*6NOTICE:* *This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

Refresco Beverages US, Inc. *and* United Electric, Radio, and Machine Workers of America (UE), Local 115. Cases 22–CA–294330 and 22–CA–294642

December 16, 2024

DECISION AND ORDER

By Chairman McFerran and Members Prouty
and Wilcox

On June 2, 2023, Administrative Law Judge Kenneth W. Chu issued the attached decision. The General Counsel and Charging Party filed exceptions and supporting briefs, the Respondent filed an answering brief, and the General Counsel and Charging Party filed reply briefs.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,[[1]](#footnote-1) and conclusions only to the extent consistent with this Decision and Order.[[2]](#footnote-2)

The issue before the Board is whether the Respondent violated Section 8(a)(1) of the Act when it instructed employee Cesar Moreira to remove a union sticker from his single-use coverall. The judge dismissed the allegation, finding that the Respondent’s concerns about safeguarding its equipment and food products from contamination established special circumstances justifying its restriction on union insignia. For the reasons explained below, we disagree.

i. factual background

The Respondent operates a beverage bottling and blending facility in Wharton, New Jersey. In 2014, Cesar Moreira began working at the Respondent’s Wharton facility in the batching department as a batching technician. Moreira is a member of the United Electric, Radio, and Machine Workers of America (UE), Local 115. Moreira was tasked with blending ingredients to make the Respondent’s beverages. Moreira testified that he always wears a single-use coverall over his street clothes. Plant Manager Frank Gohl testified that the Respondent makes single-use coveralls—a disposable white garment made of microporous laminate film—available to all employees, not just those in the batching department. Gohl explained that employees use the single-use coveralls to complete cleaning on the production line, located outside of the batching department, and to protect the employee’s street clothes. Gohl further explained, however, that the Respondent neither required nor encouraged workers in the batching department to wear the single-use coverall.

The judge credited testimony from the Respondent’s witnesses that the batching department was the highest risk area for contamination because it is where contaminants might have direct contact with the beverage mixture. Gohl testified that the facility has a Good Manufacturing Practices (GMP) policy, in effect since May 2018, later revised in January 2022, to ensure product quality and to deliver a safe product to the consumer. The GMP policy applies to “all Refresco North America Production and Processing facilities.” Gohl also explained that the GMP policy prohibits, among other things, “loose objects” that could fall into the food, equipment, or containers.[[3]](#footnote-3)

Moreira recounted that beginning in April or May 2021, he wore a union sticker on his coveralls daily. Moreira testified, uncontradicted, that he wore the sticker for approximately a year and was never told to remove it until April 22, 2022.[[4]](#footnote-4) On that occasion, two weeks before the union election,[[5]](#footnote-5) Carrera was hosting his daily supervisory meeting with workers when he saw Moreira walk by wearing a union sticker on his single-use coveralls. Carrera stopped the meeting and instructed Moreira to remove the sticker from his coverall. It is also undisputed that Moreira complied and removed it.

Moreira testified, uncontradicted, that when he removed the union sticker, “part of the cover[all] was peeling or tearing off with the sticker.” Also uncontradicted, Carrera testified that he did not see Moreira’s union sticker falling off. Carrera further testified that he nonetheless asked Moreira to remove the sticker from his single-use coverall, stating that stickers do not “attach 100% properly” to the single-use coverall which is made from “a kind of polypropylene.”

Irma Carillo, a machine operator on the production line, testified that she wore a union sticker on her work uniform shirt. Carrera further testified that workers also placed stickers on their street clothes as well as on their toolboxes. Both Moreira and Production Manager Carrera testified that most of the employees wore union stickers on their helmets throughout the facility. While Carrera recalled management discussing stickers on the single-use suits prior to the April 22 incident, Plant Manager Gohl testified that, prior to the April 22 incident, the management team had not discussed stickers on the single-use suits but had discussed stickers generally because some workers were placing stickers on their helmets. Gohl explained that he and the management team did not view stickers placed on helmets as high risk because the sticker “seemed well adhered” and because it did not seem to be folding over “or look like it was going to come loose in any meaningful way.” Carrera similarly explained that he instructed Moreira to remove the union sticker from his single-use coverall and not from his helmet because a sticker was “more sticky” on a helmet and would not easily fall off unless removed by the wearer.

Moreira testified that after Carrera instructed him to remove the union sticker, he did not wear a union sticker until Carrera left Respondent’s employ about a year later. Moreira also testified that he started wearing a union sticker on his single-use coverall again following Carrera’s departure, and no supervisor or manager told him he could not wear a union sticker. As of April 18, 2023, Moreira resumed wearing a union sticker on his single-use coveralls.

ii. judge’s decision

Pointing to the testimony of Production Manager Carrera and Plant Manager Gohl, the judge found that Carrera told Moreira to remove the union sticker from his single-use coverall because of contamination concerns. Applying *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–803 (1945), and its progeny, the judge found that the Respondent’s concerns about safeguarding its equipment and food products from contamination constituted special circumstances justifying its prohibition on Moreira wearing a union sticker on his coveralls. In so doing, the judge found, based on credited testimony, that the “overriding priority at the facility was to ensure that the equipment was sanitized and the products were not contaminated.” As support, the judge pointed to the Respondent’s GMP policy, which prohibits, among other things, unsecured objects that might fall into the food, equipment, or containers. The judge thus found that the Respondent had a “legitimate concern to safeguard the equipment and food products from contamination” and determined that the Respondent’s restriction on Moreira’s union sticker was a “targeted and narrow prohibition.” Specifically, the judge noted that the restriction was “narrowly applied within a limited area, namely, the batching room” and that elsewhere in the facility the wearing of union insignia was unrestricted. The judge further noted that while the incident occurred during the midst of the Union’s pending election, the direction to Moreira to remove the sticker on one occasion did not intimidate him or the other workers. In these circumstances, the judge found that the Respondent had met its burden of establishing that its restriction on Moreira’s union sticker was justified by special circumstances and therefore lawful.

On exception, the General Counsel asserts that the judge erred in finding that the Respondent established special circumstances justifying its prohibition on Moreira’s union coverall sticker. Specifically, the General Counsel contends that the record evidence does not demonstrate that the union sticker on Moreira’s coverall was a potentially loose item that would fall into the open tanks in the blending room. To the contrary, the General Counsel asserts that, on the facts of this case, no clear safety concern existed and that the precedent the judge relied on to find to the contrary is distinguishable. For its part, the Respondent contends that the judge correctly concluded that the facts presented here fall within the Board’s precedent for finding that special circumstances justify the union sticker prohibition. In this regard, the Respondent contends that the record establishes that concerns about product contamination undergirded the ban and that the ban was narrowly tailored to address those contamination concerns.

iii. analysis

It is well settled that an employer violates Section 8(a)(1) when it prohibits employees from wearing union insignia, absent special circumstances. *Republic Aviation* *Corp. v. NLRB*, supra, 324 U.S. at 801–803. Special circumstances justify restriction of union insignia “when their display may jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image that the employer has established, as part of its business plan, through appearance rules for its employees.” *Bell-Atlantic-Pennsylvania*, 339 NLRB 1084, 1086 (2003), enfd. sub nom. *Communications Workers of America, Local 13000 v. NLRB*, 99 Fed.Appx. 233 (D.C. Cir. 2004). The Board has also recognized that “[h]ealth and safety concerns may constitute special circumstances.” *W San Diego*, 348 NLRB 372, 375 (2006) (citing *Albis Plastics*, 335 NLRB 923, 924 (2001), enfd. mem. 67 Fed.Appx. 253 (5th Cir. 2003)).

It is the employer’s burden to prove the existence of special circumstances justifying its restriction on union insignia. *AT&T*, 362 NLRB 885, 887 (2015); see also *Guard Publishing Co. v. NLRB*, 571 F.3d 53, 61 (D.C. Cir. 2009) (“When it bans the wearing of union insignia, the employer bears the burden of overcoming the presumption of an unfair labor practice by demonstrating that special circumstances exist.”), enfg. in pertinent part 351 NLRB 1110 (2007). Further, the restriction must be narrowly tailored to address the special circumstances justifying its maintenance. See *Boch Honda*, 362 NLRB 706, 707 (2015), enfd. sub nom. *Boch Imports, Inc. v. NLRB*, 826 F.3d 558 (1st Cir. 2016). It is not enough for an employer simply to articulate a legitimate justification for restricting union insignia; rather, the employer must substantiate that justification in the factual situation presented. See *Constellation Brands U.S. Operations, Inc. v. NLRB*, 992 F.3d 642, 648 (7th Cir. 2021) (noting that “the company had the affirmative obligation of proving its position with facts and evidence” in rejecting employer argument that “Cellar Lives Matter” slogan could exacerbate employee dissention), enfg. 367 NLRB No. 79 (2019). For example, in *In-N-Out Burger, Inc.*, the Board rejected the Respondent’s health-and-safety special-circumstances argument where, among other things, there was no evidence that the manager examined the union insignia to determine whether it raised any health or safety concerns prior to directing the employee to remove it.  365 NLRB 471, 471 fn. 2, 480–481 (2017), enfd. 894 F.3d 707 (5th Cir. 2018), cert. denied 139 S.Ct. 1259 (2019).

Before the judge and in its brief to the Board, the Respondent asserts that health and safety concerns in the blending room justified Production Manager Carrera’s prohibition on Moreira’s coverall sticker. The Respondent points to its GMP policy, which prohibits employees from wearing “loose objects” that could fall into food, equipment, or containers and requires “unsecured jewelry and other objects” to be removed.

We do not question the legitimacy of the GMP policy. Here, however, the Respondent offered no evidence tending to establish that Moreira’s sticker actually implicated the concerns of the GMP policy, namely that the sticker constituted a “loose” or “unsecured” object that threatened contamination. Indeed, the evidence is to the contrary.

The Respondent permitted employees to wear stickers on their street clothes and helmets throughout the facility, apparently without incident.[[6]](#footnote-6) Moreira wore a sticker on his coverall for approximately a year before he was told to remove it immediately prior to the union election. The Respondent presented no evidence indicating that Moreira’s sticker ever fell off, or showed a tendency to fall off, in that time. Nor did the Respondent present evidence that Moreira’s sticker was peeling up, or at risk of falling off, when Production Manager Carrera told him to remove it. The Respondent offered no evidence that Carrera examined Moreira’s union coverall sticker at that time, and Carrera’s uncontradicted testimony was that he did *not* see the sticker loose or falling off.[[7]](#footnote-7) Moreira, in turn, testified that when he removed the sticker at Carrera’s instruction, a part of the coverall itself peeled or tore off along with the sticker – striking evidence that the sticker was firmly stuck. In short, the record established no factual basis for Carrera’s concern that the sticker was at risk of falling off and causing contamination. As the Board has found, purely speculative concerns about potential health and safety issues cannot justify an employer’s prohibition on union insignia.[[8]](#footnote-8)

In upholding the prohibition on Moreira’s sticker, the judge cited the Board’s decision in *W San Diego*, supra, but we find that case distinguishable on its facts. There, the Board specifically noted that the stickers at issue were “loosely attached” and that “[a]t least one sticker was already starting to peel off after only a few hours.” 348 NLRB at 375. The Board concluded that “[t]his evidence therefore shows that the stickers posed a real danger of falling off and thereby presented a contamination risk.” Id. As we have explained, the record here lacks this sort of evidence. Nor can we conclude categorically that union stickers will always pose the same risk of contamination that the employer was able to demonstrate in *W San Diego*.[[9]](#footnote-9)

In addition to echoing the judge’s findings above, the Respondent contends that a Board finding here that it did not establish special circumstances would effectively second-guess the Respondent’s judgment regarding the potential contamination risk arising from the sticker and hold it to a standard that permits an employer to impose a union sticker prohibition only “on the precipice of disaster.” Contrary to the Respondent’s assertions, we do not substitute our judgment for that of the Respondent’s, nor do we require employers to prove that a threatened harm is imminent. Rather, consistent with established Board precedent, we apply the special circumstances test to the facts of this case and, as explained above, find that the Respondent has failed to meet its burden under that test as it has pointed only to speculative concerns about the coverall sticker, which are insufficient to outweigh the employees’ Section 7 right to display union insignia.[[10]](#footnote-10)

Based on the foregoing, we conclude that, on this record, the Respondent failed to establish that the Respondent’s broad prohibition on Moreira’s union coverall sticker was justified by special circumstances.[[11]](#footnote-11) We therefore reverse the judge and find that the Respondent violated Section 8(a)(1) of the Act by instructing Moreira to remove the union sticker from his coverall.

Conclusions of Law

1. The Respondent, Refresco Beverages US, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. During the relevant period, Felipe Carrera was a supervisor within the meaning of Section 2(11) of the Act and/or agent within the meaning of Section 2(13) of the Act.

3. On about April 22, 2022, the Respondent, by Felipe Carrera, violated Section 8(a)(1) of the Act by instructing Cesar Moreira to remove his union sticker.

4. The unfair labor practice found above affects commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in an unfair labor practice, we shall order it to cease and desist and to post a notice in a conspicuous place in its Wharton, New Jersey facility for 60 days. The notice shall be posted in English and Spanish. Both Cesar Moreira and Irma Carillo testified through an interpreter at the unfair labor practice hearing, and the record demonstrates that the Respondent offers annual trainings in English and Spanish. In these circumstances, we find that notice postings in English and Spanish are warranted. See, e.g., *HSA Cleaning Inc.*, 373 NLRB No. 46, slip op. at 1 fn. 4 (2024).

ORDER

The National Labor Relations Board orders that the Respondent, Refresco Beverages US, Inc., Wharton, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Ordering employees to remove union insignia from their work clothing.

(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) Post at its Wharton, New Jersey facility copies of the attached notice marked “Appendix.”[[12]](#footnote-12) Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent in English and Spanish 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 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 April 22, 2022.

(a) Within 21 days after service by the Region, file with the Regional Director for Region 22 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.

 Dated, Washington, D.C. December 16, 2024

Lauren McFerran, Chairman

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David M. Prouty, Member

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Gwynne A. Wilcox, Member

(seal) National Labor Relations Board

APPENDIX

Notice to Employees

Posted by Order of the

National Labor Relations Board

Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

We will not order you to remove union insignia from your work clothing.

We will not in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

Refresco Beverages US, Inc.

The Board’s decision can be found at [www.nlrb.gov/case/22-CA-294330](http://www.nlrb.gov/case/22-CA-294330) 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, SE, Washington, DC 20570, or by calling (202) 273-1940.



Sharon Chau, Esq., for the General Counsel.

Howard M. Wexler, Esq. and Jason J. Silver, Esq., of New York, New York, for the Respondent.

Margot Nikitas, Esq., of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

Statement of the Case

Kenneth W. Chu, Administrative Law Judge. I tried this case in a videoconference hearing on April 18, 2023, pursuant to a complaint issued by Region 22 of the National Labor Relations Board (NLRB) on February 17, 2022. United Electric, Radio, and Machine Workers of America (UE), Local 115 (Union) filed this amended charge on April 25, 2022. Respondent Refresco US, Inc. (Refresco) timely filed an answer on March 3, 2023, denying the main allegations in the complaint (GC Exh 1).[[13]](#footnote-13)1 The complaint alleges that Refresco, by Production Manager Felipe Carrera on or about April 22, 2022, at Respondent’s facility, “. . . asked employees to remove union insignia while permitting employees to wear other insignia” (GC Exh. 1(h) at par. 5). By the conduct described, the complaint alleges that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (Act).[[14]](#footnote-14)2

On the entire record, including my assessment of the witnesses’ credibility[[15]](#footnote-15)3 and my observations of their demeanor at the hearing and corroborating the same with the adducedevidence of record, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

i. jurisdiction and Union status

The employer is a domestic Georgia corporation, with its parent company, Refresco US Holding, Inc., in Tampa, Florida, operates a facility at 92 North Main Street, Wharton, New Jersey (Wharton facility). The Respondent is engaged in the blending and bottling of beverages for retailers. During the preceding 12-month period, the Employer purchased goods and supplies valued in excess of $50,000 directly from points outside the State of New Jersey (GC Exh. 1(h) at par. 2). In its answer, the Respondent admits to par. 2 in the complaint (GC Exh. 1(k)). As such, I find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The United Electric, Radio, and Machine Workers of America (UE), Local 115 is and has been a labor organization within the meaning of Section 2(5) of the Act.

ii. alleged unfair labor practices

During the relevant period of time, the Respondent’s Wharton facility was engaged in the blending and bottling of beverages. On May 4, 2021, the Union filed a petition for certification of representative at the Wharton facility (GC Exh. 2). The Union and Respondent entered into a stipulated election agreement on May 26, 2021. (GC Exh. 3). For reasons unrelated to this proceeding, the scheduled election was set aside by the Board on April 5, 2022, and the results of the election was vacated and the case remanded to the Regional Director to conduct a second election (GC Exh. 4). An order to reschedule the election was issued by the Region on May 2, 2022 (GC Exh. 5). On June 1, 2022, Region 22 issued a certification of representative (GC Exh. 6), finding that a majority of the valid ballots had been casted in favor of the Union as the exclusive collective-bargaining representative of the following unit,

All Full-Time and Regular Part-Time Hourly Employees to include, Aseptic Techs, Batching Techs, Blending Techs, Ingredients Techs, Maintenance Techs, Quality Techs, Sanitation Techs, Forklift Operators, Forklift Operators II, Machine Operators, Machine Operators II, III and IV, Mechanics, Mechanics II, III and IV, Batching Leads, Machine Operator Leads, Maintenance Leads, Production Shift Leads, Quality Leads, Sanitation Tech Leads, and Warehouse Leads employed by the Employer at its Wharton, New Jersey facility.

Excluded: All Office Clerical Employees, Temporary Employees, Human Resources Administrators, Inventory Control Specialist, Maintenance Parts Coordinators Maintenance Planners, Guards, Managers, and Supervisors as defined in the Act, and all other employees*.*

It was during the pendency of the second election, that the complaint alleges on about April 22, 2022, the Respondent asked employees to remove their union insignia.[[16]](#footnote-16)4

a. The April 22, 2022 incident

Cesar Moreira (Moreira) is employed at the Respondent’s Wharton facility as a batching technician since 2014 and is a member of the Union. Moreira testified that he prepares the ingredients used to blend different juice formulas (Tr. 16). The job description of a batching technician is to obtain raw ingredients and other necessary materials to pump and blend the ingredients in accordance with the recommended formulas in bottling the final product (R. Exh. 3). Among other duties, the batching technician ensures the cleanliness of the silos, tanks and production lines and performs all necessary quality checks. The technician is responsible to ensure there are no contaminants during the blending process and is to report any safety or quality problems to the plant manager. The batching technician must also be knowledgeable with the Respondent’s Good Manufacturing Practices (GMP) (R. Exh. 1).

Moreira testified he is familiar with the Good Manufacturing Practices (GMP). He understands that the policy means not to wear items that might interfere with the duties of the job, such as rings and jewelry, and to wear safety items, such as safety shoes, hairnet, googles, helmets, and to limit exposure of beards. Moreira said that the GMP was designed to prevent contamination of the product. He said that if the liquid is contaminated, the product would have to be disposed and all equipment sanitized (Tr. 32–34).

Moreira testified that he has been wearing a union sticker since 2020.[[17]](#footnote-17)5 He places the sticker on the left side of his heart on his disposal suit. The disposal suit is known as a Tyvek suit and covers the entire body of the worker. The suit is worn to protect the street clothes of the worker while blending the liquid ingredients (See, picture of Tyvek suit at R. Exh. 4). Moreira usually wears the suit when cleaning the machines or mixing the ingredients for the juices. He wears a new cover on a daily basis. He said he had always placed a union sticker on the suit. He said the union sticker is thrown away along with the suit at the end of the workday. Moreira said that the wearing of the suit is not mandatory. He does not know if other workers are required to wear a suit outside of the batching department (Tr. 17, 18, 40).

Moreira knows Felipe Carrera (Carrera) as the production manager in 2022. According to Moreira, Carrera spoke to him about his union sticker just prior to the election in May 2022. Moreira said he was returning from a bathroom break to his batching department and Carrera was in a supervisory meeting by production lines 4 and 5. Moreira said Carrera observed his union sticker on his suit while passing by. According to Moreira, Carrera stopped the meeting and told Moreira “you can’t have your sticker there,” pointing to the sticker on the left side of his chest. Carrera said he can have the sticker on his helmet. Moreira replied that the helmet is the property of the Respondent and the cover is disposed at the end of the day. According to Moreira, Carrera again instructed Moreira to remove his sticker. Moreira did so and placed the sticker on his helmet. Moreira testified that Carrera told him that if he “. . . was going to be a bother,” he would be sent to the office. Nothing else was said (Tr. 18–21, 38). Carrera was not Moreira’s direct supervisor but was the operations manager at the Wharton facility in April 2022 (Tr. 24, 27).

Moreira described the union sticker as the size in diameter of a regular coffee cup. He said the sticker stated, “vote for the union” (Tr. 25). Moreira maintained that the sticker was completely attached to his cover and was not falling off. Moreira testified that he did not continue to wear the sticker on his cover for fear of retaliation by Carrera but resumed wearing the sticker after Carrera was reassigned from the plant. Moreira believed that Carrera left about a year or more ago (from time of the hearing, which would be place his departure during the 2022 time rame). Moreira insisted he has never been told by other supervisors to remove his sticker from his cover or to place the sticker on his helmet (Tr. 21–23, 34). He testified he is currently wearing his sticker on his cover (Tr. 39). Moreira is aware that other workers would place the sticker on their helmet and tool boxes. He was not aware of any other incidents regarding workers being told to remove their stickers from their Tyvek suit. He also has no knowledge of other workers putting sticker on their suits (Tr. 36). Moreira testified that most workers would wear the union sticker on their helmets.[[18]](#footnote-18)6 He estimated that 70 percent of the plant workers wore the sticker on their bum cap. He said that before the first election, the sticker read, “join the union” and it then changed to “vote for the union” prior to the first election (Tr. 28, 29). Moreira recalled placing the sticker on his cover after the election. He has also penned in slogans on his cover with a marker. He maintained he was never instructed to remove his cover because of the markings he placed on his cover (Tr. 29, 30, 35).

Irma Carillo (Carillo) is a machine operator on production line 4 at the Wharton facility since November 2018 and is a member of the Union (Tr. 44, 45). Carillo testified that she knows Carrera as the manager at the Wharton facility and believed he left 6 months ago (from the time of this proceeding) (Tr. 44).

Carillo testified that she witnessed the conversation between Carrera and Moreira, which she place about 2 weeks before the election. She said she was approximately two meters from the two individuals. Carillo testified that she heard Carrera tell Moreira that he could not wear a sticker on his cover. She also heard Moreira responded, “why not?” According to Carillo, Carrera stated it was because the cover belongs to the Company and said Moreira could place the sticker on his helmet. Moreira replied that the suit was disposable and therefore it did not really belong to the Company, but that the helmet did belong to the company (Tr. 44–46).

Carillo testified that the sticker stated, “vote for the union” and was approximately five centimeters wide and was placed by Moreira on his suit on left chest (Tr. 46). Carillo stated that she wears her union sticker on her work shirt (that is provided by the Company and has the Refresco logo) and on her helmet. Carillo does not work in the batching department and does not work in close proximity to the blending of the ingredients to make the products. She stated that no one ever told her that she had to remove her union sticker (Tr. 47, 48).

b. The Respondent’s rationale

Felipe Carrera (Carrera) is no longer employed with the Respondent. He worked at Refresco from December 2019 to September 2022 and was based in Florida. During his employment with the Respondent, Carrera held the positions of maintenance manager and improvement manager. Although he was stationed in Florida, Carrera would travel to the Wharton facility. At the time, Carrera was the operations manager and was responsible for management of the majority of the Wharton facility’s operations (Tr. 87–89).

Carrera was knowledgeable with the Respondent’s GMP and knows Moreira as a blending operator. Carrera testified he was not his direct supervisor but oversaw the area. He recalled a conversation with Moreira around April 22, 2022 at 10 a.m. near production line 5. Carrera said the conversation was no longer than 20 seconds (Tr. 90, 91, 98). Carrera testified that his conversation with Moreira related to sticker that was placed on his white coat. Carrera asked Moreira to remove the sticker for risk of contamination. He stated to Moreira to remove the sticker “. . . because the risk of it fell off and contaminated the product while he prepared juice” (Tr. 91, 92).

Carrera testified that he had a meeting earlier with managers and supervisors from all departments on how to react and address the workers that they believed were engaged in an activity that posed a risk in contaminating the products (Tr. 92). Following this meeting with his supervisor, Carrera observed Moreira walking by with the sticker on his Tyvek suit. Carrera testified,

“Well, the reason why I asked him to remove the sticker is because the material from the white coat is a kind of polypropylene, which is easy to fell off any sticker because did not attach 100% properly to that. So it’s easy to it fell off while they are preparing the juice, because in order to prepare the juice, they had to jump—they had to dump product into the tanks. And this is what may can—that may can occur” (Tr. 95).

Carrera specifically recalled telling the managers and supervisors to make sure that no employees should wear stickers on their white coat. He said that was discussed in the management meeting. He said supervisors and managers talked about how to ensure that the workers follow the GMP to prevent the risk of contamination, and specifically, with respect to wearing stickers on their white coats. He said that the stickers should be removed to prevent any product contamination while they are dumping ingredients into the tanks (Tr. 99, 100).

Carrera testified that he also observed Moreira with the union sticker on his bum cap. He only instructed Moreira to take the sticker off his suit. He allowed the sticker on the helmet because, “Well, because two things. Most of the employees has stickers on the bum caps and also on the bum caps, the sticker is more sticky. It’s not easy to fell off by itself unless you remove that” (Tr. 92, 93). He said he has observed union stickers on helmets, toolboxes, lockers, and even on the cars. Carrera he never instructed any worker to remove the sticker from those objects. Carrera believed that self-made markings on the suit should not be allowed because the ink might contaminate the product while the juice is being mixed (Tr. 93–95).

Carrera testified that Moreira removed the sticker. Carrera denied telling Moreira he would be subjected to discipline if he failed to comply. He said their conversation was not argumentative or confrontative. Carrera stated that Moreira never protested the removal of his sticker and merely continued to walk to his work area. Carrera never told Moreira that he should remove his sticker because he supported the union and that Moreira never said anything to Carrera during their conversation (Tr. 95–97).

Carrera testified that he had a follow-up meeting with Frank Gohl, who was his supervisor. According to Carrera, Gohl told him that he heard from someone in the Union talking about his conversation with Moreira. Carrera testified that Gohl asked him what was said to Moreira, and Carrera responded, “ I said to him, I just followed what we talk about in our management meeting to remove any kind of potential risk of contamination from the white coat. And that it was a very short conversation here” (Tr. 98, 99). Carrera testified that he did not notice that the sticker was falling off Moreira’s coat (Tr. 100).

Frank Gohl (Gohl) is and has been the plant manager at the Wharton facility since 2019. He has held this position for the past 2 years and was the operations manager prior to his current position. Gohl testified that as the plant manager, he is responsible for the safety of the workers within the facility; the quality and cleanliness of the products and plant equipment, and the monitoring of the processes in place to deliver products in accordance with customer requirements (Tr. 52, 53). He said that the facility produces mostly juices, teas, and sports drinks, for branded customers, like Costco and Sam’s Club, convenience stores and other retail establishments (Tr. 53).

Gohl testified that the facility has Good Manufacturing Practices (GMP) in effect prior to April 2022 (Tr. 56; R. Exh. 1). Gohl described the GMP policy as a set of the best and current good manufacturing practices that ensures product quality in order to deliver a safe product to the consumer. Gohl noted that the good manufacturing practices is to prevent contamination of food products and were taken from Title 21 Part 110 of the Code of Federal Regulations (21 CFR §110) that governs the handling of food and drugs. Sub-chapter B of the regulations specifically refers to food for human consumption. Gohl noted that the Company’s GMP is taken directly from Part §117 of Title 21 that described good manufacturing practices and risk-based preventive controls (Tr. 57). Relevant to this proceeding, Gohl cited the requirement to remove all unsecured jewelry and other objects that might fall into food equipment or containers under 21 CFR §117.10 would be consistent with the facility’s GMP (Tr. 59; R. Exh. 2: Title 21 of Federal Regulations at §117.10 and referenced in the GMP at R. Exh. 1).

Gohl repeated that the facility’s good manufacturing practices are used to ensure food safety because the products are going to be consumed and items that were to fall into the food or equipment could become a contaminant in a product that might make it out to the consumer (Tr. 60, 61). Gohl testified that the area that posed the most significant risk of contamination at the Wharton facility is the batching department, where the product is actually made. He said that the Company conducts numerous internal audits and a significant time and effort is focused on the batching room because of the exposure of the product to contaminants. He noted that once the product is sealed and packaged, there is little danger of exposure to contaminants. Gohl testified, however, that in the batching room, there are large open vessels where the ingredients for the drinks are being blended that could be exposed to contaminants and other things. He stated the batching department is the most sensitive area that contaminants might have direct contact with the food (Tr. 62, 63). Gohl noted that the job description of the batching technician specifically referenced the requirement of the worker to know the GMP (Tr. 64, 65; R. Exh. 3). He stated that each employee is responsible for maintaining proper GMP (Tr. 79).

Gohl elaborated that in the facility’s batching room, there are two blend vessels for each production line, and a weight tank. He said that the ingredients, water and sweeteners are directly conveyed through pumps into the blend vessels. Meanwhile, the remaining ingredients, the acids, the concentrates, the colorants, all other ingredients are added into a weight tank through a lid that opens at the top of the tank. Gohl stated that the weight tank is approximately 4 feet in diameter with a lid at the top that is opened when the ingredients are being added. The batching technician is responsible for adding the ingredients into the open tank. He maintained that the biggest exposure point for the contaminants to fall into the tank is when the lid is open (Tr. 75, 76).

Gohl testified that he knows Moreira as the batching technician. He stated that Moreira and other batching technicians would wear a different colored hairnet to ensure that only employees working in the batching department enters the blending room. He is also aware of the of Union’s petition for an election in April 2021 and that employees started to wear materials supporting the Union, such as t-shirts and stickers (Tr. 66, 67).

Gohl was made aware of the incident with Moreira by Carrera. He said that Carrera informed him that he had directed Moreira to take the union sticker off his suit. Gohl said that the Tyvek suit is used for cleanups so materials do not get on their street clothes (R. Exh. 4).[[19]](#footnote-19)7 Gohl noted that there is high potential for the sticker to fall into the blending weight tank and mingle with the fluids (Tr. 67–72). Gohl stated that he had previous management discussions about stickers on the bum caps and concluded there is no high risk from the stickers on the helmets because the sticker adhered well to the helmet. Gohl has not personally seen Moreira wear a sticker on his suit and is not aware of other workers wearing stickers on their suits (Tr. 72, 73). Gohl testified there are no supervisors in the blending department, but there are blending leads to provide direction and facilitate production (Tr. 77). He said there was only a production supervisor, who has purview over the blending department, at the time of the incident (Tr. 79, 80).

Gohl testified that after the incident between Moreira and Carrera, he held a supervisory discussion regarding contaminants and the risk to food safety. He said that it is the responsibility of the management team to ensure food safety, so after the incident, the discussion concluded that workers could still wear stickers, but the company needed to make sure that the workers are not going to create a risk to food safety. Gohl believed that the discussion occurred within weeks of the incident. Gohl insisted that no conclusion was made that it was inappropriate for Moreira to wear a sticker on his suit, but he did believe the sticker on his cover posed a risk to food safety (Tr. 80, 81). Gohl said he was aware that after the incident, the production manager, Diego Barreneche, took the lead to speak directly to the blending department to say that the sticker on the Tyvek does pose a contaminant risk. Gohl said he did not hear from Barreneche about any employees wearing a sticker on their suit in the blending room after he spoke to the batching technicians (Tr. 82, 83).

Discussion and Analysis

The counsel for the General Counsel alleges that the Respondent violated Section 8(a)(1) of the Act when Carrera instructed Moreira to remove his union insignia from his Tyvek suit on or about April 22, 2022 (GC Br. at 6). Section 7 of the Act guarantees employees “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.” 29 U.S.C §157. Under Section 8(a)(1) of the Act, an employer may not “interfere with, restrain, or coerce employees” in the exercise of their Section 7 rights. “The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act.” *American Freightways Co*., 124 NLRB 146, 147 (1959). Employees have “a protected Section 7 right to make public their concerns about their employment relation, including a right to wear union insignia at work.” *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801‒803 (1945). It is well settled that an employer violates Section 8(a)(1) when it prohibits employees from wearing union insignia at the workplace, absent special circumstances. *Republic Aviation*; *Ohio Masonic Home*, 205 NLRB 357, 357 (1973), enfd. mem. 511 F.2d 527 (6th Cir. 1975).

The counsel for the Respondent argues that special circumstances exist to overcome the presumption that the employer interfered with the worker’s Section 7 rights. Respondent asserts there were no prohibitions in wearing union insignia and the only single restriction concerned any object that pose a risk of contaminating the food product when the ingredients are being blended in open tanks by the batching technician and the object inadvertently falls into the tanks (R. Br. 12–16). “The Board has found special circumstances justifying proscription of union insignia and apparel when their display may jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image that the employer has established, as part of its business plan, through appearance rules for its employees.” *Bell-Atlantic-Pennsylvania*, 339 NLRB 1084, 1086 (2003), enfd. *Communications Workers of America Local 13000 v. NLRB*, 99 Fed.Appx. 233 (D.C. Cir. 2004).

A rule that curtails employees’ Section 7 right to wear union insignia in the workplace must be narrowly tailored to the special circumstances justifying maintenance of the rule, and the employer bears the burden of proving such special circumstances. See *W San Diego*, 348 NLRB 372, 373, 374 (2006). In *Tesla, Inc*., 371 NLRB No. 131 (2022), the Board reaffirmed that under *Republic Aviation* and its progeny, when an employer interferes *in any way* with its employees’ right to display union insignia, the employer must prove special circumstances that justify its interference.

Applying the legal principles set forth above to the facts presented, I find that the single isolated incident on about April 22 did not prohibit or curtail the employees’ Section 7 right to wear protected union insignia. To be clear, there was no company rule prohibiting or banning the display of union insignia. The only concern was to prevent loose items from falling into the open tanks while the ingredients were being blended. I find credible the testimony of Gohl and Carrera that the overriding priority at the facility was to ensure that the equipment was sanitized and the products were not contaminated.[[20]](#footnote-20)8 In that endeavor, the Company’s GMP was consistent with Title 21 CFR Part 117 to ensure good manufacturing practices and risk-based preventive controls for human food were in place at the facility. Of particular concern was unsecured objects that might fall into the food, equipment or containers. Title 21 CFR Part 117 at §117.10 states, in part,

Removing all unsecured jewelry and other objects that might fall into food, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which food is manipulated by hand. If such hand jewelry cannot be removed, it may be covered by material which can be maintained in an intact, clean, and sanitary condition and which effectively protects against the contamination by these objects of the food, food-contact surfaces, or food-packaging materials.

The Respondent’s GMP at 1.3.4 (R. Exh. 1) states, in part,

Jewelry and other loose objects will not be worn or taken into the plant. All unsecured jewelry and other objects that might fall into food, equipment or containers will be removed, including hand jewelry that cannot be adequately sanitized when handling food.

I find that the Respondent had a legitimate concern to safeguard the equipment and food products from contamination and this targeted and narrow prohibition did not interfere with the employees’ Section 7 right. To be clear, this is not the situation, as alleged in the complaint, that the Respondent prohibited the wearing of union insignia while permitting other insignia and loose items, like jewelry or rings, in the batching room.

I find Gohl credibly testified that there was no prohibition on wearing union insignia. This was evident and not disputed that workers were permitted to wear union materials on their street clothes, company apparel, adhere union stickers on tool boxes, helmets and on their lockers. It was irrelevant whether the apparel or equipment was owned by the Company. Carillo testified that she wears a company work shirt with the Refresco logo and simultaneously also wears a union sticker on the same shirt (Tr. 47, 48). The restriction on forbidding any potentially loose items falling into the open tanks was narrowly applied within a limited area, namely, the batching room. See *W San Diego*, above (the danger that stickers would potentially fall onto food preparation surfaces constitute circumstances justifying the sticker prohibition); *Campbell Soup Co*., 159 NLRB 74, 77 (1966) (rule banning workers from wearing loose items, such as jewelry, which might contaminate canned goods).

Elsewhere in the facility, the wearing of union insignia went unfettered and unrestricted by the Respondent. The fact that union insignia was seen and displayed throughout the facility and no other worker was instructed to remove his/her union insignia is significant. This isolated incident did not preclude Moreira or other employees to continue wearing union insignia in the facility. Moreira testified that 70 percent of the workers displayed union insignia throughout the plant (Tr. 28, 29). Moreira testified that he had worn the union insignia on his Tyvek suit before and after the April 22 discussion with Carrera. Further, Moreira was never instructed to remove his union insignia from his helmet. Moreira was not subjected discipline although he continued to wear the union sticker on his suit. Moreira also testified that he is not aware of any employees with a union sticker on their suit or that any were subjected to discipline for wearing a union insignia on any occasions (Tr. 36). This is not the situation where there was a rule that precluded the wearing of clothing, pins or buttons bearing union insignia. Indeed, there was no company rule limiting the wearing of only approved pins or badges. This was a single and isolated incident involving one employee and one manager, who asked and the employee complied, in removing a sticker from his Tyvek suit for sanitization reasons.[[21]](#footnote-21)9

Although this incident occurred during the midst of the Union’s pending election, I find that Carrera’s direction to Moreira to remove the sticker on one occasion did not intimidate him or the other workers. Moreira testified that Carrera allegedly stated that if Moreira “. . . was going to be a bother, he could be sent to the office.” Based upon my findings that Moreira continued to wear his sticker on his suit after his April 2022 conversation with Carrera and no discipline had been taken, I find it was not credible Carrera told Moreira that he was a “bother” who would be sent to the office. In addition, the Union prevailed in the election and is now the exclusive bargaining representative for the unit. No employees testified that Carrera’s action chilled their Section 7 rights in supporting the Union. Indeed, Carrillo testified that she proudly continues to wear her union insignia next to the Refresco logo on her company work shirt. I find that the one occasion that Moreira was instructed to remove his union insignia from his Tyvek suit could not reasonably be said to interfere with the free exercise of employee rights under the Act. *American Freightways Co*., above.

I find that the Respondent had met its burden to establish that “special circumstances” existed to justify the targeted restriction of employees’ Section 7 rights. Accordingly, I recommend that this complaint be dismissed.

Dated, Washington, D.C. June 2, 2023

1. The General Counsel and Charging Party have 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. [↑](#footnote-ref-1)
2. We shall provide conclusions of law and a remedy, Order, and notice consistent with our findings herein and the Board’s standard remedial language. [↑](#footnote-ref-2)
3. The Respondent’s GMP policy at 1.3.4 states, in relevant part: “Jewelry and other loose objects will not be worn or taken into the plant. All unsecured jewelry and other objects that might fall into food, equipment or containers will be removed, including hand jewelry that cannot be adequately sanitized when handling food.” This portion of the GMP policy is consistent with 21 CFR Part 117.10, set forth in the judge’s decision. [↑](#footnote-ref-3)
4. Gohl testified that Moreira wore a single-use coverall “very consistently,” but denied ever seeing Moreira, or any other worker, wear a union sticker on single-use coveralls. [↑](#footnote-ref-4)
5. A second union election was held on May 19 and 20, 2022 in Case 22–RC–276628. The majority of the valid ballots were cast in favor of the Union in a bargaining unit of all full-time and regular part-time hourly employees including: Aseptic Techs, Batching Techs, Blending Techs, Ingredient Techs, Maintenance Techs, Quality Techs, Sanitation Techs, Forklift Operators, Forklift Operators II, Machine Operators, Machine Operators II, III, and IV, Mechanics, Mechanics II, III, and IV, Batching Leads, Machine Operator Leads, Maintenance Leads, Production Shift Leads, Quality Leads, Sanitation Tech Leads, and Warehouse Leads employed by the Respondent in the Wharton facility. [↑](#footnote-ref-5)
6. The Respondent asserts that stickers on coveralls are different than stickers on helmets because stickers firmly affix to helmets, but the Respondent did not offer any evidence that it examined Moreira’s sticker to determine how well or poorly adhered it was compared to how well other union insignia adhered to employees’ helmets, street clothes, and toolboxes. See *In-N-Out Burger,* supra. [↑](#footnote-ref-6)
7. See *In-N-Out Burger, Inc. v. NLRB*, supra, 894 F.3d at 719 (“The Board also noted that In-N-Out's managers did not make ‘any effort to examine’ the ‘Fight for $15’ buttons for safety issues before restricting employees from wearing them, which indicates that the company's food safety argument is a ‘post hoc invention[ ].’”). [↑](#footnote-ref-7)
8. See *In-N-Out Burger*, supra, 365 NLRB at 471 fn. 2, 480–481; *AT&T*, supra, 362 NLRB at 889 (“Moreover, the [r]espondent has presented nothing beyond conclusory testimony to support its argument that Prop 32 was ‘highly controversial’ and that it was concerned about potentially offending customers when it prohibited employees from wearing the buttons. The [r]espondent’s speculative, conclusory testimony is not sufficient to meet its burden of demonstrating special circumstances sufficient to outweigh employees’ Sec[.] 7 rights.”); *Boch Honda*, supra, 362 NLRB at 708 (“Further, the record includes no evidence supporting actual safety concerns related to pins worn by public facing employees. Although the record does contain evidence that employees have caused damage to vehicles, none of that damage was shown or even asserted to be related to employee pins.”). [↑](#footnote-ref-8)
9. Moreover, contrary to the judge, under Board precedent, the fact that the prohibition at issue was limited to Moreira’s sticker, and that the Respondent otherwise permitted the wearing of union insignia elsewhere in its facility, does not support a finding that the prohibition on Moreira’s sticker was lawful. Absent proof of special circumstances, employers are not free to dictate how, where, or to what extent employees may exercise their statutory right to wear union insignia. See, e.g., *Tesla, Inc.*, 371 NLRB No. 131, slip op. at 10 (2022), enf. denied 86 F.4th 640 (5th Cir. 2023); *Caterpillar, Inc.*, 321 NLRB 1178, 1180-1181 fn. 10 (1996) (“[I]t is irrelevant that the [r]espondent allowed employees to wear other union insignia that it deemed acceptable.”) (citing *Holladay Park Hospital*, 262 NLRB 278, 279 (1982)), vacated pursuant to settlement March 19, 1998; *Malta Construction Co.*, 276 NLRB 1494, 1494–1495 (1985) (finding unlawful employer’s prohibition on two employees wearing union helmet stickers even where it “allowed its employees to wear union insignia on articles of their personal attire, such as T-shirts”), enfd. 806 F.2d 1009 (11th Cir. 1986).

Similarly, and also contrary to the judge, it is immaterial that Moreira and other workers were not intimidated from supporting the Union as a consequence of the Respondent’s requirement that Moreira remove his sticker. As explained, Moreira had a Sec. 7 right to wear the sticker and that right was violated, given the Respondent’s failure to prove special circumstances, regardless of the effect of the violation on Moreira. Under Sec. 8(a)(1) of the Act, of course, proof of actual coercion is not required. See, e.g., *Multi-Ad Services, Inc.*, 331 NLRB 1226, 1227–1228 (2000) (“It is well settled . . . that the basic test for evaluating whether there has been a violation of Sec[.] 8(a)(1) is an objective test, i.e., whether the conduct in question would reasonably have a tendency to interfere with, restrain, or coerce employees in the exercise of their Sec[.] 7 rights, and not a subjective test having to do with whether the employee in question *was actually intimidated*.”) (emphasis in original), enfd. [255 F.3d 363 (7th Cir. 2001)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2001534690&pubNum=0000506&originatingDoc=I2585ee3c8c2711ed8a56f87cdf30c3a5&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=9f57916cc2b741cb9b561ac31588a322&contextData=(sc.Search)). [↑](#footnote-ref-9)
10. The cases cited by the Respondent do not undercut our conclusion here. In *Campbell Soup*, 159 NLRB 74, 77–79 (1966), enfd. 380 F.2d 372 (5th Cir. 1967), the Board adopted the trial examiner’s finding that the respondent, a manufacturer of packaged and canned foods, lawfully enforced a rule prohibiting the wearing of items that may fall into its product, where the respondent presented “affirmative evidence” of the justification for the rule through “clear[] and meticulous[]” testimony. As explained above, the Respondent here provided only speculative concerns about the contamination risks of Moreira’s sticker. Similarly, in *Consolidated Biscuit Co.*, 346 NLRB 1175, 1176–1177 (2006), enfd. 301 Fed.Appx. 411 (6th Cir. 2008), the respondent’s hygiene and cleanliness standards explicitly prohibited temporary markings on employees’ skin in the production area of the plant based on concerns about food contamination. As a result, the Board declined to question the respondent’s business judgment that employees working in the production area should not be permitted to display prounion slogans, written on their skin in magic marker, because it presented a food safety hazard. Here, even assuming the Respondent’s GMP policy demonstrates that “loose” or “unsecured” items pose contamination risks, the Respondent has failed to establish that Moreira’s sticker was a “loose item” that genuinely presented such a concern. See, e.g., *Boch Honda*, supra, 362 NLRB at 708.

We also reject the Respondent’s reliance on appellate court decisions involving facts distinguishable from those in this case. In the cases cited by the Respondent, the employers did more than present speculative concerns about the union insignia at issue. See *Eastern Omni Constructors, Inc. v. NLRB*, 170 F.3d 418, 425 (4th Cir. 1999) (court found employer ban on non-company authorized decals on hardhats “amply supported” by concerns for safety where official decals on hardhats were used to identify if employees operating equipment possessed the necessary training and skills and which employees were trained in certain types of first aid); *Virginia Electric & Power Co.* *v. NLRB*, 703 F.2d 79, 82–83 (4th Cir. 1983) (court found lawful employer’s statement that it preferred that employee remove union button where employer substantiated legitimate concerns about public conflict between supporters of competing unions and employee was not forced to remove button, or disciplined for refusing to do so). [↑](#footnote-ref-10)
11. Because we find that the Respondent failed to establish special circumstances we need not and do not address the judge’s finding that the restriction was narrowly applied. [↑](#footnote-ref-11)
12. If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that “This notice is the same notice previously [sent or posted] electronically on [date].” 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.” [↑](#footnote-ref-12)
13. 1 The exhibits for the General Counsel are identified as “GC Exh.” The exhibits for the Respondent are identified as “R. Exh.” The posthearing briefs for the General Counsel and Respondent are respectively identified as “GC Br.” and “R. Br.” The hearing transcript is referenced as “Tr.” [↑](#footnote-ref-13)
14. 2 The allegation in the complaint at para. 6 was withdrawn by the counsel for the General Counsel during the hearing (Tr. 49). [↑](#footnote-ref-14)
15. 3 Witnesses testifying at the hearing included Cesar Moreira, Irma Carillo, Frank Gohl, and Felipe Carrera. [↑](#footnote-ref-15)
16. 4 To be clear, the counsel for the General Counsel presented testimony and evidence during the hearing from only one worker alleged to have been asked by the Respondent to remove his union insignia. [↑](#footnote-ref-16)
17. 5 On cross-examination, Moreira clarified his testimony and stated that he began wearing the union sticker in April/May 2021 during the pendency of the first election and not in 2020 (Tr. 31; see, GC Exh. 2: the first election was held on May 4, 2021 and not in 2020). [↑](#footnote-ref-17)
18. 6 Called a “bum cap” by the employer. [↑](#footnote-ref-18)
19. 7 Gohl testified there is no mandatory policy that workers were required to wear Tyvek suits in the blending room (Tr. 74). [↑](#footnote-ref-19)
20. 8 Moreira testified that the sticker was firmly adhered to his Tyvek suit. I would take administrative notice that stickers have the potential to fall off clothing and I have experienced occasions when my name tag sticker had fallen from my suit. The purpose of the GMP and 21 CFR Part 117 was to prevent the *potential* of high risk items, such as rings, jewelry and other objects, from falling into food, equipment and containers. [↑](#footnote-ref-20)
21. 9 My finding that Sec. 8(a)(1) of the Act was not violated by the Respondent is based upon the special circumstances of prohibiting the wearing of any potentially loose items that might contaminate food products focused in one specific area of the facility and not because the isolated incident affecting a single worker was de minimus (see, GC Br. at 11, 12). [↑](#footnote-ref-21)