

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

GREDE II, LLC

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL
AND SERVICE WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC

Cases 11-CA-22980
11-CA-22984
11-CA-22997
11-CA-66972

GREDE II, LLC

Employer

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL
AND SERVICE WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC

Case 11-RC-6748

To the Honorable, the Members of the
National Labor Relations Board
Franklin Court Building
1099 14th Street, NW
Washington, D.C. 20570-0001

**REQUEST OF COUNSEL FOR ACTING GENERAL COUNSEL
FOR PERMISSION TO FILE SPECIAL APPEAL**

Comes now Counsel for the Acting General Counsel, pursuant to Section 102.26
of the Board's Rules and Regulations, and herein requests permission to file a special
appeal of the ruling by the Administrative Law Judge denying her Motion to Consolidate

Cases and To Amend the Amended Consolidated Complaint. In support of this Request to File Special Appeal, Counsel for Acting General Counsel states as follows:

1. The Second Order Consolidating Cases, Amended Consolidated Complaint, and Notice of Hearing in Cases 11-CA-22980, 11-CA-22984, 11-CA-22997, 11-CA-66972 and 11-RC-6748 [herein “Complaint”], which seeks a *Gissel* bargaining order, issued against Grede II, LLC [herein “Respondent”] on January 13, 2012. The hearing in this matter commenced on January 30, 2012 before Administrative Law Judge George Carson II.

2. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC [herein “ the Union”], in Case 11-CA-71297, charged that Respondent violated Section 8(a)(3) and (1) of the Act by discharging a Union supporter on October 7, 2011.

3. On February 7, 2012, at the hearing in the above-captioned cases and before resting her case-in-chief, Counsel for the Acting General Counsel filed with Judge Carson a Motion to Consolidate Cases and to Amend the Amended Consolidated Complaint. The motion was predicated both on allegations contained in newly-filed Case 11-CA-71297, as well as on allegations of the Employer’s anti-union misconduct upon which evidence had been adduced for the first time at the hearing.

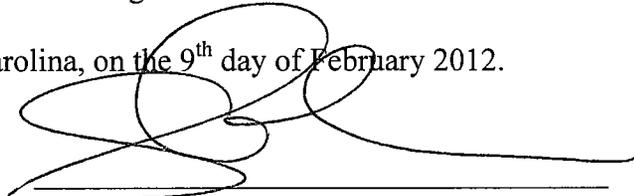
4. On February 7, 2012, upon hearing oral argument on the motion, Judge Carson granted the motion to amend the Complaint only as to those allegations on which evidence had been adduced at hearing, and denied the motion to consolidate and amend in the discharge allegation in Case 11-CA-71297. In denying the motion to consolidate, the Judge noted that the charge in Case 11-CA-71297 was filed exactly one year after the

Union filed its representation petition on December 22, 2010, and that efficiency concerns dictated that the pending matters in the Complaint should be adjudicated separately from the discharge in Case 11-CA-71297.

5. Counsel asserts, as set forth more fully in the accompanying Special Appeal, that the Judge's denial of her motion is contrary to the Board's settled policies that seek to preserve judicial economy by avoiding unnecessary costs and delay. Moreover, delaying adjudication of this discharge case is contrary to the Board's policy of timely protecting employees' Section 7 rights. Finally, Counsel will argue that Case 11-CA-71297 is part and parcel of Respondent's ongoing unlawful campaign to rid itself of the Union, and that the interrelation of Case 11-CA-71297 to the pending *Gissel* Complaint makes consolidation not just desirable, but imperative.

Based on the foregoing, Counsel for the Acting General Counsel requests permission to file a special appeal of the ALJ's ruling.

Dated at Winston-Salem, North Carolina, on the 9th day of February 2012.



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Case 11-RC-6748

**SPECIAL APPEAL OF
COUNSEL FOR ACTING GENERAL COUNSEL**

Comes now Counsel for the Acting General Counsel, pursuant to Section 102.26 of the Board's Rules and Regulations, and files this Special Appeal of the ruling by Administrative Law Judge George Carson II, denying her Motion to Consolidate Cases and to Amend the Amended Consolidated Complaint.¹ As set forth more fully below, Counsel for Acting General Counsel asserts that the Judge's ruling is contrary to the

¹ Counsel's Motion is attached hereto as Exhibit 1. The Second Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing [herein "Complaint"] is attached hereto as Exhibit 2.

Board's settled policies designed to preserve judicial economy by avoiding unnecessary costs and delay. Moreover, because the conduct underlying Case 11-CA-71297 is part and parcel of Respondent's ongoing unlawful campaign to rid itself of the Union, which is a relevant consideration in determining whether a *Gissel* remedy is justified, the interrelation of Case 11-CA-71297 to the pending cases makes consolidation not just desirable, but imperative. Finally, delaying adjudication of this discharge case is contrary to the Board's policy of timely protecting employees' Section 7 rights.

Background

The Complaint in Cases 11-CA-22980, 11-CA-22984, 11-CA-22997, and 11-CA-66972 alleges that Respondent, beginning in January 2011 and continuing until mid-October 2011, among other conduct, engaged in numerous Section 8(a)(1) violations, including threats of plant closure, threats of discipline, threats of loss of pay raises, threats of futility, surveilling employees' Union activities, soliciting employees' grievances and promising to remedy them, promising benefits, and interrogating employees about their Union activities.² Notably, the Complaint further alleges that, beginning in May 2011 and continuing to as recently as December 7, 2011, Respondent violated Section 8(a)(3) and (1) of the Act by granting benefits to employees and issuing warnings to, terminating, and/or refusing to hire various Union supporters.³

In Case 11-CA-71297, filed on December 22, 2011, the Union has charged that Respondent violated Section 8(a)(3) and (1) of the Act by discharging a Union supporter on October 7, 2011.

² See subparagraphs 10(a), (b), (c), (e), (f), (h), (k), (l), and (p) of the Complaint.

³ See paragraphs 19, 20, 21, and 22 of the Complaint.

On February 7, 2012, before resting her case-in-chief at the hearing in the above-captioned cases, Counsel for the Acting General Counsel filed with Judge Carson a Motion to Consolidate Cases and to Amend the Amended Consolidated Complaint. The motion was predicated both on allegations contained in newly-filed Case 11-CA-71297, as well as on allegations of the Employer's anti-union misconduct upon which evidence had been adduced for the first time at the hearing.

On February 7, 2012, Judge Carson granted the motion to amend the Complaint only as to those allegations based on the evidence newly-adduced at hearing, and denied the motion to consolidate cases and to amend in the discharge contained in Case 11-CA-71297. As set forth in the accompanying request for permission to file this special appeal, Judge Carson rested his ruling on the conclusion that the charge in Case 11-CA-71297 was filed exactly one year after the filing of the petition and that it would be more efficient to hear the pending matters and to deal with the discharge allegation in 11-CA-71297 in a separate hearing.

Discussion

Counsel for the Acting General Counsel asserts that, contrary to the Judge's conclusion, consolidation here best serves fundamental policy interests that the Board has long protected. More specifically, the ruling of Judge Carson is error in three fundamental respects.

First, it is settled that cases should be consolidated, when appropriate, in order to preserve judicial economy and to avoid unnecessary costs and delay. *Restaurant Management Services, Inc.*, 266 NLRB 779, 779 n. 1 (1983). *enfd. mem.* 729 F. 2d 780 (11th Cir. 1984). This is the paramount policy served by consolidation, and it is not

vitiating, or even affected, by the mere passage of time between an election campaign and subsequent unfair labor practices. Thus, the Judge's reliance on the span of time between the filing of the petition and the filing of charge in Case 11-CA-71297 is misplaced.

More to the point, consolidation here is supported by the congruence between the timing of the discharge in Case 11-CA-71297 and the timing of the alleged unfair labor practices already present in the Complaint. Indeed, the October 7 discharge is closely flanked by allegations of Respondent's unlawful conduct in the summer of 2011, then mid-October, followed by December.⁴ The passage of time between the filing of the petition and the charge simply has no bearing on this congruence.

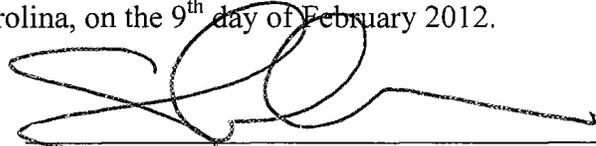
Second, a respondent's ongoing course of conduct is highly relevant to the determination whether a *Gissel* remedy is warranted. *Evergreen America*, 348 NLRB 178, 181 (2008) quoting *Aldworth Co.*, 338 NLRB 137, 150 (2002), *enfd.* 363 F.3d 437 (D.C.Cir. 2004) (respondent's post-election conduct can demonstrate its propensity to violate the Act and can indicate that the effects of the unlawful conduct are likely to linger, making it unlikely that fair second election can be held). See also *Raley's*, 235 NLRB 971, 973 (1978), *enfd.* 608 F.2d 1374 (9th Cir. 1979)(post-election wage increases served the dual purpose of fulfilling employer's implied promise of benefits, as well as rewarding employees for rejecting the union, thereby justifying a bargaining order.)

Third, the discharge at issue in Case 11-CA-71297 is deserving of both a timely and fair adjudication, in order to vindicate fundamental Section 7 rights. Counsel for the Acting General Counsel submits that the discharge in 11-CA-71297 is imbedded both in time and substance within Respondent's ongoing unlawful response to the organizing efforts of its employees. That discharge is best understood, and evaluated, as part of the

⁴ See subparagraph 10(p), (q), (r), and paragraphs 11, 14, 15, 20, 21, and 22, of the Complaint.

Respondent's ongoing orchestrated response to the Union organizing efforts of its employees. To remove the discharge in 11-CA-71297 from the rest of Respondent's conduct, would create an artificial separation where none, in fact, exists, and would create an unnecessary delay in adjudicating substantive Section 7 rights.

Dated at Winston-Salem, North Carolina, on the 9th day of February 2012.

A handwritten signature in black ink, appearing to read 'Shannon R. Meares', written over a horizontal line.

Shannon R. Meares
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Case 11-RC-6748

**MOTION TO CONSOLIDATE CASES AND TO AMEND
AMENDED CONSOLIDATED COMPLAINT**

Counsel for the Acting General Counsel herein moves to consolidate Case 11-CA-71297 with Cases 11-CA-22980, 11-CA-22984, 11-CA-22997, 11-CA-66972, and 11-RC-6748, and to amend the Amended Consolidated Complaint, as set forth more fully below.

A. The Second Order Consolidating Cases, Amended Consolidated Complaint, and Notice of Hearing in Cases 11-CA-22980, 11-CA-22984, 11-CA-22997, 11-CA-66972 and 11-RC-6748 issued on January 13, 2012 against Grede II, LLC, herein called Respondent, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service

Workers International Union, AFL-CIO, CLC, herein called the Union, in Case 11-CA-71297, has charged that Respondent has been engaging in unfair labor practices as set forth and defined in the National Labor Relations Act, 29 U.S.C. Section 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, pursuant to Sections 102.24 and 102.33 of the Rules and Regulations of the National Labor Relations Board (herein “Board’s Rules”), Counsel for Acting General Counsel hereby moves that these cases be consolidated.

B. Further, Counsel for Acting General Counsel, for good cause shown and pursuant to Sections 102.17 and 102.24 of the Board’s Rules, moves to amend the Amended Consolidated Complaint as follows:

1. Based on the consolidation of Case 11-CA-71297, add paragraph 4.5 as follows:

The charge in Case 11-CA-71297 was filed by the Union on December 22, 2011, and a copy was served by regular mail on Respondent on December 22, 2011.

2. Based on evidence adduced at hearing, add paragraph 10(s) as follows:

In or around January 2011, Respondent, by Shade Zebib and Martin Nystrom, threatened employees with the loss of overtime in order to discourage their union activities.

3. Based on evidence adduced at hearing, add paragraphs 19(c) and (d) as follows:

(c) In or around January 2011, Respondent, by Richard Cabadas, remedied employee grievances.

(d) Respondent engaged in the conduct described above in paragraph 19(c) because the employees of Respondent formed and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

4. Based on the consolidation of Case 11-CA-71297, insert new paragraph 25 as follows:

(a) On or about October 7, 2011, Respondent terminated its employee Stacy Ewing.

(b) Respondent engaged in the conduct described above in paragraph 25(a) because the named employee of Respondent formed and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

5. Renumber old paragraph 25 to new paragraph 26.

6. Renumber old paragraph 26 to new paragraph 27, and amend as follows:

By the conduct described above in paragraphs 19-22, and 25, Respondent has been discriminating in regard to the terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

7. Renumber old paragraph 27 to new paragraph 28.

8. Amend the subsequent un-numbered paragraphs as follows:

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 21, 22, and 25, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.

The Acting General Counsel further seeks, as part of the remedy for the allegations in paragraphs 21, 22, and 25, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

WHEREFORE, as part of the remedy of the unfair labor practices alleged above in paragraphs 10 through 22, and 25, the Acting General Counsel seeks an Order requiring that Respondent promptly have Plant Manager Richard Cabadas read the notice in English and Labor

Consultant Olga Herrera or a Spanish-speaking representative read the notice in Spanish to the employees on worktime.

WHEREFORE, the conduct describe above in paragraphs 10 through 22, and 25 is so serious and substantial in character that the possibility of erasing the effects of these unfair labor practices and of conducting a fair rerun election by the use of traditional remedies is slight, and the employees' sentiments regarding representation, having been expressed through authorization cards would, on balance, be protected better by issuance of a bargaining order than by traditional remedies alone.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 10 through 22, and 25, the Acting General Counsel seeks, in addition to such other relief as may be appropriate to remedy the unfair labor practices alleged, an order requiring Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act.

WHEREUPON, based on the foregoing, and for good cause shown, Counsel for Acting General Counsel respectfully requests that the above Motion be granted.

Dated at Winston-Salem, North Carolina, on the 7th day of February 2012.

/s/ Shannon R. Meares
Shannon R. Meares
Counsel for Acting General Counsel
National Labor Relations Board
Region 11
4035 University Parkway, Suite 200
P.O. Box 11467
Winston-Salem, North Carolina 27116-1467

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Case 11-RC-6748

Petitioner

**SECOND ORDER CONSOLIDATING CASES, AMENDED CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Upon charges filed, in Cases 11-CA-22980, 11-CA-22984, and 11-CA-22997, by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, herein called the Union, and the issuance of a Report on Objections and Order Directing Hearing in Case 11-RC-6748, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on October 31, 2011, against Grede II, LLC, herein called Respondent, and the Union, in Case 11-CA-66972, has charged that Respondent has been engaging in unfair labor practices as set forth and defined in the National

Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel, by the undersigned, pursuant to Sections 102.33 and 102.72 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Second Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing, and alleges as follows:

1.

(a) The charge in Case 11-CA-22980 was filed by the Union on February 9, 2011, and a copy was served by regular mail on Respondent on February 10, 2011.

(b) The first amended charge in Case 11-CA-22980 was filed by the Union on April 19, 2011, and a copy was served by regular mail on Respondent on April 20, 2011.

(c) The second amended charge in Case 11-CA-22980 was filed by the Union on May 27, 2011, and a copy was served by regular mail on Respondent on May 27, 2011.

(d) The third amended charge in Case 11-CA-22980 was filed by the Union on July 25, 2011, and a copy was served by regular mail on Respondent on July 26, 2011.

(e) The fourth amended charge in Case 11-CA-22980 was filed by the Union on September 8, 2011, and a copy was served by regular mail on Respondent on September 8, 2011.

2.

(a) The charge in Case 11-CA-22984 was filed by the Union on February 10, 2011, and a copy was served by regular mail on Respondent on February 10, 2011.

(b) An amended charge in Case 11-CA-22984 was filed by the Union on August 2,

2011, and a copy was served by regular mail on Respondent on August 3, 2011.

3.

(a) The charge in Case 11-CA-22997 was filed by the Union on February 16, 2011, and a copy was served by regular mail on Respondent on February 16, 2011.

(b) An amended charge in Case 11-CA-22997 was filed by the Union on July 25, 2011, and a copy was served by regular mail on Respondent on July 26, 2011.

4.

(a) The charge in Case 11-CA-66972 was filed by the Union on October 18, 2011, and a copy was served by regular mail on Respondent on October 19, 2011.

(b) The first amended charge in Case 11-CA-66972 was filed by the Union on October 26, 2011, and a copy was served by regular mail on Respondent on October 26, 2011.

(c) The second amended charge in Case 11-CA-66972 was filed by the Union on November 4, 2011, and a copy was served by regular mail on Respondent on November 4, 2011.

(d) The third amended charge in Case 11-CA-66972 was filed by the Union on December 22, 2011, and a copy was served by regular mail on Respondent on December 22, 2011.

(e) The fourth amended charge in Case 11-CA-66972 was filed by the Union on January 13, 2012, and a copy was served by regular mail on Respondent on January 13, 2012.

5.

At all material times the Respondent, a limited liability company, with a facility in Biscoe, North Carolina, herein called Respondent's Biscoe facility, has been engaged in the operation of a foundry that produces metal components for automobiles and trucks.

6.

During the past 12-month period, Respondent, in conducting its operations described above in paragraph 5, purchased and received at its Biscoe facility, goods and materials valued in excess of \$50,000 directly from points outside the State of North Carolina.

7.

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.

8.

At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

9.

(a) At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Doug Grimm	-	CEO
William Goodin	-	Vice President of Human Resources
Richard Cabadas	-	Plant Manager
Charles Wolffis	-	Human Resources Manager
Tim Burns	-	Plant Controller
Steve Thalen	-	Quality Supervisor
Ron Welker	-	Maintenance Supervisor
John Ringley	-	IT Supervisor
Tom Gesme	-	Melting Department Supervisor

Tom Divley	-	Production Supervisor
Rick Lynch	-	Production Supervisor
Steve Damschroder	-	Quality Manager
Ken West	-	Production Supervisor
Russ Brentel	-	Production Supervisor
Trevor Beech	-	Foundry Engineer
Dominique Contae	-	Core Room Supervisor
Willie Singleton	-	Quality Supervisor
Bruce Fields	-	Foundry Superintendent
Sean Anger	-	Foundry Superintendent
Russell Bittle	-	Operations Manager
Jesus Salizar	-	Finishing Manager
Brian Cummingly	-	Supervisor
David Mayberry	-	Supervisor
Robbie Brennan	-	Grinding Supervisor
Rudolph Harris	-	Supervisor (post- February 14, 2011)
Deanna Kato	-	Supervisor (post- February 14, 2011)
Jeffrey Horne	-	Supervisor (post-February 14, 2011)
Perry Brower	-	Supervisor (post-February 14, 2011)
Steven Gesme	-	Supervisor (post-February 14, 2011)
David Stutts	-	Supervisor (post-February 14, 2011)

(b) At all material times prior to and including February 2, 2011, the following

individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Luis Garcia	-	Labor Consultant
Olga Herrera	-	Labor Consultant
Martin Nystrom	-	Labor Consultant
Shade Zebib	-	Labor Consultant

(c) On February 2, 2011, the following individuals held the positions set forth opposite their respective names and were agents of Respondent within the meaning of Section 2(13) of the Act:

Abraham Flores	-	Maintenance Mechanic A
Jeffrey D. Horne	-	Molding Leadperson
Deanna M. Kato	-	Finishing Crew Leadperson
Mark R. Reynolds	-	Mechanic Master
John Jarrell	-	Office Clerical

10.

(a) In January 2011, and again on February 10, 2011, Respondent, by Richard Cabadas, at its Biscoe facility, announced the withholding of a raise, cash bonus and/or other benefits in order to discourage employees from supporting the Union.

(b) On or around January 26, 2011, Respondent, by Richard Cabadas, at its Biscoe facility, distributed a newspaper to employees that contained an article threatening that the plant would close if the Union was selected as their collective-bargaining representative.

(c) Respondent, by the individuals named below, on or about the dates set opposite their names, at its Biscoe facility, threatened its employees that the plant would close if the

Union was selected as their collective-bargaining representative:

Martin Nystrom - January 2011

Shade Zebib - January 2011

(d) In or around January 2011, Respondent, by Shade Zebib, at its Biscoe facility, by telling employees that it would not bargain with the Union, informed its employees that it would be futile for them to select the Union as their collective-bargaining representative.

(e) In or around January 2011, Respondent, by Doug Grimm, at its Biscoe facility, threatened its employees with job loss if the Union was selected as their collective-bargaining representative.

(f) In or around January 2011, Respondent, by Shade Zebib, at its Biscoe facility, threatened its employees with the inevitability of strikes if the Union was selected as their collective-bargaining representative.

(g) In or around January 2011, Respondent, by Martin Nystrom, at its Biscoe facility, threatened its employees that it would move its Biscoe facility operations to Mexico if the Union was selected as their collective-bargaining representative.

(h) In or around January 2011, Respondent, by Richard Cabadas, at its Biscoe facility, solicited and promised to remedy employee grievances and complaints if they refrained from union organizational activity.

(i) In or around January 2011, Respondent, by Martin Nystrom, at its Biscoe facility, made an implied promise of benefits, including raises and increased vacation time, to employees in order to discourage them from selecting the Union as their collective-bargaining representative.

(j) Respondent, by the individuals named below, on or about the dates set opposite their

names, at its Biscoe facility, threatened its employees with unspecified reprisals because of their union activities and/or because the Union filed unfair labor practice charges:

Shade Zebib	-	January 2011
Richard Cabadas	-	February 10, April or May, June 10, and Mid-October, 2011

(k) On or about January 29, 2011, Respondent, by Richard Cabadas, at its Biscoe facility, threatened its employees with discipline because of their union activities.

(l) On or about February 2, 2011, Respondent, by Deanna M. Kato, Jeffrey D. Horne, and John Jarrell, at its Biscoe facility, interrogated employees about their union activities.

(m) On or about February 2, 2011, Respondent, by Abraham Flores, Deanna M. Kato, Jeffrey D. Horne, John Jarrell, and Mark Reynolds, at its Biscoe facility, by standing and observing employees coming in and out of the polling location, engaged in surveillance of employees engaged in union activities.

(n) On or about February 2, 2011, Respondent, by Richard Cabadas and Shade Zebib, at its Biscoe facility, paid employees to engage in electioneering and surveillance during the polling periods.

(o) On or about February 10, 2011, Respondent, by Richard Cabadas, at its Biscoe facility, promised its employees that they would receive a raise, cash bonus, boot allowance and other benefits in order to discourage their union activities.

(p) In or around June, July, and/or August 2011, Respondent, by Bruce Fields, at its Biscoe facility, by photographing employees, engaged in surveillance of employees because of their union activities.

(q) In or around May, June, and/or July 2011, Respondent, by David Stutts and Trevor Beech, at its Biscoe facility, created the impression among its employees that their union

activities were under surveillance by Respondent.

(r) On or about October 17, 2011, Respondent, by Charles Wolffis, at its Biscoe facility, threatened employees that they could not receive a raise because of their union activities.

11.

(a) In or around June or July 2011, the Respondent, at its Biscoe facility, installed windows in the spectrometer lab.

(b) Respondent installed the windows described above in paragraph 11(a) to create the impression among its employees that their union activities were under surveillance by Respondent.

12.

On or about January 29, 2011, Respondent, by Richard Cabadas, at its Biscoe facility, selectively and disparately prohibited employees from talking about the Union during work time in work areas, while permitting employees to talk about other non-work related subject matters during their work time and in work areas.

13.

(a) On or about February 2, 2011, Respondent, by oral announcement, at its Biscoe facility, promulgated and enforced a rule prohibiting employees access to the facility while off-the-clock.

(b) Respondent promulgated and enforced the rule described above in paragraph 13(a) to discourage its employees from forming, joining and/or assisting the Union or engaging in other concerted activities.

14.

(a) In or around April and/or May 2011, and on June 10 and mid-October 2011,

Respondent, by oral announcement, at its Biscoe facility, promulgated and enforced a dress code policy.

(b) Respondent promulgated and enforced the rule described above in paragraph 14(a) to discourage its employees from forming, joining and/or assisting the Union or engaging in other concerted activities.

15.

(a) In or around April, May, June and/or July 2011, and on August 2, 2011, Respondent, by oral and/or written announcement, at its Biscoe facility, promulgated and enforced a policy prohibiting employees from taking breaks in the spectrometer lab.

(b) Respondent promulgated and enforced the rule described above in paragraph 15(a) to discourage its employees from forming, joining and/or assisting the Union or engaging in other concerted activities.

16.

(a) Since on or about August 10, 2010, Respondent, by issuing an employee handbook, promulgated and since then has maintained rules prohibiting employees from: (i) soliciting during work time on company premises; and (ii) distributing or posting written materials on company premises without written permission from management.

(b) In or around January 2011, Respondent, by Richard Cabadas and others known to Respondent, enforced the rules described above in paragraph 16(a) selectively and disparately by prohibiting union solicitations and distributions, while permitting nonunion solicitations and distributions.

17.

Since on or about August 10, 2010, Respondent, by issuing an employee handbook,

promulgated and since then has maintained a rule prohibiting employees from deliberately delaying or restricting production, or inciting others to delay or restrict production.

18.

(a) Since on or about August 10, 2010, Respondent, by issuing an employee handbook, promulgated and since then has maintained a written policy asking employees to report the union activities of other employees.

(b) By promulgating and maintaining the written policy described above in paragraph 18(a), Respondent has created an impression among its employees that their union activities are under surveillance by Respondent.

19.

(a) In or around May 2011, Respondent increased benefits for its employees by granting a boot allowance.

(b) Respondent engaged in the conduct described above in paragraph 19(a) because the employees of Respondent refrained from forming, joining and/or assisting the Union and to encourage employees from refraining in union activities.

20.

(a) On or about August 8, 2011, Respondent issued a written warning to its employee Samuel Ingram.

(b) Respondent engaged in the conduct described above in paragraph 20(a) because the named employee of Respondent formed and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

21.

(a) On or about October 29, 2011, and continuing thereafter, Respondent failed and

refused to consider for rehire Samuel Ingram.

(b) On or about December 7, 2011, and continuing thereafter, Respondent failed and refused to rehire Samuel Ingram.

(b) Respondent engaged in the conduct described above in paragraphs 21(a) and (b) because the named employee of Respondent formed and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

22.

(a) On or about August 2, 2011, Respondent issued a written warning to its employee Walter Morrison.

(b) On or about August 30, 2011, Respondent issued a written warning and terminated its employee Walter Morrison.

(b) Respondent engaged in the conduct described above in paragraph 22(a) and (b) because the named employee of Respondent formed and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

23.

The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining with then meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, quality control, shipping and receiving employees employed by the Respondent at its Biscoe facility; but excluding office clericals, and guards, professional employees and supervisors as defined in the Act.

24.

On or about December 22, 2010, a majority of the Unit designated and selected the Union

as their representative for the purposes of collective bargaining with Respondent.

25.

By the conduct described above in paragraphs 10-18, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

26.

By the conduct described above in paragraphs 19-22, Respondent has been discriminating in regard to the terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

27.

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

WHEREFORE, as part of the remedy for the unfair labor practices alleges above in paragraphs 21 and 22 the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.

The Acting General Counsel further seeks, as part of the remedy for the allegations in paragraphs 21 and 22, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

WHEREFORE, as part of the remedy of the unfair labor practices alleged above in paragraphs 10 through 22, the Acting General Counsel seeks an Order requiring that Respondent promptly have Plant Manager Richard Cabadas read the notice in English and Labor Consultant

Olga Herrera or a Spanish-speaking representative read the notice in Spanish to the employees on worktime.

WHEREFORE, the conduct described above in paragraphs 10 through 22 is so serious and substantial in character that the possibility of erasing the effects of these unfair labor practices and of conducting a fair rerun election by the use of traditional remedies is slight, and the employees' sentiments regarding representation, having been expressed through authorization cards would, on balance, be protected better by issuance of a bargaining order than by traditional remedies alone.

WHEREFORE as part of the remedy for the unfair labor practices alleged above in paragraphs 10 through 22, the Acting General Counsel seeks, in addition to such other relief as may be appropriate to remedy the unfair labor practices alleged, an order requiring Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Amended Consolidated Complaint. The answer must be **received by this office on or before January 27, 2012, or postmarked no later than one day before the due date.** Unless filed electronically in a pdf form, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website

informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by the counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

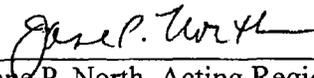
Service of the answer on each of the other parties must be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Amended Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 30th day of January 2012, at 10:00 a.m., at Courtroom 4B, Randolph County Courthouse, 176 E. Salisbury Street, Asheboro, North Carolina, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent

and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Amended Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Winston-Salem, North Carolina, on the 13th day of January 2012.



Jane P. North, Acting Regional Director
National Labor Relations Board
Region 11
4035 University Parkway, Suite 200
P. O. Box 11467
Winston-Salem, North Carolina 27116-1467

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Request of Counsel for Acting General Counsel for Permission to File Special Appeal and the Special Appeal of Counsel for Acting General Counsel were hand-delivered on February 9th, 2012, on the following individuals at the Randolph County Courthouse, Courtroom 4B, 176 E. Salisbury Street, Asheboro, North Carolina:

Administrative Law Judge:

The Honorable George Carson II

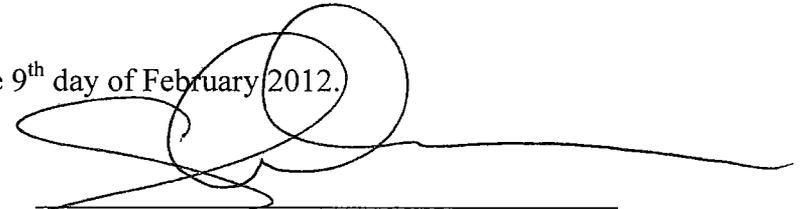
Counsel for Respondent:

John C. Cashen, Esq.
Jonathan Young, Esq.

Counsel for Union:

Brad Manzollilo, Esq.

Dated at Asheboro, North Carolina, on the 9th day of February 2012.



Shannon R. Meares
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