulliam allegedly told Nixdorf that a similar situation occurred in a New York call center where the employee was ultimately discharged for recording without permission. Nixdorf testified that, after speaking with Pulliam, he decided to terminate Cuff and Mansour. (Tr. 445–46, 449–450.)

However, the documents surrounding the New York employee's discharge show that the termination request from the regional manager was not made until February 22, and the termination authorization was signed on February 23.<sup>10</sup> And, McDonough's report of his investigation was not submitted until February 22. Thus, Nixdorf could not have discussed the matter with Pulliam in "early February" as he testified. (Tr. 446) The New York employee had not yet been terminated nor had Nixdorf received McDonough's report. (R. 8, 12, 13.)

Also, during the underlying investigation into the discharges of Cuff and Mansour, ADT's attorney submitted a position statement to the NLRB stating that Respondent "knows of no prior instances in which employees surreptitiously recorded meetings or any other events in its workplace. Cuff and Mansour are the only two employees who have engaged in such conduct." (GC 11, p. 6; Tr. 548.) Nixdorf provided input into the position statement and testified that it was "possible" he reviewed it, as position statements are sent to him. However, he testified that he did not remember whether he reviewed the document. (Tr. 545–548.)

It was clear at trial that the General Counsel's cross-examination into the position statement caught Nixdorf by surprise, and I believe his answer that he did not remember whether he reviewed the document was expediently provided to avoid a clear discrepancy with his previous testimony regarding his purported discussion with Pulliam. The position statement was drafted on April 23, 2018, well before Nixdorf's testimony. And there is no evidence Respondent submitted an errata or addendum to the position statement regarding whether ADT knew of other employees that had been disciplined for making surreptitious recordings. I therefore find that Nixdorf's purported conversation with Pulliam did not occur before Cuff and Mansour were terminated, and I do not credit that part of his testimony.

Instead, the credited evidence shows that Nixdorf's decision to fire Cuff and Mansour was based upon his determination that they violated Respondent's policy on recordings. Specifically, Nixdorf thought that in this situation Washington State law required consent from everyone being recorded. Because Cuff and Mansour did not receive consent from the people being recorded in the January 9 meetings, Nixdorf believed that they violated both Washington State law and Respondent's policy, and that termination was warranted.

#### *J. Cuff and Mansour Learn of their Termination*

On February 23, 2018, Cuff and Mansour were fired. On February 22, Cuff was told by Ross to report to the Tacoma office the next day. He did so and met with Ross and Foster. They told Cuff he was fired. Mansour also received a call to report to the Tacoma office on February 23. When he went to the office he met with Foster and Ross who told him that he was fired as well. Neither received any termination paperwork from the company. According to Nixdorf, ADT does not provide termination notices to employees. In August 2018, Rutter was promoted to a management position, and is no longer represented by the Union.

<sup>10</sup> These documents show that the New York employee engaged in multiple incidents of misconduct. Within a 1-week time period she improperly used her manager's login/password information; had an altercation with a team lead in the workplace; and recorded her coworkers on

(Tr. 19, 67–71, 137, 187–190, 332; GC 1(g), 1(i).)

### III. ANALYSIS

#### *A. Mansour and Cuff were engaged in activities protected by the Act*

In their respective briefs, the parties dispute whether the conduct of Mansour and Cuff, in recording the January 9 captive-audience meetings, are covered by the Act's protection. Section 7 of the Act reads as follows:

Employees shall have the right, to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in [S]ection 8(a) (3).

29 U.S.C. § 157. Thus, employees have a statutory right to engaging in union and protected concerted activities, or to refrain from any and all such activities. Cf. *Stanton Industries, Inc.*, 313 NLRB 838, 848 (1994) (noting the Board has "pointed out over and over again that employees have the right to engage in union activities, as well as the right to refrain from engaging in union activities, which rights are guaranteed by Section 7 of the National Labor Relations Act.)

Regarding Mansour, I find that his actions were protected by Section 7 of the Act. In the January 9 captive-audience meeting Respondent was presenting its position to employees and attempting to persuade them to vote the Union out. Mansour had never previously been in a union, he is dyslexic, and English is his second language. He decided to record the meeting to listen to it more carefully later and get a better understanding of what being discussed. Mansour was simply documenting the meeting in order to study Respondent's position, so he could make an educated choice when voting to either retain or decertify the Union. Respondent argues his actions are not protected because he did not discuss his intentions to record the meeting with anyone else. However, I find Respondent's argument misguided.

Say a single employee checked out a library book about unions so he could study the issues and make an informed choice in an upcoming representation/decertification election. If an employer or union discriminated against the employee simply because he checked out the book and wanted to study whether unionization suited his particular situation so as to make an informed choice at the ballot box, how could the employee's conduct not fall under the Act's protections? I believe it would be protected. Here, Mansour was documenting the meeting, where the benefits/pitfalls of continued unionization was discussed, so he could study the matter and make an informed choice on the issue. I find his actions protected by Section 7. Cf. *Great Dane Trailers*, 293 NLRB 384, 392 (1989) (employer engaged in

the call center floor where there was an "extremely high" potential of having customer information captured on the recording. (R. 12–13.) Nixdorf admitted that he did not see these documents until he was preparing to testify in this matter. (Tr. 447.)

unlawful surveillance of employee engaged in protected activity where the employee was taking notes at a captive-audience meeting); *Whole Foods Market Group, Inc., v. NLRB*, 691 Fed.Appx. 49, 51 (2d Cir. 2017) (employer’s policy unlawful as it would prevent employees from exercising their Sec. 7 rights including recording images of employee picketing, documenting unsafe workplace equipment or hazardous working conditions, documenting and publicizing discussions about terms and conditions of employment, or documenting inconsistent application of employer rules without management approval).

I also find that Cuff’s actions in recording the January 9 captive-audience meeting were protected by Section 7. Cuff, a Union steward, recorded the meeting because of his concerns that the information Respondent was going to disseminate to employees in the two meetings was going to be different. The Union had requested, but was not allowed, to have a steward in both meetings, so Cuff wanted to document the 11 a.m. meeting hoping to compare the information disseminated by ADT at the two meetings. Employees, including Cuff, had been debating the issues regarding the decertification drive via email, and after Cuff had both recordings he emailed his coworkers telling them that the first meeting was antiunion and suggested this was the reason Respondent kept shop stewards out of the meeting. In these circumstances I believe that Cuff’s actions in recording the captive-audience meeting were clearly in support of the Union’s efforts to counter whatever arguments Respondent was advancing regarding the decertification election and constitute union activities protected by Section 7 of the Act.

Finally, it is undisputed that both recordings made their way to Samuelsen, the Union’s business representative. In his report McDonough specifically notes that Samuelsen was given both recordings which he had on a thumb drive given to him by Cuff and the thumb drive was kept “on his desk in his office.” (R. 9.) This alone is sufficient to establish the union activities of both Mansour and Cuff, and Respondent’s knowledge. *Commerce Concrete Co.*, 197 NLRB 658, 660 (1972) (violation found where employer suspected discriminatee gave information to the union and the Board that was helpful to the union’s position and adverse to respondent’s).

#### B. Cuff and Mansour did not Lose the Protection of the Act.

Where a case turns on the alleged misconduct that is part of the res gestae of activity protected by Section 7 of the Act, the proper inquiry is whether the employee lost the Act’s protections in the course of that activity. *Desert Cab, Inc.*, 367 NLRB No. 87, slip op. at 1 fn. 1 (2019). In such a situation “neither the *Wright Line* mixed-motive standard nor the *Burnup & Sims* mistaken-belief standard applies.” *Id.* (citing *Public Service Company of New Mexico*, 364 NLRB No. 86, slip op. at 7 (2016); see also, *Hawaii Tribune Herald*, 356 NLRB 661 (2011) enfd. sub nom. *Stephens Media, LLC v. NLRB*, 677 F.3d 1241 (D.C. Cir. 2012). In *Hawaii Tribune Herald*, the Board found that an employee, who was working in Hawaii and secretly tape recorded a meeting, did not lose the Act’s protections and the employer’s actions in terminating the employee for making the recording violated Section 8(a)(3). 356 NLRB at 661. In finding that the employee’s actions did not lose the Act’s protections, the Board noted that the employer had no rule barring recordings, and that

the employee’s conduct was not unlawful in State of Hawaii.

Here therefore, because Cuff and Mansour were discharged for recording the January 9 captive-audience meeting, conduct which I have found to be protected, their “alleged misconduct . . . is part of the res gestae of activity protected by Section 7 of the Act, [and] the proper inquiry is whether the employees lost the Act’s protections in the course of that activity.” *Desert Cab, Inc.*, 367 NLRB No. 87, slip op. at 1 fn. 1 (2019).

Cuff and Mansour were fired because Nixdorf believed they violated that portion of Respondent’s recording rule prohibiting the recording of coworkers or managers where “(1) such recording occurs without explicit permission from all parties involved in those states with laws prohibiting nonconsensual recording.” (GC 9.) On its face, a violation of Respondent’s policy occurs only if state law prohibits nonconsensual recording. Therefore, if the State of Washington prohibited such recordings, Cuff and Mansour’s conduct would be both illegal and in violation of Respondent’s policy; in these circumstances they both would lose the Act’s protections. *Hawaii Tribune Herald*, 356 NLRB at 661. If not, their conduct would be legal, would not violate Respondent’s policy, and Respondent’s actions in suspending and terminating them for recording the January 9 meetings would violate Section 8(a)(3) as neither lost the Act’s protection. *Id.*

1. Cuff and Mansour’s actions are not prohibited by Washington State law

Section 9.73.030 (1) of the Revised Code of Washington, (referred to as the “Privacy Act,”) reads as follows:

(1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any: (a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication; (b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

WASH. REV. CODE § 9.73.030. Washington’s Privacy Act does not apply to the recording of all conversations, the “Privacy Act protects only private conversations.” *State v. Babcock*, 279 P.3d 890, 894 (Wash. Ct. App. 2012); (citing *State v. Clark*, 916 P.2d 384 (Wash. 1996); *Kadoranian v. Bellingham Police Dep’t*, 829 P.2d 1061 (Wash. 1992)). While Washington’s Privacy Act does not define the term “private,” in determining whether a communication is private Washington courts “consider several factors, including but not limited to, (1) the subject matter of the communication, (2) the location of the participants, (3) the potential



presence of third parties, (4) the role of the interloper,<sup>11</sup> (5) whether the parties manifest a subjective intention that it be private, and (6) whether any subjective intention of privacy is reasonable.” *State v. Mankin*, 241 P.3d 421, 424 (Wash. App. 2010) (internal quotations and citations omitted).

Here, considering all the factors, I find that the January 9 captive-audience meetings were not “private” communications and therefore not covered by Washington’s Privacy Act. There was no subjective intention of privacy explicitly stated by Respondent, or anyone else, at the January 9 meetings, nor is there evidence to suggest that the actions of any meeting participants inferred such an expectation. See *State v. Kipp*, 317 P.3d 1029, 1034 (Wash. 2014) (discussing conduct where people evidenced their subjective intention of privacy, for example by taking the telephone into another room). While the meetings did not occur in a public place, the subject matter of the meetings was unionization, the Union, and the decertification petition/election. These are not private matters. Respondent could have not lawfully restricted employees from discussing what was said about these subjects in the January 9 meetings with outside third parties, including the media or union officials. *Compuware Corp.*, 320 NLRB 101, 103 (1995) (rule restricting employees from engaging in concerted activity by prohibiting communication with third parties a violation), *enfd.* 134 F.3d 1285 (6th Cir. 1998). As such, even if there was any subjective intention of privacy on the part of any of the meeting participants, it was unreasonable. “A person has no reasonable expectation of privacy in a conversation that takes place at a meeting where one who attended could reveal what transpired to others.” *State v. Clark*, 916 P.2d 384, 392 (Wash. 1996). Accordingly, I find that the communications in question here were not “private” and the recordings of the January 9 captive-audience meetings were not subject to Washington’s Privacy Act.

Therefore, neither Cuff nor Mansour violated Washington State law when they recorded the January 9 captive-audience meetings. And, because their recordings were not prohibited by Washington State law, they did they violate Respondent’s policy on recordings. In these circumstances, neither Cuff nor Mansour lost the protection of the Act, and Respondent violated Section 8(a)(1) and (3) of the Act by suspending and terminating them for recording the meetings.<sup>12</sup> *Hawaii Tribune Herald*, 356 NLRB 661 (2011).<sup>13</sup>

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(1) and (3) of the Act by

suspending and discharging Mohammed Mansour and Patrick Cuff for engaging in union activities.

4. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

Specifically, having found that Respondent violated Sections 8(a)(1) and (3) of the Act by suspending and discharging Mohammed Mansour and Patrick Cuff, I shall order Respondent to reinstate them and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

Respondent shall compensate Mohammed Mansour and Patrick Cuff for any adverse tax consequences of receiving a lump-sum backpay award in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014). Respondent shall also compensate Mohammed Mansour and Patrick Cuff for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. *King Soopers, Inc.*, 364 NLRB No. 93 (2016).

Backpay, search-for-work, and interim employment expenses, shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Additionally, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), Respondent shall file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration.

The Respondent shall also be required to expunge from its files any references to the unlawful suspension and discharge issued to Mohammed Mansour and Patrick Cuff, and notify them and the Regional Director of Region 19, in writing, that this has been done and that these unlawful employment actions will not be used against them in any way. The Respondent shall also post the attached notice in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010) and *Durham School Services*, 360 NLRB 694 (2014).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>14</sup>

<sup>11</sup> This factor examines at the role of the nonconsenting party and his relationship to the consenting party.

*State v. Christensen*, 102 P.3d 789, 792 (Wash. 2004).

<sup>12</sup> The complaint also alleges that Respondent enforced its rule on recordings “selectively and discriminatorily.” (Tr. 7.) I find that this allegation is encompassed in the violations already found.

<sup>13</sup> At trial Respondent made a verbal motion for summary judgment, citing *Boeing Co.*, 365 NLRB No. 154 (2017), which I took under advisement. (Tr. 325–327.) In *Boeing Co.*, supra at slip op. 16, the Board

majority specifically noted that, “the Board may find that an employer may lawfully *maintain* a particular rule . . . even though the rule cannot lawfully be *applied* against employees who engage in NLRA protected conduct.” (italics in the original). Because of my findings set forth above, Respondent’s motion is denied.

<sup>14</sup> 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.

## ORDER

Respondent ADT LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Suspending, discharging, or otherwise discriminating against employees because they engaged in activities protected by Section 7 of the National Labor Relations Act, including but not limited to activities in support of IBEW Local 46 and IBEW Local 76.

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

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

(a) Within 14 days from the date of this Order, offer Mohammed Mansour and Patrick Cuff full reinstatement to their former job or, if that job no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make whole Mohammed Mansour and Patrick Cuff for any loss of earnings and other benefits suffered resulting from their unlawful suspension and discharge, including any search-for-work and interim employment expenses, in the manner set forth in the remedy section of this decision.

(c) Compensate Mohammed Mansour and Patrick Cuff for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for Mohammed Mansour and Patrick Cuff.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge of Mohammed Mansour and Patrick Cuff, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful employment decisions will not be used against them in any way.

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

(f) Within 14 days after service by the Region, post at its Bothell and Tacoma Washington facilities copies of the attached notice marked "Appendix."<sup>15</sup> Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such

as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 16, 2018.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply with this order.

Dated, Washington, D.C. July 9, 2019

## 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 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 suspend, discharge, or otherwise discriminate against our employees because they engaged in activities protected by Section 7 of the National Labor Relations Act, including but not limited to activities in support of IBEW Local 46 and IBEW Local 76.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Mohammed Mansour and Patrick Cuff full reinstatement to their former job or, if that job no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Mohammed Mansour and Patrick Cuff whole for any loss of earnings and other benefits resulting from their unlawful suspension and discharge, less any net interim earnings, plus interest, and WE WILL also make them whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Mohammed Mansour and Patrick Cuff for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and we will file with the Regional Director for Region 19, within 21 days of the date the amount of backpay

<sup>15</sup> 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."

is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful suspension and discharge of Mohammed Mansour and Patrick Cuff, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that these unlawful employment actions will not be used against them in any way.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/19-CA-216379](http://www.nlr.gov/case/19-CA-216379) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015

Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

