UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL DIE CASTERS, INC.	:		
	:		
and	:	Cases Nos.	8-CA-39211
	:		8-CA-39228
TEAMSTERS LOCAL 24 a/w	:		8-CA-39252
INTERNATIONAL BROTHERHOOD	:		8-CA-39256
OF TEAMSTERS	:		8-CA-39266
	:		8-CA-39272
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RESPONDENT GENERAL DIE CASTERS, INC.'S
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE CARISSIMI'S DECISION
AND BRIEF IN SUPPORT

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I. STATEMENT OF THE CASE

On January 6, 2011, the National Labor Relations Board, Region 8 (hereafter "Region 8" or "General Counsel") issued its Consolidated Complaint and Notice of Hearing alleging that the Respondent, General Die Casters, Inc. (hereafter "General Die," "the Company" or "Respondent") through its agents engaged in enumerated unfair labor practices as set forth in the National Labor Relations Act (hereafter the "Act"). *See, Order Consolidating Cases, Consolidated Complaint And Notice Of Hearing,* consolidating 8-CA-39211, 8-CA-39228, 8-CA-39252, 8-CA-39256, 8-CA-39266 and 8-CA-39272, dated January 6, 2011. On January 20, 2011, Region 8 filed its First *Amended Consolidated Complaint And Notice Of Hearing* to include a second amended charge in Case 8- CA-39266 as filed on January 13, 2011 by Teamsters Local 24 a/w International Brotherhood Of Teamsters (hereafter "Union") with Region 8. On March 14, 2011, at the outset of hearing, Region 8 further amended its Complaint at ¶¶ 8(B) and 8(C) respectively on the record before National Labor Relations Board Administrative Law Judge Mark Carissimi ("Judge Carissimi"). *See,* G.C. Exhibit 1(jj).

On January 7, 2011, General Counsel filed a motion to reopen the record of the previous case – now being considered before the National Labor Relations Board (the "Board") in 8-CA-37932 *et al,* and consolidate the records of the previous case with the present one. On January 12, 2011, the Respondent filed its response to General Counsel's motion as not opposing the consolidation. On January 13, 2011, Judge Carissimi denied General Counsel's motion. On January 14, 2011, General Counsel filed its motion for reconsideration attaching the January 11, 2011 Order from the District Court for the Northern District of Ohio decision granting General Counsel's 10(j) injunction. The Respondent filed no further pleading. Later that day, Judge Carissimi denied General Counsel's motion for reconsideration for consolidation of the cases.

General Counsel's final Consolidated Complaint against General Die alleged the employer had engaged in illegal activity principally against three employees: Jerome Ivery ("Ivery"), a cast trim developer, Leonard Redd, a "metal man" and towmotor operator and Sam Tomsello, an employee who testified on behalf of General Counsel in both this matter and the previous matter (8-CA-37932 *et al.*).

General Counsel's allegations regarding these employees were as follows:

Jerome Ivery

- Allegations Regarding More Onerous Working Conditions
- Allegations Regarding Closer Supervision
- Allegations Regarding November 1, 2010 Warning Regarding Training Pay
- Allegations Regarding *Weingarten* Violation
- Allegations Regarding December 9, 2010 Warning Regarding Lock Out/Tag Out
- Allegations Regarding Threat Made To Ivery

Leonard Redd

- Allegations Regarding Placing Leonard Redd On 6 Months Probation

Sam Tomsello

- Allegations Regarding Paying The Wages Of The Respondent's Employee Witness [Witness For The General Counsel]

See generally, Judge Carissimi's July 11, 2011 Decision.

Judge Carissimi dismissed all of General Counsel's allegations against General Die, except that he found the Employer had violated Jerome Ivery's right to union assistance under *Weingarten* during a November 1, 2010 meeting where discipline for Ivery's incorrect timecards

(Ivery added nonexistent training time to time card for pay) was previously determined and Ivery had been called in to receive the paperwork.

Respondent makes exception to two parts of Judge Carissimi's decision. The first exception is that Judge Carissimi committed error when he did not consolidate the cases for consideration of all facts, particularly the credibility of General Counsel's premier witness, Jerome Ivery. Frankly, by the trial in this matter, the Judge's opinion of Ivery's credibility correctly changed such that the Judge dismissed Ivery's testimony as wholly uncredible.

Also, the Respondent makes exception to Judge Carissimi's finding that Ivery's right to union assistance under *Weingarten* during a November 1, 2010 meeting had been violated. The evidence before Judge Carissimi was primarily an audio tape recording and transcript of the meeting. No testimony by Respondent's managers or Ivery was taken by General Counsel such that the ALJ could draw inferences as to whether the managers realized Ivery was requesting union assistance.

II. FACTS

A. Denial Of Case Consolidations

Previously, Judge Carissimi was assigned to administer the *Consolidated Complaints in General Die Casters, Inc. and Teamsters Local 24 a/w International Brotherhood Of Teamsters,* Cases 8-CA-37932 *et al.* On January 7, 2011, General Counsel filed a motion to reopen the record of this previous case with the present one. On January 12, 2011, the Respondent filed its response to General Counsel's motion as not opposing the consolidation. In its initial motion to consolidate, General Counsel stated:

> The testimonial evidence given by these witnesses at hearing provides substantive background evidence of animus relevant and closely related to the 8(a)(1), (3) and (4) allegations included in the

> attached Consolidated Complaint. Indeed, it would have a significant bearing on the allegations of harassment, discrimination, and unlawful discipline since imposed on these employee/witnesses in direct retaliation for having testified at the hearing, as alleged in the Consolidated Complaint….

Id. at p. 2 of General Counsel's January 6, 2011 Motion To Reopen The Record And Consolidate With Cases 8-CA-39211, 8-CA-39228, 8-CA-39252, 8-CA-39256, 8-CA-39266 and 8-CA-39272.

General Counsel correctly observed that the cases should be consolidated, further stating:

> The principal consideration in determining whether a record should be reopened is administrative efficiency. In the present analysis, these cases arise essentially from the same basic operative facts, involve the same parties and testimony by the same witnesses….

Id. at p. 3 of General Counsel's January 6, 2011 Motion To Reopen The Record And Consolidate With Cases 8-CA-39211, 8-CA-39228, 8-CA-39252, 8-CA-39256, 8-CA-39266 and 8-CA-39272.

On January 14, 2011, Judge Carissimi denied General Counsel's Motion For Reconsideration of General Counsel's original motion to consolidate. Regarding General Counsel's judicial efficiency argument for consolidation, Judge Carissimi stated:

> I am assigned to hear the new consolidated complaint. Accordingly, there is absolutely no need to introduce the prior transcript and exhibits from the previous case as I already have them in my possession. On the same basis there would be no reason whatsoever to have witnesses repeat their previous testimony. When I issue my decision in the first case, my findings of fact and conclusions of law will serve as background to my consideration of the issues raised in the second case….

Judge Carissimi's Order Denying Motion For Reconsideration in Case 8-CA-37932 *et al.* At hearing, counsel for the Respondent urged Judge Carissimi to consolidate the cases on account of witness credibility. Judge Carissimi refused to do so. *See*, Tr. pp. 254-259.

On July 15, 2011, the Respondent submitted its Exceptions To Administrative Law Judge Carissimi's Decision And Brief In Support in the first case (8-CA-37932 *et al.*) which is now currently pending before this Board. It is the Respondent's position that even though Judge Carissimi erred by not consolidating the cases before him, the Board can now correct that error in order to review the evidence as a whole in the greater chronology of the "entire" case[s].

It is particularly relevant that the Board consider both cases simultaneously in order to review the credibility of General Counsel's witnesses, particularly Jerome Ivery. Ivery was a premier witness in both consolidated cases. It is clear that as the proceedings progressed, Judge Carissimi gave far less weight to Ivery as it was shown over both trials that he had been untruthful on his affidavits to General Counsel which made up a substantial portion of both cases and testified in complete opposition to unassailable evidence that he was threatened by his supervisor at the end of shift as he alleged.

B. Falsification Of Training Time On Time Card And Alleged Violation Of Weingarten Rights

On October 28, 2010, Ivery was training General Die employee Mike Williams. Tr. p. 173. Ivery was to keep track of training time on his timecard. The timecard tracks which machine an employee is working on and training time. Tr. p. 262. On the October 28, 2010 timecard, Ivery indicated that he was training Mike Williams for eight (8) hours. G.C. Exhibit #13, Tr. pp. 174 & 272-273. It is the responsibility of Mike Jordan ("Jordan") to approve training pay, and as such, he reviewed Ivery's timecards for the relevant dates of October 27 and October 28, 2010. Tr. p. 457. Jordan testified that on the day in question, he moved Mike Williams out of training to a trim job around 10:00 a.m. Nonetheless Ivery noted on his timecard that he had trained Williams for six and one half hours. Tr. pp. 457-460. Two weeks before

Ivery's training of Williams, on October 12, 2010, Plant Manager Brian Lennon ("Lennon") posted a reminder memo for employees that train to mark "training" on the timecard to receive training pay. G.C. Ex. #12, Tr. p. 53 and Tr. p. 174. Ivery stated that he "put down put down, Training, eight hours, or six hours on a card -- on my card." Tr. p. 175. The discrepancy was discovered when Jordan was reviewing the timecards. *Supra.* In turn, Jordan notified Lennon (Tr. p. 262) who wrote up the discipline on Ivery because from his October 27, 2010 timecard it was clear Ivery had described that he was changing a "shot tip" on a casting machine instead of training. Id. Likewise, on October 28, 2010, Ivery documented six (6) hours of training time when he only trained for 3.5 hours. G.C. Ex. #28 and R. Ex. #61. When the time cards of Ivery and Williams are examined side-by-side, discrepancies are shown in that Ivery performs other work after training Williams on both October 27th and October 28th. G.C. Ex. #35 and R. Ex. #61, Tr. p. 213. On November 1, 2010, Ivery was called to the Human Resource Director, Doug Hicks' ("Hicks") office and given the verbal written warning. G.C. Ex. #28. A recording of the meeting was made by Doug Hicks. G.C. Ex. #26. The transcript of the meeting was introduced into evidence. G.C. Ex. #27. General Counsel did not allege Weingarten violations with respect to the discipline Ivery received for violating the training pay policy. Decision p. 12, fn 9.

III. LAW AND ARGUMENT

A. Judge Carissimi Erred In Denying General Counsel's Motion To Consolidate Cases In 8-CA-37932 *et al.* Into The Present Case In Order To Hear And Judge All Issues Of Witness Credibility Simultaneously.

Judge Carissimi erred by denying consolidation of Case 8-CA-37932 into the present case. Tr. pp. 254-259. General Counsel's premier witness was shown to be untruthful in both cases. In the first case, he lied on his Affidavits taken by General Counsel. In fact, in Case Number 8-CA-37932 *et al.*, Ivery's testimony before Judge Carissimi was completely contrary to

the contents recorded on audio tape. Case 8-CA-37932 *et al.* R. Ex. 19 and R. Ex. 20. The ALJ acknowledged that conflict in *General Die Casters, Inc.*, 2011 NLRB LEXIS 200, *226-227 (2011). As in the previous case, Ivery's testimony under oath is in direct conflict with the video tape of the encounter with his supervisor, Mike Jordan. In this case, the video evidence even more clearly established that Ivery deserves zero credibility. Under oath, he stated with clear recollection that the conversation lasted only at most, two (2) seconds. The video tape irrefutably shows the conversation lasted nearly fifty (50) seconds.

In this matter, Respondent's request for consolidation is not extraordinary. "[T]he Board generally disfavors piecemeal litigation." Citing *National Labor Relations Board, Division Of Judges* Bench Book, August 2010, § 3-420 Consolidation at p. 23. As stated above in its Motion For Consolidation, General Counsel correctly pointed out that several issues between the two cases were interrelated. Moreover, a majority of witnesses were the same as well. Case 8-CA-37932 *et al.*, concluded on December 16, 2010. The first day of hearing on this matter before ALJ Carissimi was March 14, 2011. Respondent submitted its Exceptions To Administrative Law Judge Carissimi's Decision And Brief In Support to the Board in Case 8-CA-37932 *et al.*, on July 15, 2011.

Obviously, Respondent does not suggest that Judge Carissimi revisit either case However, it is Respondent's position that for the full and fair administration of both cases before the Board that it consolidate the cases for purposes of evidentiary review and legal argument. It is Respondent's position that all of the evidence, reviewed in total, demonstrates a more complete picture of the parties' credibility, particularly, the General Counsel's union witnesses. Judge Carissimi's opinion of General Counsel's witnesses' credibility diminishes noticeably from the first hearing to the second. The accepted standard of review of the ALJ's measure of

credibility is found at *Jerry Ryce Builders*, 352 NLRB 1262, fn.2 (2008), *as cited* in Judge Carissimi's Opinion at p. 3 which states "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." Id. Moreover, Judge Carissimi continued: "nothing is more common in all kinds of judicial decisions than to believe some and not all" of the witness' testimony. Judge Carissimi's Opinion at p. 5, *citing Jerry Ryce Builders* at p. 1262. *See also, J. Shaw Associates, LLC,* 349 NLRB 939 (2007) at p. 940. In denying Respondent's request to consolidate the cases on the record, Judge Carissimi again made reference to this method to resolve credibility. Tr. p. 257.

It is the Respondent's position that the Board must consolidate Case 8-CA-37932 *et al.,* with this case in order to properly judge the credibility of the witnesses. The first case has only been submitted to the Board for a month. It would be completely reasonable, given nearly all identical facts and witnesses to consolidate the cases without undue prejudice to the parties, particularly since there was no objection to consolidation at the lower administrative level.

On previous occasions, the Board has asserted authority to consolidate cases submitted to it for purposes of issuing a decision on all matters. In *ACL Corporation,* 273 NLRB 87 (1984), the Board consolidated a representation case together with a ULP case which addressed ULP allegations and proper unit definitions. Id. at pp. 88-90. Likewise, in *White Castle System, Inc.*, 264 NLRB 267 (1982), the Board decided *sue sponte* to consolidate consideration of representation cases for unit appropriateness regarding employees of a fast food restaurant chain. Id. at p. 267.

Here, the witnesses for General Counsel and the Company are nearly identical in both Case 8-CA-37932 *et al.,* and the present case. As previously stated, no prejudice to the parties

will occur by consolidation and, indeed, a more comprehensive evaluation of the facts and circumstances will occur as a result of consideration of both cases based upon a merged record.

B. Judge Carissimi Erred In Concluding The Company Denied Ivery His Weingarten Rights.

Judge Carissimi erred in concluding that the Company "violated Section 8(a)(1) of the Act by denying Ivery's request to have a union representative present before conducting an investigatory interview that Ivery reasonably believed could lead to discipline." Decision p. 14.

The November 1, 2010 meeting in Hicks' office was not an investigatory meeting nor was it an interview to which discipline might later be applied. Rather, the issue was completely investigated prior to Ivery being called in. Although a review of the meeting tape audio and transcript show clearly Ivery was argumentative, the discipline was already prepared and he was being advised of same and asked to sign for receipt. *See generally*, G.C. Ex. #28, G.C. Ex. #26 and G.C. Ex. #27. At Page 8, bottom line and top line of Page 9 of the meeting transcript (G.C. Ex. #27) and at 11:36 minutes into the meeting recording on CD (G.C. Ex. #26), Ivery asks Lennon and Hicks: "Do I need to get somebody in here?" presumably giving reference to a union representative. Nevertheless, Ivery was still referencing the discipline he had already received. Lennon responded, "Jerome, we, we're not going to talk about this for hours. I, I, I've made my point, you've told me what you think[.]" G.C. Ex. # 26 at p. 9.

Soon thereafter, Lennon asked Ivery why he kept "insinuating" that the Company was putting him on jobs that are outside his job responsibilities. Id. at p. 9. At that point, Lennon showed Ivery his job description, read from the document and explained to Ivery that the Company was not asking him to do anything that is not in his job description and that that he hasn't done for years. Id. at pp. 9-10. Specifically, Lennon stated as follows:

> And not but, you know, you know, why, why do you keep insinuating that were [sic] that your that we are putting you on jobs that are that are outside your job responsibilities Jerome. I mean, here is your job description right here, alright. Shall assist in cast and trim setup. We are not asking you to do anything that you haven't done for years and that isn't in your job description, alright?

Id. at pp. 9-10. *See also,* Tr. p. 287 and R. Ex. #39.

At no time during this discussion was Ivery under investigation or was discipline considered. Hicks and Lennon made the purpose of the meeting clear and expressly dispelled any fear that that the meeting could result in discipline. Lennon is simply putting Ivery on notice that *future* insubordination could lead to discipline.

> Jerome: Okay, so you pulling me in here…Okay so you pulling me in here because I asked Mike a, Mike Jordan a question about how…
>
> Doug: No we pulled you in here to write you up for the time cards. We didn't pull you in here…
>
> Jerome: Well he just said 'while we're in here'…
>
> Doug Hicks: Well…
>
> Jerome: 'I want to talk to you'…
>
> Doug Hicks: Well he's questioning it but, he didn't[,] we didn't call you in.
>
> Brian: ….and, and Jerome
>
> Doug Hicks: …for that specific reason…
>
> Brian: …these are the kinds of traits that that have got you in trouble in the past. And you've done
>
> Jerome: So…
>
> Brian: And you've done, and you've, you've done an outstanding job for, for a long time now alright and I don't know if, if, if your upset about something or, or whatever but tell you what just consider this, it, it, **it's meant to be a friendly talk** but just to let you know I mean, that whatever is bugging you, it's, it's, it's….

(Emphasis added.) Id. at p. 12. Later, Lennon again instructs Jerome that he is not receiving discipline.

> Brian: You're always thinking that oh, that this that this guy is do something that I should be doing or I'm doing something that they should be doing. And Jerome, I mean, I mean.
>
> Jerome: Uh, here we, here we go. I mean we all know…
>
> Brian: Yeah, okay, yeah.
>
> Jerome: Brian, Brian,
>
> Brian: We've had, we've had this conversation
>
> Jerome: You just told me, you just told me last week, Jerome, you're doing a great job, or whatever. You're doing a good job.
>
> Brian: I just told you that in this 30 seconds ago
>
> Jerome: Then all of a sudden you got me, you got me in the office with this. And you got me in the office about because I'm asking Mike and, and Cooper so you said I can't I can't ask a question. Is that what you said, I can't ask a question? So you gonna pull me in because I can't ask a question. I can't even believe you asking me this stuff Brian.
>
> Brian: Jerome.
>
> Jerome: Because I'm asking question?
>
> Brian: You going, you're basically going to your supervisor and saying you got me doing a job that I shouldn't be doing.
>
> Jerome: No I didn't say that.
>
> Brian: Yeah that's….
>
> Jerome: No I didn't. I said how long you gonna have me on set up. That's what I said, how long you gonna have me on set up.
>
> Brian: And why does it matter, I mean what, why-why is it your questioning what your [sic] doing at that given time as if we are doing it to singe you out.

> Jerome: Brian I'm doing my job the set up is getting done I mean, I'm doing my job to the best of my ability, train. I'm not rocking no boat and nothing like that, and I mean cause I asked a guy a question, I'm in trouble?
>
> Brian: **You're not in trouble…**
>
> Jerome: Then what I'm in here for?
>
> Brian: **Well you're in tr.., you're in, trouble with…**
>
> Jerome: Because…
>
> Brian: …**Your time cards Jerome.**
>
> Jerome: I'm in trouble with my time cards.

Id. at pp. 13-14. (Emphasis added.) As the transcript bears out, with the exception of the discipline for the time cards,[1] no further disciplinary action was taken against Ivery.

The Company readily admits that an Employer violates Section 8(a)(1) of the Act when it denies an employee's request that a union representative be present in an investigatory interview which the employee reasonably believes may result in discipline. *See, NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975). Nevertheless, Ivery's request was simply not sufficient to invoke the right to representation under *Weingarten*.

ALJ Carissimi cites *Southwestern Bell Telephone Co.*, 227 NLRB 1223 (1977) and *Circuit-Wise, Inc.*, 308 NLRB 1091 (1992) in support of his finding that Ivery sufficiently requested union representation when he asked Brian Lennon if "he needed to get somebody else in here," because he had just been given discipline he did not understand. Decision p. 13. In *Southwestern Bell*, the Company conducted investigatory interviews into the alleged serious misconduct of certain employees. 227 NLRB 1223 at p. 1223. The facts were undisputed "that

[1] As previously noted, General Counsel did not allege Weingarten violations with respect to the discipline Ivery received for violating the training pay policy. Decision p. 12, fn 9.

these interviews were ones which the employees reasonably believed might result in discipline." Id. During one interview, after having been asked series of questions by the Employer, an employee instructed his Employer that "[he] would like to have someone there that could explain to [him] what is happening." Id. The Board held that such a statement was sufficient to invoke the protections of *Weingarten*. Id. Here, Ivery was unclear about discipline he had already received. Furthermore, in *Southwestern Bell* employees were being questioned about past serious misconduct that could potentially lead to discipline. Likewise, Judge Carissimi cites *Circuit-Wise, Inc.* for the proposition that "an employee's request for 'someone' to be present during an interview was sufficient to invoke the *Weingarten* right when his supervisor admitted that he assumed that the employee was requesting the presence of a union steward." Decision p. 13. Even though Judge Carissimi acknowledged that Lennon did not explicitly admit that he interpreted Ivery's statement as a request to invoke his *Weingarten* rights, he nevertheless "[drew] the inference that Lennon was aware that Ivery was requesting union representation." Id. Such an inference was erroneous.

General Counsel elicited zero testimony from Ivery, Lennon or Hicks on this matter and, instead, relied exclusively on the tape recording in its attempt to prove a *Weingarten* violation. Tr. pp. 176-177. After General Counsel indicated they were solely relying on the audio tape to prove a violation, Judge Carissimi prohibited questions any questions with respect to the November 1, 2010 meeting. Tr. pp. 209-210. Accordingly, there is not enough evidence to support his "inference" that Lennon was aware that Ivery was requesting union representation.

Additionally, Judge Carissimi concluded that viewing the evidence objectively, "Ivery reasonably believed that Lennon's desire to discuss issues that had arisen between himself and Jordan could potentially lead to discipline especially considering Lennon never indicated to Ivery

that no discipline was being considered." Decision p. 13. However, the transcript of the audio recording expressly indicates otherwise. As noted above, Lennon explicitly informed Ivery that their discussion with respect to Mike Jordan was "meant to be a friendly talk" and that Ivery was "not in trouble." G.C. Ex. # 26 pp. 12-14. Lastly, when listening to Ivery's antics during the meeting, one could certainly infer that he had no fear of incurring potential discipline given his confrontational and defiant behavior towards Hicks and Lennon.

Contrary to Judge Carissimi, the Company believes the dialogue between Ivery and Lennon is analogous to the one found in *Northwest Engineering Co,* 265 N.L.R.B. 190 (1982). In *Northwest Engineering Co.,* a Company supervisor decided to call an employee meeting after having observed what he considered to be an intentional work slowdown. Id. at p. 190. During the meeting the supervisor passed out plant rules and regulations and began reviewing them with employees giving examples of what he considered to be violations. Id. When an employee asked what the meeting was about and whether a union steward should attend, he was told by the supervisor to "sit down and shut up." Id. The ALJ concluded that the Employer violated its employees' *Weingarten* rights by "requiring them to attend a meeting which they had reasonable cause to believe could result in disciplinary action after denying a request for union representation." Id. The Board subsequently overturned the ALJ's decision and stated as follows:

> It is not every employee meeting, however, to which Weingarten rights attach, and we are unable to agree that Respondent was obligated to comply with the request for a union representative's presence before it could read its plant rules and regulations and cite examples of rule infractions to an assemblage of its employees. There is no evidence that the purpose of the meeting was investigatory. No questions were asked of anyone. Nor was any discipline meted out. The Administrative Law Judge, however, makes much of the fact that the meeting was called after [the supervisor] observed what he considered to be a work slowdown by the outside crew earlier in the day. That the meeting may

> have been prompted by such incident does not establish that the purpose of the meeting was investigatory or disciplinary. Weingarten rights do not arise simply because an employer calls a meeting of its employees to discuss a perceived problem in the way its employees are carrying out their duties. Work performance is a matter of legitimate concern to an employer. An employer surely retains the prerogative of calling a meeting of a group of employees, at which no disciplinary actions are contemplated or taken, simply to advise them of the employer's valid work performance expectations and to inform them of the possible consequences of noncompliance, without invoking the spectre of Weingarten.

Id. at pp. 190-191. Similar to the meeting in *Northwest Engineering Co, supra,* Lennon spoke with Ivery to express his concerns about Ivery's attitude toward his job duties. This is evidenced by the fact that Lennon reviewed Ivery's job description with him. Lennon was simply putting Ivery on notice that *future* insubordination could lead to discipline. In layman's terms, Lennon was essentially telling Ivery to "knock it off." Nonetheless, as the Board in *Northwest Engineering Co.* noted, putting employees on notice that future violations could lead to discipline is not a violation. Specifically, the Board stated:

> In these circumstances, the nature of the meeting, and its purpose, was not changed merely because the employees, including Kennedy, were put on notice that future violations of the rules could lead to discipline. That, after all, was made explicit by the reading of the rules. Weingarten, however, is not concerned with employees having reason to believe that discipline will be imposed for future offenses; it relates to past conduct for which employees fear the imposition of current sanctions.

Id. at p. 191. As such, Judge Carissimi's conclusion that Ivery had a right to a *Weingarten* representative based upon his reasonable belief of possible discipline because he had a history of poor work performance issues and conflicts with supervisors is erroneous. Decision pp. 13-14.

Judge Carissimi appears to be stating that employees with a history of work performance issues and/or a history of conflicts with their supervisors will always have a reasonable belief of possible discipline and, therefore, *Weingarten* rights automatically attach to those employees.

Circuit-Wise Inc., supra, Lennox Industries, Inc., 244 NLRB 607 (1979) enfd. 637F.2d 340 (5th Cir, 1981) and *Van Tran Electric Corp.,* 218 NLRB 43 (1975)[2] do not hold that. For instance, in *Circuit-Wise, Inc., supra,* the employer admitted that that he knew the employee was requesting the presence of a union steward. Moreover, the Employer failed to inform the employee that the purpose of the meeting was not to administer discipline. Furthermore, in *Lennox Industries, supra,* the Employer did not instruct the employee that no disciplinary action was being considered and, therefore, union representation was not needed. Instead, the Employer simply stated that the employee did not need any assistance. Unlike the Employers in *Circuit-Wise* and *Lennox Industries*, Lennon informed Ivery that this was "meant to be a friendly talk" and that he was "not in trouble." G.C. Ex. #27 pp. 12-14. As the Board in *Northwest Engineering Co., supra,* stated:

> It is immaterial that Respondent may have foreseen that [the employee] would attempt to defend himself, or that there would likely be some given [sic] and take between [the supervisor] and the employees. The exchange of accusations and denials, or the interchange of viewpoints, claims, and counterclaims, does not determine whether a Weingarten right exists at such a meeting; what is determinative is whether discipline reasonably can be expected to follow.

Id. at p. 192. With respect to an employee's "fear of discipline" the Board stated:

> An employee's fear of discipline cannot by itself convert a meeting into a disciplinary or investigatory exercise. If the meeting is not intended to be and in fact is not concerned with discipline or an investigation into employee conduct, and the employee is made aware of this either before or at the meeting, the employee's fear to the contrary is immaterial.

Id. fn 4. Here, the facts plainly show that disciplinary action resulting from the meeting was not a reasonable likelihood and, indeed, none was taken. Even so, any fear that Ivery may have had

[2] General Die does not believe *Van Tran Electric Corp.* is applicable here. The Employer in *Van Tran* argued that employees do not have the right to union representation in an interview with management unless expressly stated in the contract.

about possible discipline was nullified when Lennon assured him that this was a friendly talk and that he was not in trouble.

IV. CONCLUSION

For the reasons outlined above and in accordance with the evidence, Respondent requests that the Board consolidate consideration of this matter together with the similarly identical matter in Case 8-CA-37932 *et al.*, for full and fair administration of both matters. Moreover, Respondent did violate Section 8(a)(1) of the Act by meeting with Jerome Ivery and subsequently reviewing his job description/duties with him. Accordingly, the Respondent respectfully requests that the Board find contrary to Administrative Law Judge Carissimi's rulings, findings, conclusions and the recommended Order with respect to the issues raised on these exceptions.

Dated at Dublin, Ohio on this 24th day of August, 2011

Respectfully submitted,

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General Die Casters, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 24, 2011, an electronic original of Respondent General Die Casters, Inc.'s Exception and Brief in Support was transmitted to the Board, Division of Judges via the National Labor Relations Board electronic filing system, and further, that copies of the foregoing Exceptions and Brief in Support were transmitted to the following individuals by electronic mail or first class U.S. mail as indicated:

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