UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

BOCH IMPORTS, INC. d/b/a BOCH HONDA

and **Case No. 1-CA-83551**

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, DISTRICT LODGE 15, LOCAL LODGE 447

Daniel Fein, Esq. and *Karen Hickey, Esq.*, Counsel for the General Counsel.
Thomas J. McAndrew, Esq, Thomas J. McAndrew & Associates, Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me in Boston, Massachusetts on November 18, 2013[1]. The Amended Complaint herein, which issued on June 17 and was based upon an unfair labor practice charge that was filed on June 20, 2012 by International Association of Machinists & Aerospace Workers, District Lodge 15, Local Lodge 447, herein called the Union, alleges that Boch Imports, Inc., d/b/a Boch Honda, herein called the Respondent, maintained certain overly restrictive rules in its Employee Handbook in violation of Section 8(a)(1) of the Act. As to the allegations contained in Paragraph 7 and 8 of the Amended Complaint, which allege that these Employee Handbook provisions were in effect from about December 21, 2011 to about May 2013, Respondent defends that "…the Company modified the terms and conditions of its Employee Handbook in concert with the Regional Director's office…" and that the General Counsel should be estopped from alleging that these provisions violate the Act. The only provision of the Handbook that was not changed is Paragraph 9 of the Amended Complaint, which states: "In or about May 2013, Respondent implemented and has since maintained the following rule in its Employee Handbook: Employees who have contact with the public may not wear pins, insignias, or other message clothing." Only the legality of this provision was litigated at the hearing.

I. Jurisdiction and Labor Organization Status

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and that the Union has been a labor organization within the meaning of the Act.

II. The Facts

Paragraphs 7 and 8 of the Amended Complaint allege as follows:

> 7. From about December 21, 2011 to about May 2013, Respondent maintained an Employee Handbook containing the following rules and policies:

[1] Unless stated otherwise, all dates referred to herein relate to the year 2013.

(a) Confidential and Proprietary Information, which defined confidential information to include all information that has or could have commercial value or other utility in the Company's business; the identity of the Company's customers, suppliers, and/or prospective customers and suppliers; compensation structures and incentive programs; Company policies, procedures, and litigation activity; and prohibited employees during and after their employment from disclosing or authorizing the disclosure or use of any Confidential Information;

(b) Discourtesy, which stated the following:

> All employees are expected to be courteous, polite and friendly both to customers and to their fellow employees. The use of profanity or disrespect to a customer or co-worker, or engaging in any activity which could harm the image of the Company, is strictly prohibited;

(c) Inquiries Concerning Employees, which stated in relevant part:

> All inquiries from outside sources concerning employees should be directed to the Human Resources Department. An employee shall not provide personal information of any nature concerning another employee (including references) to any outside source unless approved by the Human Resources Department and authorized, in writing by the employee;

(d) Dress Code and Personal Hygiene, which stated in relevant part:

> Employees who have contact with the public may not wear pins, insignias, or other message clothing which are not provided to them by the Company; and

(e) Solicitation and Distribution Policy, which restricts persons who are not employed by Respondent from soliciting and distributing literature or other materials at any time on property adjacent to Respondent's premises.

8. From about December 21, 2011 to about May 2013, Respondent maintained a Social Media Policy in its employee handbook with the following requirements:

(a) prohibited employees from disclosing any information about employees or customers;

(b) required employees to identify themselves when posting comments about Respondent or related to Respondent's business or a policy issue;

(c) prohibited employees from referring to Respondent in postings that would negatively impact the Respondent's reputation or brand;

(d) prohibited employees from engaging in activities that could have a negative effect on Respondent, even if it occurs off Respondent's property or off the clock;

(e) prohibited employees from using Respondent's logos for any reason;

(f) prohibited employees from posting videos or photos that are recorded in the work place;

(g) required employees to contact Respondent's Vice President of Operations before making a statement to the media;

(h) required employees to provide Respondent access to any commentary posted by employees on social media sites; and

(i) required employees to write and post respectfully.

At the hearing, the parties stipulated that, after consultation with the Board's regional office, the Respondent changed these provisions, with the exception of the Dress Code Provision, to the satisfaction of the region, and the region is no longer alleging that, with that one exception, the Employee Handbook provisions contained in Paragraphs 7 and 8 are still in effect. Further, in May 2013, the Respondent issued a revised Employee Handbook containing the corrected provisions, and this revised Employee Handbook was distributed to all employees who received the prior handbook.

The only provision contained in the Employee Handbook presently in effect that is alleged to violate the Act is contained in Paragraph 9 of the Amended Complaint, (also Paragraph 7(d) above) and is listed under the classification Dress Code and Personal Hygiene Policy, which states:

> In or about May 2013, Respondent implemented and has since maintained the following rule in its Employee Handbook:
>
> Employees who have contact with the public may not wear pins, insignias, or other message clothing[2].

The Employee Handbook states:

> Welcome to a Boch Enterprise retail company, which presently include the various Boch new motor vehicle dealerships as well as related retail businesses which may be established from time-to-time (each referred to herein as the "Company"). ..
>
> As an employee, you will want to know what you can expect from our Company and what we expect from you. This Handbook provides information regarding our Company's current benefits, practices, and policies as well as some of the Company's expectations regarding your performance.

David Carlson, Respondent's Service Director, testified that the service department operates seven days a week and employs a service manager as well as about sixteen or seventeen service technicians who work Monday through Wednesday and about the same number of service technicians who work Thursday through Sunday. They are required to wear a blue and gray company jacket, as well as a company hat, which the Respondent provides. The Respondent has never placed any pins or buttons on these uniforms. The technicians perform

[2] The only change to this provision is that the 2013 Employee Handbook removes the words: "which are not provided to them by the Company," which was in the 2010 Employee Handbook.

all facets of repair and maintenance of the automobiles brought to the facility. He testified that safety is one reason for the rule against wearing pins or buttons on the uniform. The technicians, obviously, work on the vehicle's engine and while they are leaning over the engine if a pin or button got loose and fell into the engine it could be dangerous to the technician because it could become a projectile or, more likely, it could fall into the engine, and damage or ruin the engine, depending on where it landed. Additionally, while a technician was working on the vehicle, a pin could damage the interior of the car, or scratch the exterior paint. In addition to maintaining and repairing customer's vehicles, the technicians perform pre-delivery inspections of new cars delivered to the dealership as well as used cars acquired by the dealership. During those inspections, pins or buttons could fall into the engine or damage the inside or outside of the vehicle in the same manner. If a pin or button worn by a technician damaged a customer's car, the dealership would pay to repair that damage.

The technicians also interact with customers, either on a road test, or if the customer requests to look at the car while the technician is working on it, but this interaction occurs only about once a day, on average, for the service technicians. In addition the technicians occasionally, meet with the customers in the parking lot or at the cashier station. The customer waiting area at the facility has a large glass window that allows the customers to observe the technicians while they are waiting for their cars to be serviced. The service advisors are the employees who meet with the customers, get in the car, check the odometer as well as the exterior of the vehicle for any damage and, if the customer agrees, they will top off the washer fluid. The customer tells the service advisor what work has to be done, and they will recommend what work needs to be done depending upon the mileage and condition of the vehicle, and write up the service orders: "They're the face of our service organization."

Carlson also testified that employees are permitted to wear message clothing or pins and buttons to and from work and to have stickers or buttons on their car or toolbox. In fact, Respondent moved into evidence a picture of a technician's tool box with stickers encouraging support of the Union, without complaint from the Respondent. In addition, Respondent recognizes technicians for exemplary service with a sticker or magnetic award that he can put on his tool box, rather than with a button or pin.

Mark Doran, Respondent's General Manager, oversees all departments within the dealership. He testified that Respondent tries to be professional in everything that they do, in appearance and conduct. It is the number one Honda Dealership "on the planet" and spends millions of dollars yearly on advertising to maintain that position. Pins have never been allowed at the dealership; during a blood drive, Red Cross and American flag pins were not permitted, nor are pins recognizing individuals with intellectual disabilities. In addition to image, safety concerns are also important in prohibiting pins; they could damage a car, as Carlson testified. Even without pins, Respondent pays out about $250,000 a year to repair customers' vehicles. The sales employees have a choice of wearing Boch Honda jerseys or their own shirt and tie. Like Carlson, he testified that employees can wear anything when reporting to work, or leaving from work, as long as they change when they arrive and look "professional." At one time, after the Boston Marathon terrorist bombing, the Respondent conducted a fundraiser for Boston Strong and, on that day, the Respondent permitted the employees to wear Boston Bruins, Boston Red Sox, and similar shirts.

III. Analysis

It is initially alleged that from about December 21, 2011 to about May 2013, the Respondent's Employee Handbook maintained provisions regulating Confidential and Proprietary Information, Discourtesy, Inquiries Concerning Employees, Dress Code and

Personal Hygiene, Solicitation and Distribution and Social Media Policy that were overly restrictive and in violation of Section 8(a)(1) of the Act. After consultation with the Board's regional office, the Respondent changed all of these provisions with the exception of the Dress Code provision prohibiting employees who had contact with the public from wearing pins, insignias or other message clothing, and the Respondent issued a revised Employee Handbook in 2013 containing the corrected provisions, which was distributed to all employees who had received the prior Handbook. The region is no longer alleging that these provisions with the exception of the allegation in Paragraph 9 of the Complaint, are still in effect.

Counsel for the Respondent argues that the allegations contained in paragraphs 7 and 8 are moot and do not merit any finding of a violation because after discussions with the Board's regional office, the Respondent rescinded these provisions, replaced them with corrected provisions and distributed a new Employee Handbook to all those employees who had received the prior Handbook. Although I originally agreed with counsel for the Respondent that it would not effectuate the policies of the Act to spend time on these allegations which had already been remedied, a careful examination of the Board's cases, convinces me that my initial impression was incorrect.

In *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), two days prior to the issuance of a Complaint, the respondent's administrator published a statement in the employees' newsletter repudiating an unlawful statement made by a supervisor. The respondent argued that this disavowal obviated the need for any remedial action. The Board disagreed, stating:

> It is settled that under certain circumstances an employer may relieve himself of liability for unlawful conduct by repudiating the conduct. To be effective, however, such repudiation must be "timely," "unambiguous," "specific in nature to the coercive conduct," and "free from other proscribed illegal conduct…" Further, there must be adequate publication of the repudiation to the employees involved and there must be no proscribed conduct on the employer's part after the publication. And, finally, the Board has pointed out that such repudiation or disavowal of coercive conduct should give assurances to employees that in the future their employer will not interfere with the exercise of their Section 7 rights. [citations omitted]

An additional factor to consider in these situations is whether the unfair labor practice was repudiated before or after the issuance of the Complaint. *IBEW, Local 1316*, 271 NLRB 338, 341 (1984).

The Complaint herein issued on December 31, 2012. Subsequently, the Respondent and the Board's regional office entered into discussions on modifications to the Employee Handbook so that it would not unlawfully restrict employees' Section 7 rights, and in May, the Respondent issued a new Employee Handbook modifying the provisions alleged to be unlawful in the December 31, 2012 Complaint, with the exception of the Dress Code provision, Paragraph 9 of the Complaint. Clearly, not all the requirements set forth in *Passavant* have been met. While there has been an adequate publication to the affected employees, the Dress Code provision remains as is in the Handbook, and there have been no assurances by the Respondent that, in the future, it will not interfere with the employees' Section 7 rights.

The 2010 Employee Handbook's Confidential and Proprietary Information provision defines such information as: "All information that has or could have commercial value or other utility in the Company's business. The unauthorized disclosure or use of this information could be detrimental to the Company's interests whether or not such information is specifically

identified as Confidential Information by the Company. Employees who have access to the Company's Confidential Information will be required to sign the Company's Confidential Information Agreement as a condition of Employment." Included in the definition of Confidential Information are customers, suppliers, compensation structures and incentive programs. A lead case on this subject, *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) stated that an employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights. Citing *Lafayette Park Hotel,* 326 NLRB 824 (1998), the Board stated:

> In determining whether a challenged rule is unlawful, the Board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights. Consistent with the foregoing, our inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule *explicitly* restricts activities protected by Section 7. If it does, we will find the rule unlawful. If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

As there is no evidence that any of the rules involved herein were promulgated pursuant to either (2) or (3) above, or that they *explicitly* restrict Section 7 activity, the issue is whether a reasonable construction of the rules would prohibit Section 7 activity. I believe that a reasonable reading of this provision, particularly the restriction on "compensation structures" and "incentive programs" could lead an employee to believe that his ability to discuss his terms and conditions of employment with fellow employees, the media or a union were limited by this provision. I therefore find that the Confidential and Proprietary Information Policy provision in the 2010 Handbook violates Section 8(a)(1) of the Act. *Labinal, Inc.*, 340 NLRB 203, 210 (2003); *Flex Frac Logistics, LLC*, 358 NLRB No. 127 (2012).

The Discourtesy Policy, under General Rules of Conduct, states:

> All employees are expected to be courteous, polite and friendly, both to customers and to their fellow employees. The use of profanity or disrespect to a customer or co-worker, or engaging in any activity which could harm the image or reputation of the Company, is strictly prohibited.

I find that no reasonable reading of the first sentence, as well as the first half of the second sentence (up to co-worker) could be construed as limiting or prohibiting Section 7 rights. *Adtranz ABB Daimler-Benz Transp.,NA, Inc.*, 331 NLRB 291 (2000); *Lutheran Heritage, supra,* at 647. An employer is certainly permitted to maintain order in its workplace and promote harmonious relations between its employees, other employees and its customers. However, the provision prohibiting any activity which could harm the image or reputation of the company is clearly susceptible of being understood to limit employees in their right to engage in a strike, work stoppage or similar forms of concerted activities. The Discourtesy Policy provision therefore violates Section 8(a)(1) of the Act. *Karl Knauz Motors, Inc.*, 358 NLRB No. 164 (2012).

The Inquiries Concerning Employees provision in the 2010 Handbook states, *inter alia:*

> All inquiries from outside sources concerning employees should be directed to the Human Resources Department. An employee shall not provide personal information of any nature concerning another employee to any outside source unless approved by the

Human Resources Department and authorized in writing, by the employee.

Although this provision is limited to sharing information with "outside sources," it would clearly prevent an employee from discussing employees' terms and conditions of employment with union representatives, and would also prevent employees from cooperating with the Board, the media or other governmental agencies, investigating matters involving the Respondent. This provision clearly violates Section 8(a)(1) of the Act. *Supervalu Holdings, Inc.*, 347 NLRB 425 (2006).

The 2010 Handbook's Solicitation and Distribution Provision states, *inter alia:*

> Persons who are not employed by the Company are prohibited from soliciting and from distributing literature and other materials, for any purpose and at any time, within the Company's buildings or property or on or adjacent to the Company's premises.

The Board, in *Bristol Farms, Inc.*, 311 NLRB 437 (1993) stated: "It is beyond question that an employer's exclusion of union representatives from public property violates Section 8(a)(1) so long as the union representatives are engaged in activity protected by Section 7 of the Act." As this is right on point, I find that the Solicitation and Distribution Provision violates Section 8(a)(1) of the Act.

The 2010 Handbook's Social Media Policy Provision is rather extensive, with definitions and fifteen subparagraphs, briefly stated, *inter alia*:

> 1. The Company requires its employees to confine any and all social media commentaries to topics that do not disclose any personal or financial information of employees, customers or other persons, and do not disclose any confidential or proprietary information of the Company.
>
> 2. If an employee posts comments about the Company or related to the Company's business or a policy issue, the employee must identify him/herself…
>
> 5. If an employee's online blog, posting or other social media activities are inconsistent with, or would negatively impact the Company's reputation or brand, the employee should not refer to the Company, or identify his/her connection to the Company.
>
> 7. While the Company respects employees' privacy, conduct that has, or has the potential to have a negative effect on the Company might be subject to disciplinary action up to, and including, termination, even if the conduct occurs off the property or off the clock.
>
> 8. Employees may not post videos or photos which are recorded in the workplace, without the Company's permission.
>
> 9. If an employee is ever asked to make a comment to the media, the employee should contact the Vice President of Operations before making a statement.
>
> 10. The Company may request that an employee temporarily confine its social media activities to topics unrelated to the Company or a particular issue if it believes this is necessary or advisable to ensure compliance with applicable laws or regulations or the policies in the Employee Handbook. The Company may also request that employees provide it access to any commentary they posted on social media sites.

11. Employees choosing to write or post should write and post respectfully regarding current, former or potential customers, business partners, employees, competitors, managers and the Company. Employees will be held responsible for and can be disciplined for what they post and write on any social media. However, nothing in this Policy is intended to interfere with employees' rights under the National Labor Relations Act.

12. Managers and supervisors should think carefully before "friending," "linking" or the like on any social media with any employees who report to them.

It requires little discussion to find that a number of these provisions clearly violate the Act as employees would reasonably construe these provisions as preventing them from discussing their conditions of employment with their fellow employees, radio and television stations, newspapers or unions, or limiting the subjects that they could discuss. *Cintas Corp.* 344 NLRB 943 (2005); *Crowne Plaza Hotel*, 352 NLRB 382 (2008); *Karl Knauz Motors, supra.* I therefore find that Provisions 1, 5, 7, 8, 9, 10 and 11 of the Social Media Provision of Respondent's 2010 Employee Handbook violates the Act.

The remaining issue is the Dress Code contained in both the 2010 and 2013 Employee Handbooks stating: "Employees who have contact with the public may not wear pins, insignias, or other message clothing." This provision applies to the service technicians, the service advisors as well as the salespeople. An often cited case, *The Kendall Company*, 267 NLRB 963, 965 (1983), stated:

> While employees have the right to wear union insignia at work, employers have the right to take reasonable steps to ensure full and safe production of their product or to maintain discipline. Therefore the Board holds that a rule which curtails that employee right is presumptively invalid unless special circumstances exist which make the rule necessary to maintain production or discipline, or to ensure safety.

Such special circumstances would include situations where the wearing of insignias or "other message clothing" might jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image that the employer has established, or when necessary to maintain decorum and discipline among employees. *Nordstrom, Inc.*, 264 NLRB 698, 700 (1982); *United Parcel Service,* 312 NLRB 596, 597 (1993); *Komatsu American Corp.,* 342 NLRB 649, 650 (2004). In *United Parcel, supra,* the Board stated: "In determining whether an employer, in furtherance of its public image business objective, may lawfully prohibit uniformed employees who have contact with the public from wearing union insignia, the Board considers the appearance and message of the insignia to determine whether it reasonably may be deemed to interfere with the employer's desired public image." However, customer exposure to such insignia, alone, is not a special circumstance allowing the employer to prohibit such a display. *Meijer, Inc.*, 318 NLRB 50 (1995).

The Respondent defends that the special circumstances herein are that pins are a safety hazard that could injure its employees and damage its vehicles, and, additionally, that as Number 1 on the Planet, it is protecting its image. I agree with its initial defense, but disagree with the latter. Obviously, pins can fall from the clothing that they are attached to and, possibly, damage the engine or interior or exterior of a vehicle that the employee is working on, or could become a projectile and injure the employee. *The Kendall Company, supra; E & L Transport Company, LLC*, 331 NLRB 640, 649 (2000). Therefore, they can be lawfully prohibited. However, although the Respondent established that the employees have direct contact with the

customers, and that the customers can observe the service technicians through the large glass window in the waiting area, it has not established any special circumstances warranting the prohibition of wearing "insignias or other message clothing." It is more likely that the display would be a Boston Red Sox or Boston Strong display, rather than an offensive or defamatory display. *Pathmark Stores, Inc.*, 342 NLRB 378 (2004). There are numerous factors that need to be weighed to determine whether a displayed item constitute special circumstances and should be permitted, including size and the message thereon. A blanket prohibition such as the instant one, therefore violates Section 8(a)(1) of the Act. *Titus Electric Contracting, Inc.*, 355 NLRB 1357 (2010).

Conclusions of Law

1. Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by maintaining in its Employee Handbook from about December 21, 2011 to about May 2013, provisions relating to Confidential and Proprietary Information, Discourtesy, Inquiries Concerning Employees, Dress Code and Personal Hygiene, Solicitation and Distribution Policy, and Social Media Policy. All of these provisions, with the exception of Dress Code and Personal Hygiene, were modified by the Respondent and codified in a new Employee Handbook dated May 2013, and therefore require no remedy.

4. Respondent violated Section 8(a)(1) of the Act by implementing and maintaining a rule in its Employee Handbook, effective May 2013, stating: "Employees who have contact with the public may not wear insignias, or other message clothing."

5. Respondent did not violate the Act by prohibiting its employees from wearing pins.

The Remedy

Having found that Respondent has unlawfully maintained the Dress Code and Personal Hygiene Policy since about December 2011, I recommend that the Respondent rescind this provision (with the exception of the prohibition on wearing pins) from its Employee Handbook and notify its employees that it has done so and that this provision is no longer in effect. An issue arose at the hearing as to which unit of employees would be affected by this hearing and remedy. The Respondent is Boch Imports, Inc., d/b/a Boch Honda; however, the Employee Handbook, under the caption: "WELCOME," states: "Welcome to a Boch Enterprise retail company, which presently includes the various Boch new motor vehicle dealerships, as well as related retail businesses which may be established from time-to-time (each referred to herein as the 'Company')." Kathleen Genova, the Respondent's vice president and general counsel, testified that the Employee Handbook applied to employees at all of Mr. Boch's dealerships. At the hearing, Counsel for the General Counsel introduced in evidence a listing of Boch dealerships from Boch's website and moved to amend the Complaint to allege that the handbooks are unlawful at all of Respondent's enterprises where they are in effect. I denied this request to amend the Complaint. In *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), the Board stated:

> Concerning the scope of notice posting, we have consistently held that, where an

employer's overbroad rule is maintained as a companywide policy, we will generally order the employer to post an appropriate notice at all of its facilities where the unlawful policy has been or is in effect…There is no dispute in this case that the unlawful rules apply to all of the Respondent's employees nationwide. Accordingly, we will modify the judge's Order to provide for nationwide posting of the remedial notice.

In *Raley's, Inc.,*311 NLRB 1244 (1993), the Board found that because the respondent did not except to the judge's finding that the dress code applied to employees at all of its stores, the remedy would apply to all stores. As the judge stated (at p. 1252): "the remedy directed herein shall be coextensive with Respondent's application of its union button prohibition rule." In *Marriot Corporation,* 313 NLRB 896, the General Counsel excepted to the judge's failure to require the Respondent to rescind the unlawful prohibition at all of its facilities where the unlawful rule was promulgated and maintained. The Board refused to do so stating: "Given the absence of any evidence, finding or stipulation that the unlawful rule was promulgated or maintained at any other of the Respondent's facilities, we find that the issue of more widespread violations was not fully litigated." In the instant matter, the Handbook states that it applies to all "Boch new motor vehicle dealerships as well as related retail businesses," and Genova testified that it applied to employees of all of Mr. Boch's dealerships. As the Employee Handbook is effective at all Boch dealerships, and employees at all the dealerships presumably received the Handbook, it is appropriate that employees at all of these dealerships be aware of the findings herein.

Upon the foregoing findings of fact, conclusions of law and on the entire record, I hereby issue the following recommended[3]

ORDER

The Respondent, Boch Imports, Inc., d/b/a Boch Honda, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Promulgating and enforcing an overly broad appearance policy prohibiting employees who have contact with the public from wearing insignias or other message clothing.

(b) In any like or related manner interfering with, restraining or coercing its 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) Rescind the Dress Code provision prohibiting its employees from wearing insignias or other message clothing, and notify the employees at all of its dealerships and related businesses, by a Corrected Employee Handbook, email or by letter, that it has done so and that this prohibition is no longer in effect.

[3] 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.

(b) Within 14 days after service by the Region, post at each of its dealerships and related retail businesses, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 21, 2011.

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

IT IS FURTHER ORDERED that the Amended Complaint be dismissed insofar as it alleges that the wearing of pins by employees with contact with the public violates the Act.

Dated, Washington, D.C. January 13, 2014

Joel P. Biblowitz
Administrative Law Judge

[4] 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."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

Although our 2010 Employee Handbook contained some overly restrictive policies that interfered with certain of the rights guaranteed you by Section 7 of the Act, we have rescinded those policies, with the exception of the Dress Code and Personal Hygiene Policy referred to below, and replaced them in our 2013 Employee Handbook,

WE WILL NOT promulgate or enforce an overly broad appearance policy prohibiting employees who have contact with the public from wearing insignias or other message clothing, and **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 modify our Employee Handbook by rescinding the Dress Code Provision that prohibits employees who have contact with the public from wearing insignias or other message clothing.

BOCH IMPORTS, INC., d/b/a BOCH HONDA
(Employer)

Dated______________ By____
(Representative) (Title)

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

10 Causeway Street, Boston Federal Building, 6th Floor, Room 601
Boston, Massachusetts 02222–1072
Hours of Operation: 8:30 a.m. to 5 p.m.
617-565-6700.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 617-565-6701.