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PPG Aerospace Industries, Inc. ***and*** **International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO.** Cases 10–CA–36530 and 10–RC–15611

March 4, 2010

SUPPLEMENTAL DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On October 19, 2007, Administrative Law Judge Lawrence W. Cullen issued the attached decision finding that the Respondent committed several violations of Section 8(a)(1) of the Act and engaged in objectionable conduct. The judge also sustained challenges to ballots cast by lead persons and overruled challenges to ballots cast by allegedly temporary employees in an election held October 18, 2006. He recommended that a new election be held if, after counting the challenged ballots, the revised tally did not show a majority in favor of the Union.

On September 30, 2008, the National Labor Relations Board issued a decision and order remanding the case to the judge to reconsider and more fully explain his crediting the testimony of employee Iva Mayes over that of Supervisor Sue Cooper regarding two allegedly unlawful statements.[1] The Board held in abeyance the remaining 8(a)(1) findings and related objections. Additionally, reversing the judge, the Board overruled the challenges to the lead persons' ballots and severed and remanded the election case to the Regional Director to open and count the ballots. The Regional Director, after opening the ballots, determined that 212 votes were cast for and 244 against the Union.

Following the remand, Judge Lawrence W. Cullen issued the attached supplemental decision on December 12, 2008. The Respondent filed exceptions and a supporting brief, the Union filed an answering brief, and the Respondent filed a reply brief.

The Board has considered the decision,[2] the supplemental decision, and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Supplemental Decision and Order and Certification of Results of Election.[3]

I. SUMMARY

In his supplemental decision, the judge reaffirmed his credibility determinations and, thus, found no need to modify the 8(a)(1) violations found in his initial decision. Consequently, the judge left intact his initial findings that the Respondent violated Section 8(a)(1) by (1) more closely scrutinizing and monitoring the movements and conversations of employees because of their support of the Union, (2) threatening loss of benefits because its employees supported the Union, (3) informing employees that it would be futile to select the Union because the Union would never get a contract from the Respondent, (4) threatening its employees with the inevitability of a strike if the employees selected the Union, and (5) threatening employees with replacement if they supported a strike.

As explained below, we adopt the judge's crediting of employee Mayes' testimony over that of Supervisor Cooper. Additionally, we adopt the 8(a)(1) violations found by the judge, all of which occurred during the August 30, to October 18, 2006 critical period.[4] However, in adopting the judge's finding that the Respondent violated Section 8(a)(1) by more closely scrutinizing the movements and conversations of its employees because of their support of the Union, we rely only on the basis set forth below. Additionally, contrary to the judge, we find, as explained below, that a new election is not warranted.[5]

[1] *PPG Aerospace Industries,* 353 NLRB No. 23 (2008).

[2] We have consolidated the unfair labor practice and election cases for the purpose of this decision.

[3] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, 590 F.3d 849 (10th Cir. 2009); *Narricot Industries, L.P. v. NLRB*, 587 F.3d 654 (4th Cir. 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

[4] All dates are in 2006, unless otherwise indicated.

[5] We adopt the judge's finding that the Respondent violated Sec. 8(a)(1) by Campbell's statements to employee Hansen that employees would not get a contract because the Respondent would not give the employees a contract, that employees would have to strike because it was the only power the Union had, and that employees could be replaced if they went on strike. In so doing, we disavow the judge's analysis of these statements as "inherently destructive" of Sec. 7 rights. The term-of-art "inherently destructive" is used in motive-inquiry cases as referring to misconduct so damaging to Sec. 7 rights as to carry "its own indicia of [discriminatory] intent." *NLRB v. Great Dane Trailers, Inc*., 388 U.S. 26, 33 (1967). The present case is not a motive-inquiry case.

II. THE JUDGE'S CREDITING OF MAYES' TESTIMONY

In his initial decision, the judge credited Mayes' testimony that, when she attempted to join a discussion involving antiunion employee Lindsey and prounion employee Brownsfield on about September 1, Supervisor Cooper ordered Mayes—a prounion employee—to return to her "cell" (work area), escorted her back to her cell, and stated that she (Cooper) "couldn't let two Union people gang up on a non-union person." The judge's finding that the Respondent violated Section 8(a)(1) by more closely scrutinizing and monitoring the movements and conversations of prounion employees was based partly on this incident. The judge also credited Mayes' testimony that, when Cooper escorted her back to her cell, Cooper asked her if she had ever missed a paycheck and told her that the employees would probably lose their salary continuance benefit if they selected the Union.[6] Based on this testimony, the judge found that the Respondent violated Section 8(a)(1) by threatening loss of benefits because of employees' support of the Union.

In his supplemental decision, the judge reaffirmed his credibility determinations, citing a number of factors supporting them. Among other things, he cited Mayes' status as a current employee and noted that "precedent establishes that 'the testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interest,'" quoting *Flexsteel Industries,* 316 NLRB 745 (1995), enfd. mem. 83 F.3d 419 (5th Cir. 1996). As an additional basis, the judge found that "gang up" was a colloquial expression and that "Mayes' attribution of the colloquial statement 'gang up on a non-union person' did not seem rehearsed or fabricated." The judge also discredited Cooper's denial that she made the "gang-up" statement. He noted that Cooper's denial appeared to address a conversation other than the one in which Cooper allegedly made that statement. He also found her additional blanket denial unconvincing.

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. The judge cannot be faulted for applying the *Flexsteel Industries* principle that the testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interest.[7]

Additionally, the judge found, in crediting Mayes' gang-up statement, that "Mayes' attribution of the colloquial statement 'gang up on a non-union person' *did not seem rehearsed or fabricated*." (Emphasis added.) Thus, the judge clearly did rely, in part, on demeanor in crediting her, notwithstanding his statement that "there was nothing in the demeanor of either Mayes or Cooper that enhanced or detracted from their credibility."

The Respondent's principal argument against crediting Mayes is that an incident report that Mayes had submitted to the Union did not include Cooper's allegedly unlawful statements. However, Mayes' incident report was not an affidavit or sworn statement and did not purport to be a complete account of what transpired. Thus, Mayes' omission of the allegedly unlawful statements from the report is not the equivalent of a similar omission from a prehearing affidavit prepared by the General Counsel. Cf. *Midwest Alloys, Inc*., 261 NLRB 1054, 1058–1059 (1982) (employee Jolly's hearing testimony credited even though inconsistent with her earlier unsworn statements).

Further, with regard to the gang-up statement, Mayes' incident report was not inconsistent with her testimony. Her incident report included the following statement: "Rodney [Brownsfield] and Jeff [Lindsey] were talking about the union. . . . When I walked over to listen to

[6] "Salary continuance" referred to the Respondent's policy of providing full pay to an employee after the employee missed 6 days of work under a doctor's care.

[7] The Respondent erroneously argues that the *Flexsteel* principle should not apply because Mayes was a discriminatee and, thus, her testimony contrary to the Respondent was not adverse to her own interest. However, Mayes was not a discriminatee. There is no allegation that the Respondent unlawfully discharged or disciplined her. Moreover, while she was involved in an incident that constituted 8(a)(1) conduct by the Respondent, there is no allegation that the Respondent owes her backpay or other affirmative relief. Cf. *Woodlands Health Center*, 325 NLRB 351, 354 fn. 6 (1998) (current employee Mulcahy, an active union supporter, was not a discriminatee; her testimony against the employer was contrary to her own self-interest).

Member Schaumber finds that the judge's reliance on and application of *Flexsteel* is consistent with Board precedent, and he adopts the judge's credibility findings on that basis for institutional reasons. He agrees that testimony of a current employee that contradicts the testimony of a current supervisor may not be in the pecuniary interests of the employee, a fact which *may, in an appropriate case*, enhance the credibility of the employee's testimony. However, there is no per se rule that such testimony is inherently credible as the *Flexsteel* Board emphasized. ("Thus, a witness' status as a current employee may be a significant factor, but it is one among many which a judge utilizes in resolving credibility issues." *Flexsteel*, supra, 316 NLRB at 745.) There may well be conflicting pecuniary or loyalty interests at play that outweigh or offset the significance of the *Flexsteel* principle. Judges must assess and balance the totality of circumstances impacting on the credibility of testimony, rather than applying permissible inferences as hard and fast rules.

what Jeff was saying, Sue [Cooper] came over and told me she could not have me over there out of my cell when I was openly supporting the union." At the hearing, Mayes testified that Cooper came over and told Mayes that she had to return to her cell because Cooper "couldn't let two Union people gang up on a non-union person." Both statements convey the notion that Mayes had to return to her cell and not join the conversation with Brownsfield and Lindsey because Mayes was a union supporter. Moreover, Cooper's statement as recounted in the incident report would itself appear to be violative of Section 8(a)(1). Thus, there would be no reason for Mayes to invent a different statement in order to have what Cooper said during that incident be held unlawful.[8]

Accordingly, we find no basis for reversing the judge's credibility findings.

III. THE RESPONDENT'S SCRUTINIZING OF EMPLOYEES' MOVEMENTS AND CONVERSATIONS

In finding that the Respondent violated Section 8(a)(1) by more closely scrutinizing the movements and conversations of its employees because of their support of the Union, the judge relied on four sets of facts. We do not agree that all four sets of facts show a violation of the Act.

We agree with the judge that the violation is shown by the incident in which Cooper stopped Mayes from joining a conversation with employees Lindsey and Brownsfield, ordered Mayes to return to her work cell, and told her that she (Cooper) "couldn't let two Union people gang up on a non-union person." We also agree with the judge that the violation is supported by Supervisor Campbell's standing with arms crossed and staring at employee Sims when Sims talked to other employees after Campbell learned that Sims was a union supporter.[9]

However, contrary to the judge, we find no violation shown by the Respondent's alleged interrupting of conversations of prounion employees while allowing conversations of antiunion employees to continue. We find the evidence insufficient to support this allegation.

The Respondent's alleged violative conduct occurred in the following context. There are appropriately 474 employees in the bargaining unit, which is composed of the Respondent's production and maintenance employees. The principal departments in the production area are preparation, assembly, and finishing. The assembly and finishing employees work individually or in small groups in separate work areas, called "booths" in the assembly department and "cells" in the finishing department. Employees sometimes leave their work areas to assist or train employees in other work areas. Employees also sometimes go to other employees' work areas simply to visit. Supervisors generally tell employees engaged in conversations not in furtherance of their work to go back to work.

In finding that the Respondent unlawfully interrupted the conversations of prounion employees, the judge relied on the testimony of Mayes that when conversations were led by union supporters, such as employee Balcerek, supervisors interrupted them. Mayes, however, identified only two specific instances of the Respondent interrupting prounion employees' conversations: the instance noted above in which she was prevented by Cooper from joining a conversation with antiunion employee Lindsey and prounion employee Brownsfield, and an instance on September 27, in which Cooper broke up a conversation between Balcerek and Mayes and told them to go back to work.[10]

Regarding antiunion employees' conversations, the judge relied on the testimony of Mayes and Sims. Mayes testified that, in the period around September 1, she saw employee Lindsey engage, in the presence of Supervisor Cooper, in uninterrupted conversations of up to 30 minutes in length with both union supporters and opponents. Further, Sims testified that employees Martin and Mathis, who opposed the Union, normally communicated only with each other, but that, during the campaign, they became very outgoing and talked without interruption to everybody in all the work booths. Sims acknowledged, however, that he could not hear what was said in those conversations.

We find this evidence insufficient to show that the Respondent engaged in disparate treatment by interrupting the conversations of prounion employees. As noted above, the bargaining unit consisted of 474 employees. Seven weeks elapsed between the Union's filing of its election petition and the day balloting was conducted. Yet, in this large bargaining unit, the General Counsel was able to show only two instances in which supervi-

[8] We do not rely on the judge's explanation that Mayes' testimony implied that the notes to which she referred when writing the incident report contained Cooper's allegedly unlawful statements.

[9] We find it unnecessary to pass on the judge's finding that the violation was supported by Supervisors Campbell's and Rigsby's comments to, and mimicking of, employee Sims regarding his pose in a picture on the Union's website. Finding the violation on this basis would be cumulative and would not affect the remedy.

[10] Employee Yarbrough, a witness for the General Counsel, testified that he saw prounion employee Bennett talking to another employee several times on October 16. Yarbrough could not hear what Bennett and the other employee were saying. Each time, Supervisor Rigsby "poked his head in," and the other employee left. The judge, however, did not rely on, or even mention, Yarbrough's testimony.

sors interrupted the conversations of prounion employees during this entire period.

Moreover, it was the general practice of the Respondent's supervisors to tell employees engaged in conversations not in furtherance of their work assignments to go back to work. Neither of the two interrupted conversations involving prounion employees was in furtherance of their work assignments.

Although the evidence shows that three antiunion employees—Lindsey, Martin, and Mathis—engaged in conversations that the Respondent did not interrupt, it fails to show that those conversations were not in furtherance of work assignments. Indeed, Yarbrough, a witness for the General Counsel, testified that Martin and Mathis "might frequently be called on to train newer assemblers." Conversations occurring as part of training of newer employees would, of course, be in furtherance of work assignments.

Under these circumstances, particularly the meager number of interrupted conversations of prounion employees in this large bargaining unit, we find the evidence insufficient to support a finding that the Respondent disparately interrupted prounion employees' conversations while refraining from interrupting antiunion employees' conversations.

IV. WHETHER TO SET ASIDE THE ELECTION

Under established precedent, the Board sets aside an election and directs a new one when unfair labor practice violations have occurred during the critical period, unless the violations are de minimis. In determining whether misconduct is de minimis, the Board considers such factors as the number of violations, their severity, the extent of their dissemination, the number of employees affected, the size of the bargaining unit, the closeness of the election, and the violations' proximity to the election. *Bon Appétit Mgt. Co.,* 334 NLRB 1042, 1044 (2001). Thus, in *Coca-Cola Bottling Co.*, 232 NLRB 717, 718 (1977), the Board declined to set aside the election despite finding 8(a)(1) violations consisting of interrogations affecting 2 employees out of a unit of 106 employees.

In the present case, although all the violations occurred during the critical period, they involved and were witnessed by a total of only five employees. Thus, Cooper's ordering Mayes to return to her cell and telling her that she (Cooper) "couldn't let two Union people gang up on a non-union person" involved only Mayes and was witnessed only by Brownsfield and Lindsey. Supervisor Campbell's staring at Sims involved only Sims, and there is no evidence that it was witnessed by anyone else. Cooper's telling Mayes that employees would probably lose the salary continuance benefit if they selected the Union involved only Mayes and was witnessed by no one else. Finally, Campbell's statements to Hansen that employees would not get a contract because the Respondent would not give the employees a contract, that employees would have to strike because it was the only power the Union had, and that employees could be replaced if they went on strike involved only Hansen and were witnessed by no one else. Significantly, there is no evidence of dissemination regarding any of these incidents.

Thus, the violations affected only 5 employees in a unit of approximately 474 employees. Moreover, none of the violations involved employee discharges or discipline; rather, they involved only 8(a)(1) statements or conduct. Three of the five violations occurred several weeks before the election.[11] The Union lost the election by a margin of 32 votes. Under these circumstances, we do not find that the violations warrant setting aside the election, as it is virtually impossible to conclude that they affected the election's outcome.[12] Therefore, we shall certify the results of the election.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as set forth in his decision of October 19, 2007, and reaffirmed in his supplemental decision dated December 12, 2008, and orders that the Respondent, PPG Aerospace Industries, Inc., Huntsville, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for International Union, United Automobile, Aerospace and Agricultural Implement Workers of

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[11] The violations involving Mayes occurred 6 weeks before the election and the violation involving Hansen occurred more than 2 weeks before the election. The proximity to the election of the incidents involving Sims is unclear, as they were identified only as occurring in the period of September–October 2006.

[12] See *Bon Appétit Mgt. Co.,* supra, 334 NLRB at 1044. Member Schaumber agrees, for institutional reasons, to apply the "virtually impossible" standard, as established Board precedent. See *Ogihara America Corp.*, 343 NLRB 809 fn. 1 (2004).

In our discussion above, we found it unnecessary to pass on whether Supervisors Campbell's and Rigsby's mimicking of and comments to employee Sims regarding his pose in a picture on the Union's website supported the finding that the Respondent unlawfully scrutinized and monitored the movements and conversations of prounion employees. Assuming arguendo that Campbell's and Rigsby's mimicking of and comments to employee Sims were unlawful, it would not affect our conclusion here to certify the results of the election, because it would not be a particularly serious violation, it involved only Sims, and it was witnessed by no one else.

America, AFL–CIO, and that it is not the exclusive representative of these bargaining unit employees.

Dated, Washington, D.C. March 4, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Gregory Powell, Esq., for the General Counsel.
John J. Coleman III, Esq. and *Amy K. Jordan, Esq.,* for the Respondent Employer.
George N. Davies, Esq., for the Charging Party Petitioner.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This consolidated complaint and representation case was heard before me on April 30 and May 1–2, 2007, in Huntsville, Alabama. The complaint in Case 10–CA–36530 is based on a charge filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO (the Charging Party, the Petitioner, or the Union) on November 3, 2006. The Charging Party Union has alleged and it is alleged in the complaint that PPG Aerospace Industries, Inc., (the Respondent, the Employer, or PPG) violated Section 8(a)(1) of the National Labor Relations Act (the Act). The complaint is joined by the answer filed by the Respondent wherein it denies the commission of any violations of the Act.

On January 23, 2007, the Regional Director of Region 10 of the National Labor Relations Board (the Board) filed in Case 10–RC–15611 his report on challenged ballots and objections, order directing hearing, order consolidating Case 10–RC–15611 with Case 10–CA–36530 and order transferring cases to the board and notice of hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. THE BUSINESS OF THE RESPONDENT

The complaint in Case 10–CA–36530 alleges, Respondent admits, and I find, that at all times material, Respondent has been a Pennsylvania corporation with an office and place of business located in Huntsville, Alabama, where it has been engaged in the manufacturing of aircraft transparencies, that during the past 12-month period, Respondent sold and shipped goods valued in excess of $50,000 directly to customers located outside the State of Alabama, and that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint further alleges, Respondent admits, and I find, that at all times material the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE REPORT ON CHALLENGED BALLOTS AND OBJECTIONS

Pursuant to a Stipulated Election Agreement approved by the Regional Director on September 8, 2006, an election by secret ballot was conducted on October 18, 2006, among the employees in an appropriate unit[1] to determine a question concerning representation raised by a petition filed by the Petitioner on August 30, 2006.

On conclusion of the balloting, a tally of ballots was made available to the parties showing that of approximately 474 eligible voters, 210 cast valid votes for and 214 cast valid votes against the Petitioner. In addition there was 1 void ballot and 32 challenged ballots. The challenged ballots are sufficient in number to affect the results of the election. On October 25, 2006, the Petitioner filed timely objections to conduct affecting the results of the election.

Pursuant to the provisions of Section 102.69 of the Rules, an investigation was conducted under the direction and supervision of the Regional Director who concluded that the issues raised by the challenges and Objections 1, 3, 5, 8, and 10 can best be resolved by a hearing. Accordingly, the Regional Director directed that the issues raised by the challenges and by Petitioner's Objections 1, 3, 5, 8, and 10 be resolved by a hearing.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that Respondent violated Section 8(a)(1) of the Act as follows:

Paragraph 7 of the complaint—Since on or about September 1, 2006, and continuing thereafter, Respondent, acting through its supervisors and agents, Sue Cooper, Greg Campbell and Paul Rigsby at its facility, more closely scrutinized and monitored the movements and conversations of employees because they supported the Union's organizing campaign.

In his report on objections, the Regional Director found that paragraph 7 of the complaint alleges conduct which purportedly occurred during the critical period[2] preceding the election and is substantially coextensive with the conduct alleged in Objection 1.

Paragraph 8 of the complaint—On or about September 1, 2006, Respondent, acting through its supervisor and agent, Sue Cooper, at its facility, threatened its employees with loss of benefits because they supported the Union.

In his report on objections the Regional Director found that paragraph 8 of the complaint alleges conduct which purportedly occurred during the critical period preceding the election and is substantially coextensive with the conduct alleged in Objection 3.

Paragraph 9 of the complaint—Alleges that Respondent,

[1] The appropriate unit as set forth in the Stipulated Election Agreement is:

> All production and maintenance employees employed by the Employer at its Huntsville, Alabama facility, but excluding all technicians, senior technicians, office clerical employees, professional employees, guards, step-up supervisors and all other supervisors as defined by the Act."

[2] The critical period in this matter is the period between August 30, 2006, the date the petition was filed, and October 18, 2006, the date of the election. *Goodyear Tire & Rubber Co.*, 138 NLRB 453 (1962).

acting through its supervisor and agent, Greg Campbell, engaged in the following conduct:

(a) On or about the week of September 25, 2006, at its facility, threatened employees with the inevitability of a strike if they selected the Union as their bargaining representative.

(b) On or about the week of September 26, 2006, at its facility, threatened its employees with replacement if they went on strike in support of the Union.

(c) On or about the week of September 25, 2006, at its facility, informed employees that it would be futile for them to select the Union as their bargaining representative because the Union would never get a contract from the Respondent.

In his report on objections the Regional Director found that paragraphs 9(a), 9(b), and 9(c) of the complaint allege conduct which purportedly occurred during the critical period preceding the election and is consistent with the conduct alleged in Objection 5.

Paragraph 10 of the complaint—Alleges that Respondent, acting through its supervisor and agent, Sue Cooper, and other agents presently unknown on or about October 16 and 17, 2006, in the finishing department, created the impression among employees that their union activities were under surveillance.

In his report on objections, the Regional Director found that paragraph 10 of the complaint concerns conduct which allegedly occurred during the critical period preceding the election and is substantially coextensive with the conduct alleged in Objection 8.

In *Objection 10* petitioner asserts that the Employer abused the election process by harassing employees about how and when they were to vote. The employer denies engaging in any misconduct. The Regional Director found that in light of the conflicting evidence and positions of the parties, this objection raises substantial and material issues of fact which can best be resolved through record testimony.

In light of the conflicting evidence and positions of the parties, the Regional Director found that the issues raised by the challenges and by Petitioner's Objections 1, 3, 5, 8, and 10 can best be resolved through record testimony and directed a hearing be held to resolve these issues.

The Challenged Ballots

The report on challenged ballots by the Regional Director shows that the ballots of Timothy Bragg, Lea Anne Collins, Denise Gossett, Kenny Grant, Morgan Jensen, David Kimbrough, and Jennifer Newman were challenged by the Petitioner on the ground that they were hired after the cutoff date of August 27, 2006. The Employer contends these employees were hired and commenced orientation on August 21, 2006, and that they were eligible to vote in the election.

The report on challenged ballots shows that the ballots of Leroy Green, Michael McAllister, Beverly Moon, and John Reed were challenged by the Petitioner on the ground that they are process monitors and supervisors excluded from the unit. Petitioner contended that they are process monitors who oversee the work of the GCA temporary employees. At the hearing the Petitioner withdrew the challenges to the process monitors. The Petitioner originally challenged the ballot of Joe Simpson on the ground that he was a supervisor.

The Petitioner has challenged the ballots of Donnie Black, Tim Childers, Jimmy Cloud, Kenneth Dawson, Manda Dupree, Bill Everett, Denny Franchiseur, Morris Hill, Michael Hill, Bill Hopper, James Holder, David Knoer, Jackie Lackey, Monty Little, Vivian Lyle, David McNeal, Peter Mullen, Ronnie Steakley, Curtis Wales, and Clarence Zimmerman as supervisors. The report shows that the Petitioner contends they are lead persons who instruct employees, correct improper performance, move employees when necessary, decide the order in which work will be performed and effectively recommend discipline. The report shows that the Employer contends that these employees do not possess any supervisory authority and that the Petitioner did not challenge all persons working as lead persons, that it is picking and choosing employees to challenge on the basis of their perceived support for the Petitioner.

At the hearing, the Charging Party withdrew the challenge to the ballot of Joe Simpson and the challenges to the ballots of the process monitors and the challenge to the ballot of Ken Dawson. Charging Party did not withdraw its challenge to the ballot of Morris Neal Hill who Respondent showed was a lead person, at the hearing. Respondent contended that Clarence Zimmerman is a process monitor whereas Petitioner contended he was a lead person.

Respondent offered unrebutted testimony from Step Up Supervisor Kevin Bailey that Clarence Zimmerman was a process monitor over the strip buff area, which testimony I credit.

The Union has challenged the ballots of two categories of employees whom it refers to as "temporary employees," whom are not eligible to vote because they were not permanent employees, and "lead employees," whom it contends are not eligible to vote because they are supervisors under the Act. In its brief, with respect to the "temporary" or "new employees" the Union contends that Timothy Bragg, Lea Anne Collins, Denise Gossett, Kenny Grant, Morgan Jensen, David Kimbrough, and Jennifer Newman were hired after the cutoff date of August 27, 2006, and were thus not eligible to vote in the election held on October 18, 2006. The Union contends that these employees must have successfully completed a 30-day entry level training period before they will be considered for permanent hire. It notes that they are referred to as "production temporary" employees on the employer's payroll records and that they are only hired for a permanent position if they successfully complete the training program. The production temporary employees were paid $10 per hour, but had to complete the training program before they received the higher "entry level" wage rate. Personnel Manager Michael Willey, testified that this group of production temporary employees was only the second group whose seniority dates and probationary dates were coextensive with the date they began the training program. Prior to this group and one in July 2006, the employees' probationary period and seniority date did not take effect until they had completed the training program. The Employer contends that although the names and pictures of these employees were posted on the bulletin board as new employees, this is not determinative. In July 2006, the employer hired all new production employees into trainee positions at $10 per hour. They completed the paperwork within a day of their hire and from that date

forward, were directed by supervisors in their work, schedules and work hours. Their payroll taxes were cut. They began their probationary period and worked in the training positions the first month of the 6-month probationary period. The Union did not challenge anyone hired into the training positions in July but did challenge those hired on August 21, 2006. One of these individuals who did not successfully complete the training program was terminated whereas another's employment continued and he was assigned to a different area of the plant. The remaining individuals were probationary employees until the completion of 6 months. They received a raise at the end of the 4-week training program and at the end of their probationary period. The Employer contends that these employees are employees at will as are all other of its employees. I credit the foregoing testimony of Willey which was unrebutted.

The newly hired employees who were hired on August 21, 2006, were employees before the August 27, 2006 cutoff date as every aspect of PPG employment attached to these individuals the date they were hired. In *Regency Services Carts,* 325 NLRB, 617, 627 (1998). The Board held that the "party seeking to exclude an individual from voting has the burden of establishing that the individual is, in fact, ineligible to vote." These employees were placed on PPG's payroll and earned wages beginning on August 21, 2006, and worked under the supervision of PPG supervisors who controlled the details of their work prior to the August 27, 2006 cutoff date. The Employer contends that the 30-day training period in the instant case did not involve mere "preliminaries." The Employer asserts that the challenged ballots were not merely orientation and preliminaries. In *CWM, Inc.*, 306 NLRB 495, 496 (1992), the Board held that employees in a 1-week training program were eligible. In *Firesafe Builders Products Corp.,* 57 NLRB 1803, (1944), 5-day training program members were held to be eligible voters. In *Dynocorp/Dynair Services,* 320 NLRB 120, 121 (1995), the Board distinguished between mere orienting and preliminaries. The fact that the employees were erroneously shown on a poster as "new hires" on September 15, 2006, does not make them ineligible to vote.

I find that the challenge to the "temporary" or "new" employees should be overruled. In *Golden Fan Inn*, 281 NLRB 226, 230 fn. 24 (1986), the Board held that "the burden of proof rests on the party seeking to exclude a challenged individual from voting." I find the Union has not sustained its burden of proof. The evidence adduced at the hearing does not support a finding that these employees are ineligible to vote. There is no evidence that the hiring of the employees on August 21, 2006, was a sham designed to pack the unit with recently hired employees whom the Employer might consider to, be more supportive of the employer's position and thus designed to defeat the Union in the upcoming election. Rather, they were hired prior to the cutoff date of August 27, 2006, and had all the indicia of "employees" and were not excluded from the unit. Accordingly, I find that these employees were properly included in the unit and eligible to vote and their votes should be counted.

I find that the "lead persons" are supervisors under the Act and should properly be excluded from in the unit as ineligible to vote and that their ballots should not be counted. The Union has challenged a number of employees classified as lead persons who it contends are in reality supervisors and ineligible to vote in the election. In *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006); *Croft Metals, Inc.*, 348 NLRB 717 (2006); and *Golden Crest Healthcare, Inc.*, 348 NLRB 727 (2006), referred to as the "Oakwood Trilogy," the Board determined to "refine the analysis to be applied in assessing supervisory status . . . and endeavors to provide clear and broadly applicable guidance for the Board's regulated community." *Oakwood*, above at 686. The Board adopted definitions for the terms "assign," "responsibly to direct" and "independent judgment" as those terms are used in Section 2(11) of the Act. Id. at 688. In *Oakwood,* the Board construed the term "assign" "to refer to the Act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e. tasks, to an employee." Id. at 689. The Board held the term did not encompass "choosing the order in which the employee will perform a discrete task" or "ad hoc instruction that the employee perform a discrete task." With regard to "responsibility to direct," the Board in *Oakwood*, supra*,* held "if a person on the shop floor has 'men under him' and if that person decides 'what job shall be undertaken next or who shall do it,' that person is a supervisor, provided that the direction is both 'responsible'. . . and carried out with independent judgment" Id. at 691. The Board also held that in order to be responsible direction, the alleged supervisor "must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly." Id. at 692. The Board also said, "It must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It must also be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps." Further the exercise of that authority must not be routine or clerical in nature but requires the use of "independent judgment." In *Oakwood,* the Board held that for the judgment to be independent, it must be "free of the control of others" and not be "dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement."

The lead persons in the instant case before me have the ability to and do make changes to work assignments, and prioritize these work assignments to assure production needs are met. Lead person Tim Childers testified that the Company's written job descriptions accurately reflect what he does including changing work assignments when necessary. All parties stipulated as testified by Childers that the lead employees did so only after receiving approval from their supervisors. The Employer concedes that lead employees assign work to groups of employees and may from time to time change work assignments with the approval of their supervisor. The Employer contends that although the lead persons may change the assignment of a particular employee they do so only after checking with their supervisors. The lead persons have the authority to prioritize work and change work assignments to meet pro-

duction needs. In *USF Reddaway, Inc.*, 349 NLRB 329 (2007), the Board held that lead persons who made changes in job assignments based on the employer's needs were supervisors. In *American River Transportation Co.*, 347 NLRB 925 (2006), the Board held that authority to change and prioritize work assignments required a finding of supervisory status. The Union contends that the lead persons are supervisors and that the challenges to their ballots should be sustained. I find that the lead persons "assign" work to employees under their direction and control. Although they may frequently check with the supervisors, lead employees do assign work to groups of employees. I thus find that under *Oakwood Healthcare, Inc*., supra, and related cases, the assignment of work and the prioritizing of these assignments, establishes that the lead employees are supervisors underSection 2(11) of the Act.

Background of the Alleged Unfair Labor Practices

In August 2006, the Union commenced a campaign to organize Respondent PPG's production and maintenance employees at its Huntsville, Alabama facility where it manufactures airplane "transparencies" (windows and windshields for airplanes). The Union filed a petition for an election in Case 10–RC–15611 on August 30, 2006, to represent the Employer's production and maintenance employees. The election was held on October 18, 2006, and the Region issued a tally of ballots on that date. The Union filed objections to conduct affecting the results of the election on October 25, 2006. The Regional Director issued his order directing hearing, order consolidating cases, order transferring cases to the Board and notice of hearing on January 23, 2007.

The complaint allegations are as follows:

Paragraph 7 of the complaint—More closely scrutinizing and monitoring movements and conversations of employees because they supported the Union's organizing campaign

General Counsel contends that on the day following the filing of the Petition for an election on or about September 1, 2006, the Respondent began closely scrutinizing and monitoring the activities of its production and maintenance employees because of their support of the Union. Respondent does not operate an assembly line. Its work is performed by small groups of individual employees who work in designated areas, referred to as "cells" in the finishing department. There are several employees assigned to each cell. There are two principal areas in the assembly area, the "autoclave" and the Assembly room." Employees place units of product in the autoclave area. The "assembly room" is a sealed "clean room" which is entered through an "airlock" and contains a number of 10-by-10 foot plastic curtain booths with a single employee assigned to each one. "Clean room attire" must be worn by all persons entering the assembly room. Those persons outside the booths cannot hear conversations within the booths. The Respondent contends that employees began to more frequently gather and engage in conversations of nonwork related matters which required the supervisors to break up groups of employees near the assembly room booths and finishing cells. Iva Jayne Mayes, a 12-year employee who worked in the finishing department between August and October 2006, testified that on about September 1, 2006, she saw employees Jeff Lindsey and Rodney Brownfield engaged in a lengthy conversation in Brownfield's "cell." She was aware that Lindsey was not a union supporter and that Brownfield was a union supporter. Neither of these two employees were engaged in work or on break at that time. Mayes walked over to where the two men were talking. At that time she was approached by Supervisor Sue Cooper, who told her to return to her cell, and personally escorted her back to her cell and also told Mayes that Cooper could not allow "two union people to gang up on a non-union person." Mayes testified that this was the first instance in which supervisor Cooper had personally escorted her back to her workstation. Mayes testified that during this same period of time she saw Lindsey engaged in other uninterrupted conversations with both union and antiunion supporters in the presence of Supervisor Cooper which lasted up to 30 minutes. Mayes testified that when conversations were led by union supporters such as Jay Balcerek, the supervisors interrupted these conversations. On September 27, 2006, Supervisor Cooper broke up a conversation between Mayes and Balcerek and told them to go back to work. Finishing department employee Gary Dwayne Sims testified that in the August to October time frame, the supervisors and managers on his shift closely watched the individuals in the assembly department because of their support for the Union. Sims was employed as an assembler. Sims testified that some of his projects could be accomplished in 30 minutes whereas others would take a day and a half to complete. He testified that there would be "a little down time" between obtaining or receiving parts and receiving assignments and that during these periods the employees would help each other and would engage in general conversation.

Sims further testified that he attended union meetings. At a union meeting held in September 2006, Union Organizer Harvey Durham asked Sims and several other employees to pose for a picture with a sign stating "Union Yes." They did so and held up their clenched fists. The picture was posted on the Union's Internet website. Some of Sim's coworkers told him that they had seen the picture on the Union's website. During the same time period Supervisor Greg Campbell, in the presence of Sims and Supervisor Paul Rigsby, put his fist in the air and asked Sims what it was. Sims told Campbell he did not know what he was talking about. Campbell again made a fist, held it in the air and asked Sims what it was. Sims again said he did not know. Campbell then turned to Supervisor Rigsby and asked if he had seen this before and Rigsby replied that he thought he had seen it before. Supervisors Campbell and Rigsby denied at the hearing in this case that this incident had occurred. Sims testified that he noticed a change in Campbell's attitude toward him after this incident. Campbell denied that his attitude toward Sims had changed. Sims testified that after this incident he noticed Campbell walking up and down the aisle and that whenever Sims would leave his workstation to help a coworker or to discuss an issue, Supervisor Campbell would fold his arms and stare at him. Sims also testified that during this same time period, he was aware that two of his coworkers, Mike Martin and Mary Mathis, did not support the Union and that while they had previously communicated only with each other, after the commencement of the union campaign, they began "talking to everybody . . . (in) all the booths

and talking to everybody, just really outgoing." Sims also observed that the supervisors did not interrupt the conversations of Martin and Mathis nor order them back to their workstations. The Respondent contends that during the campaign employees began to gather in groups by finishing cells and assembly room booths and discuss nonwork-related subjects during worktime.

I find that the evidence supports the conclusion that Respondent has, by its supervisors, violated Section 8(a)(1) of the Act by disparately closely scrutinizing and monitoring the conversations of its production and maintenance employees. I credit the testimony of Mayes and Sims who were current employees at the time they testified in this regard. I find that the Respondent through its supervisors was more closely monitoring and scrutinizing the movements and conversations of its prounion employees while permitting antiunion employees to engage in lengthy conversations without interruption.

Paragraph 8 of the complaint—Threatening its Employees with Loss of Benefits Because of their Support of the Union

Mayes testified that on about September 1, 2006, Supervisor Cooper told her, she would probably lose her "Salary Continuance" benefit if she and her co-employees voted to elect the Union as their collective-bargaining representative. Cooper also asked Mayes if she had ever missed a paycheck. This was a meaningful threat as Mayes testified that because of knee problems, she had made extensive use of the "Salary Continuance" benefit and was then currently on a partial disability status. Although Cooper denied having made such a threat, I credit Mayes' testimony who was a current employee at the time she testified and was not an alleged discriminatee. Her testimony was likely to be true. I find that this threat was violative of Section 8(a)(1) of the Act and destructive of the employees' Section 7 rights to engage in protected concerted activities. This was a threat of reprisal for engaging in protected concerted activities. It was not tempered in any manner by tying it to the give and take of collective bargaining. It was not a mere factual statement of the realities or stated as an opinion but clearly was a threat of loss of a benefit if the employees chose union representation. See *Overnite Transportation Co.*, 329 NLRB 990 (1999), enfd. 240 F.3d 325 (4th Cir. 2001). RE: threat of loss of future pay increases; *Abramson, LLC*, 345 NLRB 171, 174 (2005); Re: threat of loss of benefits and that the company would probably close its doors if the employees voted in favor of union representation; *International Harvester Co.*, 222 NLRB 377 (1976); Re: threat of loss of healthcare benefits, sick pay and vacation. In the instant case before me, Supervisor Cooper's threat of loss of benefits because of the employees' support of the Union was violative of Section 8(a)(1) of the Act.

9(a), 9(b), and 9(c) of the Complaint

Complaint Paragraph 9(a)—Threatening employees with the inevitably of a strike if they selected the Union as their bargaining representative

Complaint Paragraph 9(b)—Replacement of striking employees, and

Complaint Paragraph9(c)—Futility of supporting the Union

Sandra Lingo Hansen has been an assembler the last 2 years. She inspects and installs windows and windshield's internal components. Her supervisor is Greg Campbell. She testified that during the last week of September 2006 Campbell approached her with antiunion literature in hand and issued a number of threats if the Union won the election. He told her he had spoken to 50 of her fellow workers and that they had told him that they would not cross a picket line if the Union called a strike. He also told her that if the Union won the election she would need to go on strike as a strike was the Union's only power and that she could be replaced if she went on strike. He also told her that the Union would be forced to go on strike as the Respondent would not give the Union a contract. He also told her that if she went on strike, she would be permanently replaced and thus, lose her job. He ended the conversation by telling Hansen to be prepared to strike. Later on October 17, 2006, he told her he hoped the Union lost the election.

Campbell denied having made these threats. However, I credit Hansen's testimony and find that he did in fact make these threats as testified to by Hansen. I found Hansen to be a credible witness and note that she is a current employee who is not involved in this case as an alleged discriminatee and find that it is likely that her testimony is truthful. The threats made by Campbell to Hansen were not protected under the Act. Rather they were inherently destructive of Hansen's right to engage in protected concerted activities under Section 7 of the Act. They were unlawful interference with the election. *NLRB v. Gissel Packing Co.*, 395 U.S. 515 (1969); *Gold Kist, Inc.,* 341 NLRB 1040 (2001); and *Flexisteel Industries*, 316 NLRB 745 (1995).

Complaint Paragraph 10—Creating the Impression Among Employees that Their Union Activities were Under Surveillance

On October 16–17, 2006, the Respondent increased the number of supervisors on the second and third shifts in anticipation of the possibility of a need for greater supervision as the result of tension among the employees at the plant concerning the upcoming election set for October 18, 2006. The increase in supervision was modest. Whereas, the first shift was normally staffed with 260 to 275 employees and 15 to 20 supervisors; there was no increase in supervision on this shift. Rather, two supervisors from the first shift were assigned to supplement the supervision on the second shift and on the third. The second shift had a complement of 140 employees and 1 to 2 supervisors, the third shift normally had a complement of 70 to 75 employees and 1 supervisor. Respondent's witnesses, Operations Manager Mitchell Bruce and Director of Human Resources John Faulds, testified that there was tension in the plant concerning the upcoming election which was contributing to a loss of production. They also testified to three instances of suspected sabotage in which product had been intentionally damaged and of the serious safety concerns about the infliction of damage to its products which could threaten the life and safety of airplane crews and passengers if the integrity of the windshields and windows were compromised. Additionally Bruce testified that he was informed by an employee that the employee had been threatened with damage to his property and physical harm if he did not support the Union. They also testified that there was tension on the plant floor as groups of em-

ployees were gathering together to discuss the upcoming election.

I find that the General Counsel did not make a prima facie case of the creation of unlawful surveillance among the employees by Respondent. As noted above, the increase of supervision on the second and third shifts was modest. There was no increase in supervision on the first shift. I credit the testimony of Respondent's witnesses, Bruce, Willey, and Faulds, concerning the loss of production and the sabotage of its products. I credit the testimony of Bruce and Faulds that there were reports received from an employee of the threat of property damage and violence made by another employee. In *Crowley, Milner & Co.*, 216 NLRB 443, 444 (1975), the Board held there was no objectionable evidence of surveillance because of the employer's increase in supervision in a 2-week period prior to the election. It is undisputed that sabotaged products could cause an airplane disaster if they were installed in an airplane. Clearly, the Respondent had the right and responsibility to ensure that there was no interference with the production of safe products in the operation of its business and in view of the threat to all who were affected by their installation in airplanes. I find this allegation of the complaint should be dismissed.

With regard to Objection 1, I find that the Employer engaged in objectionable conduct as well as a violation of Section 8(a)(1) of the Act by more closely securitizing and monitoring the movements and conversations of employees because they supported the Union's organizing campaign. This conduct occurred during the critical period.

With regard to Objection 3, I find that the Employer engaged in objectionable conduct as well as a violation of Section 8(a)(1) of the Act by threatening its employee with loss of benefits if she supported the Union. This conduct also occurred during the critical period.

With regard to Objection 5, I find that the Employer engaged in objectionable conduct as well as violations of Section 8(a)(1) of the Act by threatening employees with the inevitability of a strike if they selected the Union as their bargaining representative, by threatening its employees with replacement if they went on strike in support of the Union, and by informing employees that it would be futile for them to select the Union as their bargaining representative because the Union would never get a contract from the Employer. These threats occurred during the critical period.

Objection 8 shall be overruled as the evidence did not establish that the Employer engaged in the creation of unlawful surveillance.

Objection 10 shall be overruled as no evidence was submitted at the hearing in support of this objection.

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Sections 2(2), (6), and (7) of the Act.

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

3. Respondent violated Section 8(a)(1) of the Act by:

(a) More closely scrutinizing and monitoring the movements and conversations of its employees because of their support of the Union.

(b) Threatening loss of benefits because its employees supported the Union.

(c) Threatening its employees with the inevitability of a strike if its employees selected the Union as their collective-bargaining representative.

(d) Threatening its employees with replacement if they supported a strike by the Union.

(e) Informing employees it would be futile for them to select the Union as their collective-bargaining representative because the Union would never get a contract from the Respondent.

4. The Respondent did not violate the Act by creating the impression that the employees' union activities were under surveillance.

5. The Employer did not engage in objectionable conduct as alleged in Objection 10.

In view of my finding of a violation of the Act as alleged in complaint paragraph 7, I find that Objection 1 should be sustained.

In view of my finding of a violation of the Act as alleged in complaint paragraph 8, I find that Objection 3 should be sustained.

In view of my finding of a violation of the Act as alleged in complaint paragraphs 9(a), 9(b), and 9(c), I find that Objection 5 should be sustained.

In view of my finding of no violation of the Act as alleged in complaint paragraph 10, I find that Objection 8 should be overruled.

I find that the Charging Party failed to establish that the employer abused the election process as asserted in Objection 10 and accordingly find that Objection 10 should be overruled.

THE REMEDY

Having found that the Respondent has engaged in the above violations of the Act, it shall be recommended that Respondent cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes and policies of the Act and post the appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, PPG Industries, Inc., Huntsville, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) More closely scrutinizing and monitoring the movements and conversations of its employees because of their support of the Union.

(b) Threatening loss of benefits because its employees support the Union.

(c) Threatening its employees with the inevitability of a strike if they select the Union as their collective-bargaining representative.

(d) Threatening its employees with replacement if they sup-

[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.

port the Union.

(e) Informing employees it would be futile for them to select the Union as their collective-bargaining representative because the Union would never get a contract from the Respondent.

(f) The allegation that Respondent unlawfully violated the Act by creating the impression that the employees' union activities were under surveillance shall be dismissed.

(g) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

2. Take the following affirmative actions to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix"[4] at its facility in Huntsville, Alabama. Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 days in conspicuous places, including all places where notices to employees are customarily posted and shall mail a copy of the notices to all employees who were employed at its Huntsville facility during the period August 1 to October 18, 2006. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any 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 August 2006.

(b) 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 proceeding in Case 10-RC-15611 be severed and remanded to the Regional Director[5] for appropriate action. I recommend that the challenged ballots of the temporary employees be counted. I recommend that the challenged ballots of the lead men be set aside and not counted. In the event that the challenged ballots and the revised tally show a majority in favor of the Union, I recommend that the election be certified by the Regional Director, as there will be no need for a second election. In the event that the challenged ballots and the revised tally do not show a majority in favor of the Union, I recommend that the election be set aside as the aforesaid finding of the objections has destroyed the laboratory conditions of the first election and the Employer should not benefit therefrom. An employer's pre-election conduct must not contain any threat of reprisal. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). See *Dominion Engineered Textiles, Inc.*, 314 NLRB 571 (1994).

Dated at Washington, D.C. October 19, 2007

APPENDIX

NOTICE TO MEMBERS
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 on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT more closely scrutinize and monitor the movements and conversations of our employees because of their support of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO (the Union).

WE WILL NOT threaten our employees with loss of benefits because of their support of the Union.

WE WILL NOT threaten our employees with the inevitability of a strike if they select the Union as their collective-bargaining representative.

WE WILL NOT threaten our employees with replacement if they support the Union.

WE WILL NOT inform our employees it would be futile for them to select the Union as their collective-bargaining representative because the Union would never get a contract from us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of your rights under Section 7 of the National Labor Relations Act.

PPG AEROSPACE INDUSTRIES, INC.

Gregory Powell, Esq., for the General Counsel.
John J. Coleman III and *Amy K. Jordan, Esqs.,* for the Respondent Employer.
George N. Davies, Esq., for the Charging Party Petitioner.

SUPPLEMENTAL DECISION

LAWRENCE W. CULLEN, Administrative Law Judge. I issued my Decision in this case on October 19, 2007, finding, inter alia, that the Respondent violated the Act by more closely scrutinizing and monitoring the movements and conversations of its employees because of their support of the Union and by threatening loss of benefits because its employees supported the Union. My finding regarding the allegation of scrutinizing and monitoring was based upon several incidents including an incident on September 1, 2006, in which Supervisor Sue Cooper directed prounion employee Iva Mayes not to become involved

[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."

[5] Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, Exceptions to this Report may be filed with the Board in Washington, DC within 14 days from the date of issuance of this Report and recommendations. Exceptions must be received by the Board in Washington by [date].

in a conversation between prounion employee Rodney Brownsfield and antiunion employee Jeff Lindsey because she "couldn't let two Union people gang up on a non-union person."[1] With regard to the threat relating to benefits, I found that Supervisor Cooper told employee Mayes that employees "would probably lose that [their salary continuance benefit] with all this union stuff." A representation election was held in an appropriate unit of the Respondent's employees on October 18, 2006. The critical period was from August 30 until October 18, 2006. The Union filed timely objections to conduct affecting the election. I found that the foregoing and other conduct constituted objectionable conduct and that the conduct occurred within the critical period.

On September 30, 2008, the Board, in *PPG Aerospace Industries*, 353 NLRB No. 23 (2008), inter alia, remanded this case to me "for the limited purposes of (a) reconsidering . . . [my] crediting of [employee Iva] Mayes over [Supervisor Sue] Cooper regarding these two statements, (b) explaining, more fully, the basis for . . . [my] credibility determinations upon reconsideration, and (c) modifying, if necessary, . . . [my] credibility based findings that Cooper's disputed statements violated Section 8(a)(1)."

Although my decision points out that Mayes was a current employee, the Board states that I did not adequately explain my credibility resolutions. With regard to the first statement, the Board notes that my decision did not state that Cooper denied making the statement. With regard to both statements, the Board notes that Mayes did not include either statement in a handwritten incident report that she gave to the Union and that she "offered no explanation" for the omission.

The unsworn handwritten incident report that Mayes provided to the Union was received as Respondent's Exhibit 2. After being confronted with the omission of the two statements in the handwritten incident report, omissions that Mayes acknowledged, she spontaneously stated that "[w]hen I did the statement I had notes," thereby implying that the notes contained the statements. In earlier testimony, Mayes had stated that her notes were at her home. Counsel for the Respondent did not request that she retrieve the notes or inquire further with regard to the contents of the notes to which Mayes referred. Thus, although Mayes gave no specific explanation for the omission of the statements in the incident report, no explanation was sought. Whether her notes contained the statements was not established on the record.

The issue, of course, is not what Mayes wrote in the unsworn report or in her notes, but what Supervisor Cooper said. Mayes provided a pretrial affidavit to the Regional Office that was provided to counsel for the Respondent at the hearing. Counsel did not examine Mayes with regard to any discrepancies between her sworn testimony and her pretrial affidavit. I am satisfied that, had there been any discrepancy, counsel for the Respondent would have pointed that out.

My decision implies that Cooper denied the "gang up" statement insofar as it does not state that Mayes' testimony regarding the "gang up" statement was uncontradicted, and it does credit Mayes, pointing out that she was a current employee.

I am mindful that one's status as a current employee, although a "significant factor" among other factors in resolving credibility, creates no presumption of truthfulness. However, precedent establishes that "the testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interest." *Flexsteel Industries*, 316 NLRB 745 (1995).

In making my initial decision, I considered all of the evidence before me. There was nothing in the demeanor of either Mayes or Cooper that enhanced or detracted from their credibility. I based my credibility determinations upon various factors including, but not limited to, Mayes' status as a current employee, Cooper's status as a supervisor, established facts, "inherent probabilities, 'and reasonable inferences which may be drawn from the record as a whole.'" *Daikichi Sushi*, 335 NLRB 622, 623 (2001).

Consistent with the Board's remand, I have reconsidered my crediting of Mayes and shall explain in more detail the basis for my credibility determinations based upon the evidence.

With regard to the first statement, Mayes explained that, on September 1, 2006, she left her work area to see what prounion employee Rodney Brownsfield and antiunion employee Jeff Lindsey were talking about at Lindsey's work station, referred to as a work "cell."[2] Cooper "came over" and told Mayes that she needed to go back to work, that she, Cooper, "couldn't let two Union people gang up on a non-union person." Cooper then escorted Mayes back to her work cell, the first instance upon which she had done so. The foregoing testimony was elicited in support of the complaint allegation that the Respondent scrutinized and monitored the movements and conversations of union supporters.

Supervisor Cooper's first denial of the "gang up" comment followed testimony elicited by counsel for the Respondent who asked whether she recalled a conversation "involving a question by Rodney Brownsfield during the month or so prior to the election." In response to that question, without specifying a date, Cooper related that she observed at least four employees at Lindsey's work cell: Lindsey, Brownsfield, and John Smith and Dan Utter. Cooper approached them and the employees asked her about a posting concerning layoff priority between PPG and contract employees. According to Cooper, employee Brownsfield asked for a copy of the posting. She testified that Mayes left her work cell to join the conversation, and that she, Cooper, told Mayes "to go back to your work station," that everybody "needs to go back." She denied walking back with Mayes to Mayes' work cell. She denied making the "gang up" comment at that time. Counsel for the Respondent later asked Cooper, "Did you ever say that to her whether it was that conversation or any other?" Cooper answered, "No." Cooper was not asked whether she had, on any other occasion, escorted Mayes back to her work station.

[1] My initial decision refers to Brownfield, as does the Respondent's brief, which also spells Lindsey as Lindsay. The spellings used herein are as the names appear in the transcript.

[2] My initial decision incorrectly states that Mayes testified that the conversation occurred at Brownsfield's work cell. She testified that the conversation was at Lindsey's work cell.

The posting regarding layoff priority is dated August 21, 2006. There is no evidence that it was still a topic of conversation on September 1, 2006, 2 days after the representation petition was filed on August 30, 2006. None of four employees that Cooper identified as participating in the conversation testified, thus her testimony was uncorroborated. Cooper did not place a date upon her conversation with the four employees regarding the posting.

The predicate for Cooper's first denial of the "gang up" comment was the foregoing conversation. On that occasion there was no potential for any ganging up. The conversation was about the posting, and Cooper was involved in it. The incident to which Mayes testified related to her attempt to join fellow prounion employee Brownsfield in what, at that time, was a one-on-one conversation between him and antiunion employee Lindsey. Mayes testified that Cooper prevented her from doing so. The fact that, after Cooper's first denial, counsel asked her if she made the "gang up" comment, "whether it was that conversation [the posting conversation] or any other," was obviously necessary in order to establish a denial of the incident to which Mayes testified. I do not credit that denial.

"Gang up" is a colloquial expression. Mayes attribution to Cooper of the colloquial statement, "gang up on a non-union person" did not seem rehearsed or fabricated. This was not the group gathering in which Cooper participated. Mayes was seeking to join prounion employee Brownsfield at Lindsey' work cell, and Cooper did not want them to "gang up." Upon reconsideration, I reaffirm my finding that, when Mayes attempted to join the conversation between Brownsfield and Lindsey, Supervisor Cooper stated to Mayes that she "couldn't let two Union people gang up on a non-union person" and then escorted Mayes back to her work station.

Regarding the second statement relating to a threat of loss of benefits, salary continuance is a benefit, full pay, given to employees under a doctor's care after the employee misses 6 days of work. The length of time that the benefit is paid is dependent upon "how long you have been employed at PPG." As noted in my initial decision, Mayes had been a beneficiary of that benefit, and had received salary continuance during a period when Cooper was her supervisor.

Mayes testified that, on September 1, 2006, when Cooper had escorted her back to her work station, Cooper stated that she was "afraid of the unknown and would rather go with the known." She asked Mayes whether she had "ever missed a paycheck," and Mayes answered, "No." Mayes reminded Cooper that she had received salary continuance. Cooper did not deny that she was aware that Mayes had received salary continuance. Cooper stated that "we would probably lose that [salary continuance] with all this union stuff."

Cooper denied asking Mayes whether she had ever missed a paycheck or stating that employees would probably lose salary continuance, but she admitted discussing salary continuance in response to questions from "people," none of whom she identified as Mayes. She testified, "I know I was asked about salary continuance, would that go away, and the only response that I had was that as far as PPG, none of our union plants had the benefit of salary continuance." The Respondent's brief notes that Supervisor Cooper's statement was "truthful information," and that it was "both lawful and appropriate" for her to convey that information.

Insofar as Cooper acknowledged answering questions about salary continuance from "people," albeit not Mayes, I find it incredible that Cooper would not have mentioned salary continuance to Mayes in view of her awareness that Mayes had received the benefit. I credit Mayes that Cooper did speak with her about salary continuance. Cooper's failure to acknowledge any such conversation with Mayes suggests that, when speaking with Mayes, Cooper phrased the truthful information, "none of our union plants had the benefit," as a threat: "[W]e would probably lose that [salary continuance]." Upon reconsideration I reaffirm my finding that Cooper, who admitted informing other employees that "none of our union plants had the benefit of salary continuance," informed Mayes, who is a current employee and not a discriminatee, that "we would probably lose that [salary continuance] with all this union stuff."

I have reconsidered my crediting of Mayes and have reaffirmed and more fully explained my basis for those credibility determinations. Having reaffirmed those determinations, I need not modify my findings regarding the alleged 8(a)(1) violations.[3]

Dated, Washington, D.C. December 12, 2008

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings 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.