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

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
11–RC–6748

Shannon R. Meares and *Jasper C. Brown, Jr., Esqs.*, for the General Counsel.
John C. Cashen and *Jonathan A. Young, Esqs.*, for the Respondents.
Brad Manzolillo, Esq., for the Charging Party.

DECISION

Statement of the Case

GEORGE CARSON II, Administrative Law Judge. This case was tried in Asheboro, North Carolina, on January 30 and 31 and February 1, 2, and 7-11, 2012, pursuant to an amended consolidated complaint that issued on January 13, 2012, and that was further amended at the hearing.[1] Objections to an election held on February 2, 2011, were consolidated with the complaint. At the hearing Objections 1, 2, and 9 were withdrawn. All remaining objections are coextensive with complaint allegations. The complaint alleges that the Respondents violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by actions that it took during and after an organizational campaign including threats of plant closure, withdrawal of new benefits, one discharge, and one failure to hire. It seeks a bargaining order as a remedy for the foregoing alleged unfair labor practices. The Respondent denies any violation of the Act. As hereinafter discussed, I find that the Respondent violated the Act as alleged in some respects but not in others and that a bargaining order is not warranted.

On the entire record, including my observation of the demeanor of the witnesses and after considering the briefs filed by all parties, I make the following[2]

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[1] All dates are in 2011 unless otherwise indicated. The charge in Case 11–CA–22980 was filed on February 9 and amended on April 19, May 27, July 26, and September 8. The charge in Case 11–CA–22984 was filed on February 10 and amended on August 2. The charge in Case 11–CA–22997 was filed on February 16 and amended on July 26. The charge in Case 11–CA–66972 was filed on October 18 and amended on October 26, November 4, and December 22, 2011, and January 13, 2012. The charge and amendments thereto in Case 11–CA–66972 were inadvertently omitted from the formal papers. The foregoing inadvertence is immaterial insofar as the answer of the Respondent acknowledges receipt of the charge and amendments.
[2] The General Counsel's unopposed motion to reintroduce GC Exh. 30 is granted. That exhibit was received at the hearing. It was inadvertently omitted from the exhibits.

Findings of Fact

I. JURISDICTION

The Respondent, Grede II, LLC, the Company, is a limited liability company with facilities at various locations including a foundry at Biscoe, North Carolina, at which it produces metal components for automobiles and trucks. The Respondent annually purchases and receives, at its Biscoe facility goods and materials valued in excess of $50,000 directly from points located outside the State of North Carolina. The Company admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Company admits, and I find and conclude, that United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview

Biscoe, North Carolina, is a small town in Montgomery County, about 30 miles south of the Piedmont Triad (Greensboro, High Point, and Winston-Salem). The Company is the largest employer in Montgomery County. Richard Cabadas became general manager of the foundry in January 2010. Cabadas initiated various improvements in foundry cleanliness, safety, and production processes. Notwithstanding those improvement efforts, many employees were dissatisfied with their wages and working environment.

The employee handbook states that Grede “believes that a union would not be helpful” to its employees and “will oppose by every proper means all attempts to unionize the plant.”

In late November 2010, about 10 employees of the Company met with Union Representative Randy Rigsby at a motel in Albemarle, North Carolina, regarding their working conditions. Rigsby informed them that, in order to obtain representation by the Union, employees needed to sign union authorization cards. Following their discussion, the employees obtained over 200 authorization cards from their coworkers. On December 22, 2010, the Union filed a petition for an election in the following appropriate unit:

> 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.

The Company was unaware of the organizational efforts of the Union until it received the representation petition. On December 22, 2010, there were 313 employees in the foregoing unit.

The Biscoe foundry was closed for Christmas and New Year’s Day from December 22, 2010, until January 3.

General Manager Cabadas regularly gave quarterly presentations relative to production, safety, and other such matters. He had scheduled a presentation for January 4 and 5, and went forward with that PowerPoint presentation. Near the conclusion of the presentation he informed the employees that the Company had received a representation petition. He read a series of

statements that were simultaneously projected onto a screen that informed the employees that a representation petition had been filed, that the Company opposed unionization, that there would be meetings "over the next several weeks," and that the Company hoped the employees would "realize that a Union is not in the best interest of our employees in Biscoe."

Cabadas then introduced labor consultants Shade Zebib and Martin (Marty) Nystrom, who had been sent by corporate headquarters. He informed the employees that they would be hearing from them in the coming weeks. Consultants Luis Garcia and Olga Herrera accompanied Zebib and Nystrom, and they served as interpreters at meetings attended by Spanish speaking employees. I note that about one third of the employees have Hispanic surnames, but the record does not establish the fluency in English of the Spanish surnamed employees. Only one witness required an interpreter. There is no evidence that the Company provided a Spanish translation of the employee handbook issued to all employees. Only three supervisors speak any Spanish.

The election was scheduled for February 2. Over the next 4 weeks, Zebib and Nystrom conducted meetings with the employees. Each employee was scheduled to go to one meeting a week. Although the total work force exceeded 300, each meeting was relatively small, with attendance varying from 20 to 50, so as not to disrupt production. At each meeting a video was shown and discussion followed with Zebib and Nystrom reemphasizing various points made in the videos and responding to questions raised by employees.

The meetings in the first week were introductory with regard to unions, the collective-bargaining process, and current economic conditions. The meetings in the second week related to union dues and internal union affairs. The third week meetings addressed the process of collective bargaining, and the fourth week, immediately before the election, was a "summary."

As might be expected, the employees did not recall the specific meeting at which specific comments were made, but several recalled statements relating to plant closure. Although Zebib denied that any meeting specifically addressed plant closure, he acknowledged that, in the presentations, he addressed the collapse of the automobile industry in Detroit, Michigan. Multiple employee witnesses recall that Zebib or Nystrom drew a rough map of the United States and then drew a line on the map approximating the location of the Mason-Dixon Line, and stated that plants were moving to the South.

About 3 weeks prior to the February 2 representation election, employees Steven Gesme and Roy Lee Karshner began circulating a petition requesting the Union to withdraw from the scheduled election. The petition, signed by 195 employees, was sent to the Union by facsimile copy on January 28. Karshner took the petition to city hall, where he knew there was a fax machine. The document shows that it was sent to the Union from "The Town of Biscoe."

On Wednesday, January 26, 1 week prior to the February 2 representation election, the Montgomery Herald, the weekly local newspaper, contained a front page article expressing fears that the plant "might close their doors rather than go union." As hereinafter discussed in more detail, Cabadas admitted that the Company purchased 300 copies of the newspaper and that he placed about 100 of those newspapers in the employee breakroom,

On February 2, the employees voted 204 to 86 against representation. There were six challenged ballots and two void ballots.

B. Preliminary Observations and Credibility Considerations

I am satisfied that the employee witnesses sought, as best they could, to relate what they recalled being said at the multiple antiunion meetings held by the Company. Due to the manner in which statements relating to the consequences of unionization were couched and the passage of time, I find that, in many instances, the employee witnesses recalled what the Company wanted them to hear rather than what was actually said. I also note that, in view of the multiple meetings to avoid interference with production, that the exact same comments would not have been made in each meeting.

I was unimpressed by Shade Zebib whose generalized assertions and contradictions obfuscated rather than enlightened. Zebib asserted that "I bet three forth[s] of them [the employees] didn't even know how it [a union] functions," and that "by the second round of meetings," the Hispanic employees "figured out what the Union was all about." He did not elaborate upon those assertions. When asked whether he ever discussed plant closure in his meetings with employees, Zebib answered, "Absolutely not," although he had previously admitted informing employees that he had lost his job and that "my plant actually moved about 75 miles northwest, from Canton, Michigan, to Fowlerville, Michigan, nine months after the UAW came in." Zebib acknowledged that Nystrom "talked about a plant nearby his house or town." Nystrom confirmed that he spoke of his personal experience with regard to a Dura Automotive plant in Mancelona, Michigan, a "union plant" with 300 employees, at which the union refused wage concessions. "Dura came back six months later and said, 'Look, we are moving south, Mexico.'" Nystrom informed the employees that "the union persuaded them [the employees] to vote no again. And they closed the plant and moved it. Shut down, . . . Crushed that town." Zebib admitted referring to Detroit, stating that "[m]anufacturing was leaving the state."

C. Paragraph 10 8(a)(1) Allegations

I shall first address the allegations set out in paragraph 10 of the complaint relating to benefits and shall then address the allegations in paragraph 10 relating to threats of closure. Thereafter I shall address the remaining 8(a)(1) allegations in paragraph 10 in the order in which they appear in the complaint.

1. Allegations relating to benefits

a. Facts

Subparagraph10(a) of the complaint alleges that Cabadas, in January and on February 10, announced the withholding of a raise, cash bonus and/or other benefits in order to discourage employees from supporting the Union. Subparagraph 10(p) alleges that, on February 10, Cabadas promised its employees that they would receive a raise, cash bonus, boot allowance and other benefits in order to discourage their union activities.

Cabadas denied making any statement relative to withholding benefits in January. As hereinafter discussed, he did address his contradictory February 10 announcements.

On January 3, there was an exchange of emails between Cabadas and corporate officials regarding what strategy the Company would follow subsequent to the filing of the petition. The emails reflect that their discussion included granting a wage increase; however, there is no evidence that any specific increase was approved. The employees had, in July 2010, been informed that they would not receive an increase at that time but that "we would revisit that possibly . . . by the end of December." There is no evidence that a raise was revisited prior to the end of December. A 10:20 a.m. email on January 3, from Cabadas states that

"nothing was promised," and there is no evidence to the contrary.

On January 4 and 5, after informing the employees of the representation petition and briefly introducing Zebib and Nystrom, Cabadas invited employees to ask any questions they might have. He acknowledged that, as at all such meetings, employees asked about a raise. He claims that he responded, "I am not allowed to discuss or make any changes to wages or benefits, since the petition had been filed on December 22nd." Director of Materials Christopher Montgomery recalled that Cabadas, when asked about a raise at the meeting he attended, responded that "he was not allowed to talk about it because the petition had been filed." Montgomery did not identify any unit employees who attended that meeting.

Quality control employees Gregory (Greg) Clarke, Delbert Capel, and Samuel (Sam) Ingram recall that Cabadas, in the meeting that they attended, referred to a 2.5 percent wage increase that would not be given because the representation petition had been filed. Employee Darriel Patterson, who attended the same meeting, recalls no mention of a specific figure and noted that the employees "didn't know about a raise." The 2.5-percent figure that employees other than Patterson recalled was the figure stated by Cabadas on February 10. Patterson recalled that Cabadas stated that "they was intending on giving us a raise but they couldn't because the Union had filed a petition."

The Respondent argues that I should credit Cabadas insofar as the employees' testimony was conflicting with regard to who was present, exactly what was said, and when it was said. The discrepancies in the recollections of employees who attended multiple meetings over a year ago does not detract from their clear memory that they were told that a raise that the Company intended to give would not be given because the Union had filed a petition. Patterson's failure to recall that Cabadas was responding to a question by an employee does not detract from his credibility. I credit Patterson. Cabadas stated that the Company intended to give the employees a raise "but they couldn't because the Union had filed a petition."

With regard to February, an internal email dated January 28 establishes that Cabadas intended, on February 3, to announce a 4-percent wage increase and a boot allowance of $100. I am satisfied that Cabadas would not announce any increases that had not been approved. Thus, although there is no document reflecting the amounts finally approved, the approved amounts were a 2.5 -percent raise, a $250 bonus, and a boot allowance of $80.

Cabadas delayed announcing the increased benefits due to the period for filing objections to the election, which expired at midnight on February 9. At some point on February 9, Cabadas asked prounion employee Patterson whether the Union had filed objections to the election. Patterson replied that if he said you "was going to get charges and you didn't, you'll say I lied to you. And if I say you wasn't going to get charged and [you] did, you'll say I lied to you." Patterson then said, "I don't know," and added that "if midnight was your deadline and you ain't got anything, I guess you're not going to get anything."

At an employee meeting held at 8 a.m. on February 10, at which many of the quality control employees were present, Cabadas announced that the Company was granting a 2.5 -percent raise, a cash bonus of $250, and a boot allowance of $80.

Cabadas thereafter learned that the Union had filed objections to the election. In all meetings that occurred thereafter, he announced that, because of the objections, there would be no change in benefits. Employee Delbert Capel recalls that, following the meeting at which the benefits had been announced, he attended another meeting at which Cabadas stated "Fellas, I can't give you the . . . 2.5-percent raise, nor can I give you the $250

bonus until all this is resolved." A posted memorandum, which fails to report that Cabadas had announced the wage increase, bonus, and boot allowance at the first meeting, states that the "Steelworkers have filed objections with the National Labor Relations Board," that a hearing was scheduled, and that counsel had advised that "until then the Company is restricted from making any wage or benefit changes." The record does not reflect whether counsel was informed that Cabadas had already announced the changes at one meeting with employees.

The announcement of the increase in benefits establishes that they had been approved and, absent the filing of objections to the election by the Union, would have been granted.

b. Analysis and concluding findings

Shortly before the close of the hearing, counsel for the General Counsel moved to amend the complaint to allege that the withholding of a wage increase in early January violated Section 8(a)(1) and (3). I stated that I would consider the matter and that the parties should address the matter in their briefs.

There is no evidence that there had been a determination to increase wages prior to the filing of the petition. In the email from Cabadas on January 3 at 10:20 a.m., he confirmed to his corporate superiors that "nothing was promised." The exchange of emails thereafter discusses the wisdom of granting a raise. Subsequent January 3 emails relating to a raise never specify the amount. Critical to my decision is the absence of any evidence that any raise had been approved prior to the filing of the petition.

I have credited the testimony of Patterson that Cabadas stated the Company intended to give the employees a raise "but they couldn't because the Union had filed a petition." The complaint alleges a statement in violation of Section 8(a)(1), not the withholding of a wage increase. The Respondent was not on notice that anything other than an alleged unlawful statement was in issue. I deny the motion to amend.

The February 10 situation is different. Although not alleged as an 8(a)(3) violation, subparagraphs 10(p) and 10(a), read together, allege that benefits that would have been bestowed were not bestowed in order to discourage employees from supporting the Union. The Respondent had full and complete notice of that issue, and it was fully litigated at the hearing. Cabadas admitted that he announced an increase in wages, the bonus, and the boot allowance at the first meeting he held on February 10, and that those benefits were retracted when the Respondent learned that the Union had filed objections to the election.

In *Atlantic Forest Products*, 282 NLRB 855, 858 (1987), the Board held:

> It is well established that an employer is required to proceed with an expected wage or benefit adjustment as if the union was not on the scene. . . . An exception to this rule, however, is that an employer may postpone such a wage or benefit adjustment so long as it "makes clear" to employees that the adjustment would occur whether or not they select a union, and that the "sole purpose" of the adjustment's postponement is to avoid the appearance of influencing the election's outcome. . . . In making such announcements, however, an employer must avoid attributing to the union "the onus for the postponement of adjustments in wages and benefits," or "disparag[ing] and undermin[ing] the [union] by creating the impression that it stood in the way of their getting planned wage increases and benefits." [Citations omitted.]

The foregoing principle is applicable when objections to an election are pending. As pointed out in *Modesto Convalescent Hospital*, 235 NLRB 1059 (1978), wherein a wage increase was withheld, "no assurances [were] given to the employees that they would get the raise regardless of the outcome of the first or second election, but they were also informed on several occasions that they would not receive the raise because of the Union." Id. at 1067.

The Respondent had determined to grant the employees a 2.5-percent wage increase, bonus, and boot allowance following the election. Cabadas announced those increased wages and benefits at the first meeting he held on February 10.

The announced benefits were retracted. It does not appear that the Respondent explained to all employees that the benefits had been announced to some employees, the ones who had attended the first meeting. That is immaterial. The employees who had been informed of the benefits were told that they were being retracted. The posted memorandum, which fails to report the wage increase, bonus, and boot allowance that Cabadas announced at the first meeting, states that the "Steelworkers have filed objections with the . . . Board," that a hearing was scheduled, and that counsel had advised that "until then the Company is restricted from making any wage or benefit changes." No assurance was given that the announced benefits would be given whether or not the employees selected the Union as their collective-bargaining representative in any subsequent election or if the objections were dismissed.

Subparagraph 10(p) of the complaint alleges a promise that employees would receive a raise, cash bonus, boot allowance, and other benefits in order to discourage their union activities. The email of January 28 establishes that an announcement of an increase in benefits was to be made after the election. The announcement at the first meeting on the morning of February 10, although altered from the figures set out in the email of January 28, was a corporate decision relative to employee compensation. It was not a promise; it was a fact. I need not address whether the initial announcement violated the Act. The initial announcement was retracted. I shall consider the announcement and retraction together.

The February 10 announcement retracted benefits that had, earlier that day, been announced. The onus for the retraction was placed upon the Union. There was no assurance that the benefits would be granted notwithstanding the "outcome of the first or second election." *Modesto Convalescent Hospital*, supra at 1067. The Respondent informed its employees that the benefits were being rescinded because of objections to the election filed by the Union.

The Respondent, in January, by informing employees that unspecified benefits would be withheld because they had engaged in union activity, violated Section 8(a)(1) of the Act.

The Respondent, in February, by rescinding announced increased benefits and informing employees that the rescission was because of their union activities, specifically the filing of objections to the election by the Union, violated Section 8(a)(1) of the Act.

2. Threats of closure

a. The newspaper article

Subparagraph 10(b) of the complaint alleges that around January 26, Richard Cabadas, 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.

Cabadas was interviewed by the editor of the Montgomery Herald, the local weekly

newspaper published each Wednesday, and, prior to its publication, he reviewed the article that was to be published. Cabadas purchased 300 newspapers. He claimed that he placed approximately 100 of them on the floor of the breakroom. Employees Greg Clarke and Darriel Patterson credibly testified that, when they came into the breakroom, the newspapers were on the breakroom tables. Zebib acknowledged that Cabadas provided copies to him and that the newspapers were in the room in which he and Nystrom conducted their meetings with employees. Cabadas testified that the remaining 200 newspapers were in the human resources office and were thrown away after 2 days, but that does not account for the copies provided to Zebib and Nystrom, the number of which was not specified.

In *Marathon Le Tourneau Co.*, 208 NLRB 213, 220–221 (1974), the employer was found to have threatened plant closure by posting a newspaper editorial that expressed "a clear threat of economic reprisal" on the company bulletin boards. In *Monroe Auto Equipment Co.*, 230 NLRB 742, 748 (1977), the employer, by "exhibiting and ostentatiously making available to employees the foregoing newspapers, . . . made it plain that Respondent was adopting and sponsoring their [the newspaper's] threatening message."

Plant rule 9 prohibits distributing any printed matter "on company premises without written management permission." The distribution of the newspapers by Cabadas, including providing copies to Zebib and Nystrom in the room in which they conducted meetings, confirms the approval and adoption by management of the message contained in the article.

The words of the newspaper article convey a threat of closure because of the Union rather than any economic circumstances. The author of the article, editor Tammy Dunn, states that "local officials fear the county's largest employer might close their doors rather than go union." No management official ever denied that statement. The article states that Economic Development Director Judy Stevens "is worried what will happen to the 345 employees should the plant close." Stevens is quoted as saying, "It would be a major blow to the county's economy if Grede should close the Biscoe facility." Mayor Jimmy Blake is quoted as saying that he did not "want anything to possibly jeopardize the plant."

The insertion of the word "might" before the word "close" in the newspaper article does not alter the threat. Words of equivocation relating to closure because of unionization do not diminish or alter the threat. *Yoshi's Japanese Restaurant & Jazz House*, 330 NLRB 1339, 1341 (2000). The employees had been sent to weekly antiunion meetings that included factual references to various closures. The implicit message of closure was made explicit in the newspaper article that expressed concern about closure of the plant unrelated to any reason other than that the employees chose to "go union." The Respondent took no action to disavow the opinion stated in the newspaper. Indeed, it sought to assure that employees were informed that "the plant might close . . . rather than go union" by placing at least 100 copies of the newspaper in the employee breakroom and providing copies it to Zebib and Nystrom.

The Respondent, by adopting and distributing a newspaper article that threatened plant closure, violated Section 8(a)(1) of the Act.

b. Other alleged closure threats

Subparagraph 10(c) of the complaint alleges that Zebib and Nystrom threatened employees that the plant would close if the employees selected the Union as their collective-bargaining representative.

Employee Delbert Capel recalls that Zebib stated that "the unions are running

companies out of business." A. J. Jackson recalled that, in one of the meetings he attended, Zebib stated that “if we got a union, it could lead to the plant closing.” He recalled only that statement and gave no context. Marcus Ratliff recalled a meeting in which Zebib rhetorically asked what would happen if the Union got in and then said, “Swoosh,” gesturing with his hands. No other employees corroborated any of the foregoing accounts. I find that the employees testified to what they understood, rather than what was actually said.

As already noted, Zebib admits recounting his personal experience relating to a plant relocating after the United Automobile Workers obtained representational rights. Nystrom related his personal experience with regard to a Dura Automotive plant, a “union plant” with 300 employees, at which the union refused wage concessions and the plant moved to Mexico. The forgoing personal accounts, neither of which were shown to be false, did not threaten plant closure. They did, however, raise the specter of closure, and the employees heard exactly what Zebib and Nystrom wanted them to hear.

Employee Amos Clifton Harris works as a final inspector and gauge technician. He recalled that, at one of the meetings, Zebib and Nystrom referred to Steelworker “wins and losses.” He asked, "If the Union came in, would it shut the plant down?" Nystrom answered, “[Y]eah.” Thereafter, Nystrom came by and began talking with Harris in the final inspection office. Harris asked again, “speaking off the record,” whether it would “really shut the Company down if the Union was to come in." Nystrom again said, “[Y]es.”

Nystrom was asked, “Did you have any discussions with employees that the Biscoe plant would close if the Union came in?” He answered, “No.” He was not asked whether he knew Harris or whether he recalled a conversation in the final inspection office.

I credit Harris. I am mindful that no employee corroborated Harris with regard to what he recalls being said in the meeting. The fact that Harris sought to speak “off the record” suggests that he was concerned with regard to what he though Nystrom had said. Thus, in a private conversation, he sought to confirm, “off the record,” whether it would “really shut the Company down if the Union was to come in." Nystrom answered, “[Y]es.” The Respondent, by threatening plant closure if the employees selected the Union as their collective- bargaining representative violated Section 8(a)(1) of the Act.

Subparagraph 10(e) alleges that, in January, Doug Grimm threatened employees with job loss if the Union was selected as their collective-bargaining representative.

Both Capel and Patterson recalled that Grimm, the chief executive officer of the Company and who did not testify, came to the Biscoe facility shortly before the election and spoke to the employees. Capel recalled that he expressed concern regarding the possibly of informing customers that that production had been interrupted due to a labor dispute. Both recalled that Grimm related the closing of a plant that residents of Pottstown, Pennsylvania, referred to as “Black Monday” or “Black Friday.” Patterson acknowledged that the town could have been Youngstown, Ohio, and that he had no basis for concluding that the statements of Grimm were untrue. There is no evidence that Grimm’s statements were untrue. There is no testimony that Grimm threatened the employees with job loss if they selected the Union as their collective-bargaining representative. See *Smithfield Foods*. 347 NLRB 1225, 1226–1227 (2006). His statements simply continued the drumbeat of closures of unionized facilities. In the absence

of any evidence that whatever he stated was not factual, I shall recommend that this allegation be dismissed.[3]

Subparagraph 10(g) alleges that, in January, Nystrom threatened that the Company would move its Biscoe facility operations to Mexico if the employees selected the Union as their collective-bargaining representative.

In the first week of January, employee Gregory (Greg) Clarke attended a meeting at which "mostly office personnel and a few supervisors" were present. There were no other quality control employees. Cabadas introduced Zebib and Nystrom and then left.

Zebib and Nystrom introduced themselves. Clarke asked Zebib if he could tell him "what was so bad about the unions." Before Zebib could answer, "Marty [Nystrom] jumped up and shouted and pointed his finger at me and stated, 'Because they'll close down and move to Mexico.'" Zebib "waved to him to like stop and sit down."

Zebib was not asked about the foregoing interaction or his response to it. Nystrom denied ever saying that "the Biscoe plant would move to Mexico," that there was "no way would we say something like that." He did not address the incident specifically described by Clarke. He did not deny shouting and pointing at Clarke, or that Zebib "waved at him [Nystrom] to stop." I credit Clarke.

The Respondent, by threatening that the plant would move to Mexico if it unionized, violated Section 8(a)(1) of the Act.

3. Remaining Section 8(a)(1) allegations in paragraph 10

Subparagraph 10(d) alleges that Zebib, by telling employees that the Company would not bargain with the Union, informed employees that it would be futile for them to select the Union as their collective-bargaining representative.

This allegation is predicated upon a conversation that employees Clarke, Capel, A. J. Jackson, and Patterson had with Zebib prior to one of the meetings that Zebib and Nystrom were holding. Clarke recalls that Zebib stated that he "would like for you guys to reconsider and maybe pull this vote off." The employees expressed their opinion that the Union was going to win. Clarke, corroborated by Capel and Patterson, recalls that Zebib answered, "No, I never lose, fellas. I'll smash you." He then stated that, even if the Union did win "the Company doesn't have to bargain with you." Patterson questioned that response, asking whether, if the Union "won by a large percentage, the company wouldn't negotiate?" Zebib answered, "not if he had anything to do with it."

Counsel for the Respondent asked Zebib, "Did you say anything during any of the meetings that if the Union won the election, the Company would not bargain?" Zebib answered, "Absolutely not." Counsel asked whether Zebib said anything about smashing the Union, and he denied doing so. On cross- examination, Zebib admitted that he did recall informing some employees of his "personal opinion" that it did not "look like the Steelworkers are going to win." He claimed that he did not recall a conversation in which he expressed that opinion to a small group of employees that included Capel, one of the

[3] The brief of the General Counsel moves to amend the complaint to allege that Grimm threatened the inevitability of strikes. He did not. The motion is denied.

few employees who Zebib remembered by name.

I credit the mutually corroborative testimony of Clarke, Capel, and Patterson. Zebib's denial that he said the Respondent would not bargain related to meetings, not an informal conversation with three or four employees. The Respondent, by informing employees that selection of the Union as their collective- bargaining representative would be futile, violated Section 8(a)(1) of the Act.

Subparagraph 10(f) alleges that Zebib threatened employees with the inevitability of strikes if the Union was selected as their collective-bargaining representative.

As already noted, the events about which the employees herein were testifying occurred more than a year earlier. Although several employees recall that Zebib stated that the Union would "force" them "to go out on strike," there was no testimony relating to inevitability. As the Respondent points out in its brief, any discussion relating to who calls a strike, the Union or the unit employees, does not relate to inevitability.[4] Employee Samuel Ingram recalled that, at the first meeting he attended, Zebib stated that "9 times out of 10, if the plant became . . . union, they would go on strike." No other employee corroborated that testimony, and I find that Ingram was mistaken regarding what he recalled hearing. I shall recommend that this allegation be dismissed.

Subparagraph 10(h) alleges that Cabadas, in January, solicited and promised to remedy employee grievances and complaints if they refrained from union organizational activity. Paragraph 19, as amended at the hearing, alleges that Cabadas remedied grievances in January.

At the first meeting in January, when Cabadas introduced Zebib and Nystrom, employee Delbert Capel recalled that Cabadas told the employees that they did not need a union, that "he was going to try to fix things up in six months." In the question and answer session, Capel recalls that employees complained about the absence of raises and that he complained about the condition of equipment in the foundry. Shortly after the meeting, Capel was approached by Zebib and Cabadas. Cabadas told Capel that he had plans, "if you would like to see them." Capel asked, "Richard, could I get my guys?" Cabadas said that he could and soon thereafter Capel, Clarke, Patterson, and Dario Lopez met with Zebib and Cabadas in his office. Cabadas showed them the Company's capital plans which Capel recalled included a new air cleaning system to help keep it cool and projects in the foundry area. Capel had never previously been invited to a meeting with Cabadas.

Cabadas acknowledged the meeting and referring to capital plans for improvements. He claims that "I was approached," that Zebib informed him that "people wanted to talk with me" about "capital plans, why I didn't fix machines." I do not credit Cabadas. The contemporaneous request that Capel recalls making, "Richard [Cabadas], could I get my guys?" belies any claim that employees requested the meeting. Capel knew nothing of capital plans. Capel had complained about equipment at the meeting and Cabadas, in an unprecedented manner, responded to the concern that Capel had raised at the meeting. It is immaterial that the plans existed. The violation was the unprecedented responsiveness of Cabadas who, by the plans, promised to remedy the complaint.

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[4] Clifton Harris attributed the "force employees to strike" comment to Nystrom. The brief of the General Counsel moves to amend the complaint to allege Nystrom. The motion is denied.

The Respondent, in its brief, argues that the employee handbook contains an open door policy and that employees were given the opportunity to express their concerns in the question and answer sessions that followed the quarterly presentations held by Cabadas. The foregoing argument neglects to point out that, prior to the organizational campaign of the Union, there is no evidence that Cabadas had been responsive to any complaints that were raised, much less invited employees into his office to explain that how he was addressing their concerns.

Cabadas admitted that, during the organizational campaign, employee complained about a “lack of accessibility and communication with supervisors.” He admitted that he “had holes” in the supervisory structure, that there was “not enough supervision on both shifts,” but no action had been taken in 2010 to correct the foregoing problem. Following the receipt of complaints during the organizational campaign, on January 24, the Company posted a memorandum for openings for an unnamed number of production supervisors on all shifts and invited qualified individual to “apply and interview” for the positions. Cabadas was not questioned regarding any reason that the notice was posted on January 24, before the election, rather than on February 3, after the election. The timing of the posting of the notice, absent any cogent explanation, establishes that the action was in response to employee complaints relating to accessibly and communication with supervisors.

Supervisor David Stutts, who was an employee during the time of campaign and who signed an authorization card but thereafter ceased to support the Union, explained that he ceased supporting the Union because “[w]e got their attention now, and that's what I wanted, just to get Richard's [Cabadas’] attention.” Following the inception of the organizational campaign, he observed that Cabadas “started listening to us and our complaints and stuff.” By way of example, Stutts explained that the Company “cleaned up the bathrooms and stuff like that.”

The Respondent, by soliciting grievances, promising to remedy them, and remedying them, in order to discourage union activity, violated Section 8(a)(1) of the Act.

Subparagraph 10(i) was withdrawn in the brief of the General Counsel.

Subparagraph 10(j) alleges that Zebib, in January, and Cabadas, on February 10, in April or May, on June 10, and in mid-October, threatened employees with unspecified reprisals because of their union activities and/or because the Union filed unfair labor practice charges.

The allegation regarding Zebib relates to the “smash” comment which is discussed above with regard to subparagraph 10(d). General Counsel argues the comment constituted a threat of an unspecified reprisal. In context, and as argued in the brief of the Respondent, the slang expression related to whether the Company or Union would win the election.

The February 10 allegation relating to Cabadas is predicted upon a brief conversation that occurred following the meeting at which Cabadas retracted the benefits that he had announced at the first meeting he held that day. Employee Capel stated that it seemed that things were “getting personal.” Cabadas responded, "The election wasn't personal, but these charges are." The brief of the General Counsel argues that the foregoing statement informed employees of “his resentment of the charges and potential for fallout.” I disagree. Cabadas responded to Capel with a statement of how he felt. There was no threat of unspecified reprisal. I shall recommend that this allegation be dismissed.

The brief of the General Counsel does not address the allegations relating to April or May, June 10, or mid-October. It would appear that those dates correspond to dates upon which Cabadas directed employees to wear Grede shirts. As hereinafter discussed, the direction that employees cease wearing prounion or antiunion shirts violated the Act. There is no evidence of any threat of reprisal in the conversations in which that direction was given. I shall recommend that subparagraph 10(j) be dismissed.

Subparagraph 10(k) alleges that Cabadas, on or about January 29, threatened its employees with discipline because of their union activities. This allegation is appropriately considered with paragraph 12 of the complaint which alleges that, on or about January 29, 2011, Cabadas, selectively and disparately prohibited employees from talking about the Union during worktime in work areas, while permitting employees to talk about other non-work related matters during their work time and in work areas.

These allegations relate to two conversations that Cabadas had after leadperson Deanna Kato reported to him on January 29 that employee “Darriel [Patterson] and them were out on the floor bothering all the employees about the Union.” The “bothering” related to discussions that resulted from the filing of the petition to cancel the election. Cabadas claims that he approached Patterson and Sam Ingram separately and asked whet they were doing, and then stated that they could not be away from their work stations, “please don't harass the employees, and return back to your work area.”

Employee Sam Ingram recalled that he was speaking with three or four employees in the gate breaking area, while showing them the petition seeking to have the Union withdraw from the election. Cabadas observed this, approached him, and asked whether he was passing out anything. Ingram answered that he was “showing the guys . . . the petition . . . the guys [Karshner and Gesme] had passed around.” Cabadas told Ingram that he had “better not be passing out anything or talking about the Union or else.” Ingram asked whether Cabadas was trying to threaten him, and Cabadas walked away.

Patterson also had a copy of the petition and, while carrying out his job duties, spoke with a fellow employee regarding the petition. Cabadas approached him and told him the he could not “be passing around union literature on the floor.” Patterson showed him the petition sent to the Steelworkers requesting that the election be called off and stated that he was not passing this around, “this is yours.” Cabadas did not respond.

I credit Ingram and Patterson. It is undisputed that employees, while working, were permitted to talk with each other. The foregoing encounters establish, as alleged in paragraph 12, that the Respondent prohibited employees from talking about the Union during worktime in work areas in violation of Section 8(a)(1) of the Act.

In neither encounter was discipline threatened. Insofar as Cabadas did not specify what he meant by “or else,” and insofar as Ingram was not disciplined, I find that the ambiguous “or else” comment did not threaten discipline. I shall recommend that subparagraph 10(k) be dismissed.

The complaint, in subparagraphs 10(l) and (m) alleges that on February 2, the day of the election, employees Deanna Kato, Jeffrey Home, and John Jarrell, acting as agents of the Respondent, interrogated employees about their union activities and, by observing employees coming in and out of the polling location, engaged in surveillance of employees engaged in union activities.

On the day of the election, Cabadas requested the employees named above to stand at the door of the plant through which employees who had voted returned to the plant and hand out "I Voted" stickers. An employer may assign employees to duties other than the employees' normal job duties. *Snap-On Tools, Inc.*, 342 NLRB 5, 18 (2004). There is no evidence that any of the employees handing out the "I Voted" stickers interrogated any employee regarding how that employee had voted. Various prounion employees received a sticker and employee Walter Morrison placed the sticker upon his hardhat so that it read "I Voted USW." There is no evidence or claim that the secrecy of any ballot cast was compromised. There is no evidence that any list was made or kept. See *Snap-On Tools, Inc.*, supra at 7. I shall recommend that these allegations be dismissed.

Subparagraph 10(n) of the complaint alleges that the Respondent paid employees to engage in electioneering and surveillance during the polling periods. This allegation arises from the Respondent paying employees Mark Reynolds and Abraham Flores to patrol the parking area and report whether they observed anyone whom they did not recognize. The request that they do so was made following a heated disagreement at the preelection conference relative to the releasing of employees to vote. Undisputed testimony established that the Board agent in charge left the preelection conference and called the Regional Office for direction upon how to proceed. There is no evidence that either Reynolds or Flores engaged in electioneering. Although they may have observed some employees as they left the voting place, there is no evidence of list keeping. I am aware or no precedent, and no party has cited any precedent, holding that the mere observation of employees as they go to vote or return from voting constitutes surveillance. I shall recommend that this allegation be dismissed.

Subparagraph 10(p) of the complaint alleges that Supervisor Bruce Fields, in or around June, July, and/or August 2011, engaged in surveillance of employees because of their union activities. Employee Delbert Capel recalled an occasion upon which Fields, with a cellular telephone camera, appeared to photograph him and employee Darriel Patterson. Testimony by employees Patterson, Greg Clarke, Sam Ingram, and A. J. Jackson establishes at least one other occasion upon which Fields photographed that group of four employees, two of whom had come to relieve two nodularity checkers. All were quality control employees and known union adherents. Clarke testified that Fields was referred to as the "paparazzi."

Cabadas testified that he was unaware of the actions of Fields, who did not testify, until it was brought to his attention in the investigation of the charges herein. He directed him to stop. Insofar as he did so, it would appear that Fields admitted his conduct to Cabadas. Whether he did so is immaterial insofar as I credit the undenied testimony of the employees.

The employee testimony establishes that, when Fields took the photographs, the employees were engaged in work activities; thus, there was no surveillance of employee union activity. The photographing establishes that the Respondent was more closely monitoring the activities of known prounion employees. By more closely monitoring the movements and activities of prounion employees the Respondent violated Section 8(a)(1) of the Act.

Subparagraph 10(q) alleges that, in or around May, June, and/or July 2011, the Respondent, by David Stutts and Trevor Beach, created the impression that employees' union activities were under surveillance. This allegation is appropriately considered in conjunction with paragraph 11 that alleges that the Respondent installed windows in the spectrometer lab to create the impression that employees' union activities were under surveillance.

On May 13, Trevor Beach was hired as foundry engineer which made him responsible for various quality functions including the spectrometer laboratory. Beach took it upon himself to

upgrade the spectrometer lab, which he characterized as a dungeon, by putting in new ceiling tiles, installing two windows, and double doors with windows. He explained that the doors with windows related to safety in that he had almost been hit by a forklift that he had not seen because the doors had no windows.

Many of the strongest supporters of the Union worked in quality control and, at the time of the election, regularly went to the spectrometer laboratory in which castings are tested for the chemistry of the metal and tensile strength. Employee Steven Gesme, who with Karshner had circulated the petition seeking to have the Union withdraw from the election, acknowledged that he did not approach "the quality control guys . . . because it was known throughout the plant that they were . . . spearheading the union efforts."

Following the election, the Company changed the reporting structure so that nodularity checkers, who formerly were supervised by a quality control supervisor, reported to a production supervisor. The change in supervision is not alleged as an unfair labor practice.

I find that the renovation of the spectrometer lab did not violate the Act. There is no evidence that employees were, at the time of the renovation, engaging in union activities in the spectrometer lab. Thus, in the absence of evidence of surveillance, or attempted surveillance, of union activities, there was no violation of the Act. I shall recommend that paragraph 11 of the complaint be dismissed. I note, however, that a byproduct of the renovation of the lab was the ability of management to observe the movements of employees in the spectrometer lab.

Undenied statements by Stutts and Beach establish that the movements of the prounion quality control employees were being monitored by the Company. Employee Darriel Patterson recalled that he mentioned the installation of the windowed doors and windows in the spectrometer lab to David Stutts, who had been promoted to a supervisory position following the election, and that Stutts replied, "they wanted to watch us. They wanted the supervisors to watch us." The foregoing comment is consistent with the Company's knowledge that the quality control employees had spearheaded the organizational campaign of the Union. Stutts did not deny the foregoing comment.

Greg Clarke recalled an occasion when Beach came back to the office and seemed to be "a little upset." He asked if Beach was "all right?" Beach replied that he did not "come here for this. I'm not a babysitter." Clarke replied, "Babysitter. No babies in here." Patterson, who Clarke recalled was present, recalled that Beach stated that he had complained to another supervisor that "he wasn't here to babysit us."

Although not engaging in surveillance of union activity insofar as the employees in the lab were working, not engaging in union activity, the undenied comments made by Stutts and Beach establish that the Respondent was more closely monitoring the movements and activities of prounion employees. See *International Paper Co.*, 313 NLRB 280, 293 fn. 3 (1993). The Respondent, by more closely monitoring the movements and activities of known union adherents, violated Section 8(a)(1) of the Act.

The complaint, in subparagraph 10(r) alleges that, on or about October 17, Human Resources Manager Charles Wolffis, threatened employees that they could not receive a raise because of their union activities.

On October 17, employees Clinton Harris and Agustin Munoz met with Wolffis to request a raise. The request was made because certain of their job duties had been combined. Munoz testified through a Spanish interpreter, but he does understand some English. He recalled that

Harris did most of the talking. After Harris argued that he and Munoz were effectively performing two jobs, Wolffis explained that he could not give them a raise because they were “at the top,” that the next pay grade would be that of a leadman. Munoz claims that Wolffis then pointed at the union sticker that Munoz had placed on his hardhat and stated that “he wasn't going to give me a raise because of that.”

Harris recalled that he stated to Wolffis that he thought that he and Munoz should be paid as leadmen, that they sometime gave instructions. Wolffis disputed that, saying that they did not give instructions. According to Harris, Wolffis then pointed at Munoz’s hardhat and stated, "That's part of the reason . . . you can't get an increase. . . . I like you guys, but I ain't going to court for you."

Wolffis denied pointing at Munoz’s hardhat and stated that employees remove their hardhats when coming into his office. He acknowledged that he explained to Harris and Munoz that counsel had advised the Company not to make “any changes relative to structure of wage and/or benefits.” The foregoing is consistent with the testimony of Munoz that Wolffis explained that he and Harris were “at the top” and the next pay level was that of a leadman.

Even assuming that Wolffis was mistaken with regard to whether the employees removed their hardhats, there would have been no reason for him to have referred to a union sticker insofar as the denial of a wage increase related to the Respondent’s wage structure. How, as Harris testified, union support could be “part of the reason” the request for an increase was denied makes no sense. I need not speculate with regard to how Munoz and Harris misinterpreted the explanation of Wolffis relating to the Respondent not making any change to the wage structure. I credit Wolffis and shall recommend that this allegation be dismissed.

Subparagraph 10(s), amended into the complaint at the hearing, alleges that Zebib threatened loss of overtime in January.

Employee Clifton Harris recalled that, at a meeting that he attended, Zebib stated to employees that “if the Union came in, it would cut out the overtime because the Union would make them hire extra people . . . [a]nd if they hired extra people, then there would be no more overtime basically.”

Employee Greg Clarke corroborated Harris. He recalled that Zebib stated, “that if the Union came in overtime would be no longer existing . . . the Union would bring in so many people that would take away from overtime.”

Zebib acknowledges that the issue of overtime was mentioned by employees in the “second round of meetings.” He contended that he and Nystrom told the employees to “take a look at the constitution . . . of the Steelworkers.” He could not remember the page number and the document was not placed into evidence. On cross-examination, when asked whether he was “aware the USW constitution says nothing about overtime,” Zebib equivocated, stating, “Actually there was either the bylaws or the constitution, one of the two, I can't remember.” When questioned further, Zebib effectively admitted that neither the constitution nor bylaws of the Steelworkers mentions overtime but one or the other does refer to striving for a shorter workweek.

Zebib claimed that he “didn't mention overtime.” I do not credit that testimony. Zebib would not rely upon employees who “didn’t even know how it [a union] functions” to make a connection between a shorter workweek and loss of overtime. He spelled it out, as recalled by Harris and Clarke, asserting that the Union would make the Respondent hire

more people. “[I]f they hired extra people, then there would be no more overtime.” The Respondent, by threatening loss of overtime if the employees selected the Union as their collective-bargaining representative, violated Section 8(a)(1) of the Act.

D. Remaining 8(a)(1) Allegations

Paragraph 13 of the complaint alleges that, on February 2, the day of the election, the Respondent, promulgated and enforced a rule prohibiting employees access to the facility while off the clock in order to discourage employees from assisting the Union.

Uncontradicted testimony by employees Delbert Capel and Darriel Patterson establishes that employees had, prior to February 2, been permitted to return to the plant when not working. Capel and Patterson did so on at least one occasion when they solicited authorization cards from employees on second shift during their breaktime.

On February 2, Patterson had engaged in conversation with the employees who were handing out the “I Voted” stickers. Cabadas explained that the parties had agreed to a 50-foot perimeter around the voting area and that Patterson was inside that perimeter. After Patterson clocked out, Zebib reported to Cabadas that Patterson was “electioneering.” There is no evidence that Patterson had been electioneering inside the perimeter. Cabadas approached Patterson and asked if he had “clocked out.” Patterson said he had. Cabadas told him that he “had to leave.”

Regardless of any perimeter, Patterson was told to leave, not simply to cease any alleged electioneering within the perimeter or to leave where he had been standing at the moment Cabadas spoke to him. Absent justification, denial of access to off duty employees to nonworking areas of the plant violates the Act. *Tri-County Medical Center*, 222 NLRB 1089 (1976). The Respondent directed Patterson to leave, not simply move. By denying access to the facility to employees while off the clock the Respondent violated Section 8(a)(1) of the Act.

Paragraph 14 of the complaint alleges that the Respondent promulgated and enforced a dress code in April and/or May, on June 10, and in mid-October in order to discourage employees from assisting the Union.

Employee Thaddeus Leake, when coming out of the breakroom with another employee, encountered Cabadas. Leake was wearing a Steelworker shirt. Cabadas told him “take that D [damn] T-shirt off because the Union was over with.” He then gave him a Grede shirt and told him to put it on. About a month later, Leake was again wearing a Steelworker shirt. Cabadas saw it and said, “[W]hat did I tell you about that shirt?”

Employee Walter Morrison, who had attended the meeting with organizer Rigsby in Albemarle and supported the Union from the inception of the campaign, continued to wear Steelworker shirts after the election. Following the election, he did not remember the date, Morrison recalled that Cabadas observed him and employee Bruce Terry wearing “Steelworker” T-shirts. He told them that “USW wasn't on our paychecks.” He then directed that they come with him and that “he would give us another shirt.” As Morrison and Terry followed Cabadas, Morrison observed that employee Leake was wearing a “Steelworker” shirt. Cabadas stated to Leake that he had given him a shirt “one time before” and to come with him. He went into a storage area and then presented the three employees with “short-sleeved Grede's T-shirts.”

Employee Sam Ingram, who continued to wear “Steelworker” T-shirts, was told by

Cabadas, “[T]his is not a USW plant, and I don't want this shit in my building.” Cabadas asked if Ingram was given a Grede shirt, would he wear it. Ingram said that he would.

Cabadas admitted that he had, following the election, told employees not to wear “Steelworker” or “Vote No” shirts in the plant. He said he did this 15 or 20 times but ceased doing so when he leaned it was improper. He did not inform the employees with whom he had spoken that his direction that they not wear “Steelworker” or “Vote No” shirts was improper.

The Respondent, by prohibiting employees from wearing shirts reflecting their support of the Union or Company, violated Section 8(a)(1) of the Act.

Paragraph 15 alleges that, in or around April, May, June and/or July 2011, and on August 2, 2011, the Respondent promulgated and enforced a policy prohibiting employees from taking breaks in the spectrometer lab in order to discourage its employees from forming, joining and/or assisting the Union or engaging in other concerted activities.

Prior to June or July, employees were permitted to take breaks in the spectrometer lab. As already noted, that is the lab out of which the quality control employees who spearheaded the organizational campaign worked until the reporting structure of nodularity checkers was altered. The lab is air-conditioned, and employees would come in to cool off when taking breaks. Employee Walter Morrison, who continued to support the Union, explained that he would go there because it was about 30 feet from his workstation.

Foundry Engineer Beach, who was hired on May 13, complained to Cabadas that employees who he did not know were coming into the spectrometer lab for breaks. He also claimed that food had had been spilled on his desk. Cabadas recalled seeing chicken boxes in the garbage and, on one occasion, “it smelled when I walked in there.” Beach admitted that people, including himself, “do eat snacks in there.”

Cabadas announced in June or July that employees would no longer be permitted to take breaks in the spectrometer lab. Morrison was told by Human Resources Manager Wolffis that he would be fired if he continued to take breaks in the lab. Superintendent Anger placed a “side note” on a warning issued to Morrison on August 2 that stated, "Also, please be aware metallurgical [spectrometer] lab is for quality employees only."

Beach did not claim that the employees whom he did not know interfered with the work of the quality control employees. Insofar as food and trash were the issues that needed to be addressed, the Respondent could have prohibited eating in the lab. The prohibition upon taking breaks in the lab limited the interaction of other employees with the prounion quality control employees. See *Impressive Textiles*, 317 NLRB 8, 13 (1995). The Respondent, by prohibiting employees from taking breaks in the spectrometer lab violated Section 8(a)(1) of the Act.

Complaint paragraphs 16, 17, and 18 all relate to rules in the employee handbook. Cabadas placed the handbook into effect when he took over management of the facility, and he admitted that it is still in effect.

Subparagraph 16(a) alleges that the handbook rules relating to solicitation and distribution are unlawful and subparagraph 16(b) alleges that the rules were selectively and disparately enforced by prohibiting union solicitations and distributions, while permitting nonunion solicitations and distributions.

The Respondent's general rule relating to solicitations provides that "[s]olicitations by employees are prohibited during working time on the premises." Although referring to working time, the rule also refers to "on the premises." Any ambiguity is resolved by plant rule 4 which prohibits "[s]oliciting or collecting contributions for any purpose without management permission.

Plant rule 9 prohibits "[d]istributing or posting written or printed matter of any description on company premises without written management permission."

As already discussed with regard to subparagraphs 10(k) and 12, Cabadas selectively enforced the foregoing rules when he confronted Ingram and Patterson on January 29.

By prohibiting solicitation without management permission during nonworking time and prohibiting distribution without management permission in nonworking areas during nonworking time, the Respondent violated the Act.

Paragraph 17 alleges that plant rule 20, which prohibits employees from "deliberately delaying or restricting production, or inciting others to delay or restrict production," violates the Act. I disagree. "It is well-settled that employees who engage in deliberate 'slowdowns' of work or encourage others to do so are engaged in activities not protected by the Act, and their discipline for such activity does not violate the Act." *Daimler Chrysler Corp.*, 344 NLRB 1324, 1325 (2005). I shall recommend that this allegation be dismissed.

Paragraph 18 of the complaint relates to the statement on unionism that appears on pages 4 and 5 of the employee handbook. Following the statement that Grede "will oppose by every proper means all attempts to unionize the plant," the handbook states:

> If you are approached by anyone asking you to sign a union affiliation card, you are requested to inform any member of management and ask for all the facts.

Subparagraph 18(a) alleges that the foregoing language asks that employees report upon the union activities of their fellow employees. Insofar as "anyone" includes fellow employees, the request that employees report upon the protected union activities of their fellow employees violates the Act.

Subparagraph 18(b) alleges that the foregoing request "has created an impression among its employees that their union activities are under surveillance by Respondent." The unlawful request that employees report upon the union activities of their fellow employees does not establish surveillance by the Respondent. I shall recommend that this allegation be dismissed.

Paragraph 19, in subparagraphs (a) and (b), alleges that, in May 2011, Respondent increased benefits for its employees by granting a boot allowance because the employees refrained from forming, joining, and/or assisting the Union and to encourage employees from refraining in union activities.

Cabadas admitted that he granted a boot allowance for employees who had been working for a year of more after an employee meeting in May at which an employee complained that he was using duct tape to hold his boots together.

The boot allowance had been announced at the first meeting held on February 10. It was, as I have found, unlawfully retracted at the subsequent meetings held that day. Insofar as I shall recommend that the appropriate remedy for the unlawful retraction of the announced

benefits is the retroactive grant of those benefits, I find no violation with regard to the May grant of the boot allowance that should have been granted in February. I shall recommend that this allegation be dismissed.

E. The 8(a)(3) Allegations

1. Samuel Ingram

a. Facts

The complaint alleges that the Company unlawfully warned Ingram, refused to consider him for rehire, and refused to rehire him. The warning related his leaving his workstation. The refusal to consider for rehire or to rehire followed Ingram's discharge for being intoxicated on the job. His discharge is not alleged as a violation of the Act.

Ingram was a nodularity checker. During the organizational campaign he was working out of the spectrometer lab and reported to the quality control supervisor. He was one of the 10 employees who met with organizer Rigsby at the motel in Albemarle. He solicited authorization cards, and he wore union T-shirts. As noted above, on January 29, Cabadas prohibited Ingram from passing out anything or talking about the Union. Following the election, Ingram continued to wear a Steelworker T-shirt that resulted in the incident on June 10 at which Cabadas stated that he "didn't want that shit in my building."

Sean Anger, who began working at the Company in March 2010, became production superintendent in 2011, a position that he held until ending his employment in December 2011.

Charles (Chuck) Wolffis became manager of human resources in April when his predecessor, Raquel Sanders, was terminated. He is responsible for all personnel matters, including discipline, hiring, and firing. Cabadas testified that Wolffis "makes the final decisions regarding personnel matters."

Nodularity checkers are responsible for analyzing samples of metal to determine whether they meet required specifications. Samples are taken when each new batch of molten metal is poured, once about every 7 or 8 minutes depending upon what is being produced. The sample is referred to as a "button." When nodularity checkers take breaks they are relieved by other employees. Employee Greg Clarke confirmed that nodularity checkers should not leave their workstations "without someone covering that position."

On August 5, Ingram admittedly left his workstation in order to obtain supplies that he needed, including a saw blade. The supply room was locked. Ingram did not return to his workstation immediately. He waited and soon encountered Supervisor David Stutts who did not have a key. Ingram returned to his workstation without having obtained the supplies.

Ingram had informed leadman George Crump that he was leaving his workstation, but he did not say for how long or that he had not obtained anyone to cover his position. If Ingram were to leave for a short time, to go to the restroom or get a drink, he would not have missed any buttons. Superintendent Anger observed that Ingram was not at his workstation and that two batches of metal had been poured and the buttons had not been checked. A third batch of metal was being poured at that time. Anger asked Crump where Ingram was. Crump reported that he "didn't know he [Ingram] was missing," that he did not know that he was "gone that long." Insofar as two buttons had not been checked and a third batch of metal was being poured, Ingram had to have been away from his workstation for at least 20 minutes. Testimony

by Anger establishes that, although less efficient, the nodularity check can be performed without a saw blade by using polishing disks.

Anger spoke with Ingram, telling him to “go through your leadman if you need supplies from the stock room. You can't be away from the station that long.” Anger directed Ingram to report to Human Resources Manager Wolffis. As Ingram was going to the human resources office he recalls that he encountered Supervisor Stutts who said that he would “handle it.” Stutts denies any such conversation. He recalls that Ingram informed him of the warning after he had been warned for being away from his workstation. Insofar as Ingram had not received a warning at the time he recalled speaking with Stutts, there would have been nothing for Stutts to handle. I credit Stutts, but even if Stutts had committed to “handle it,” he had no authority to do so insofar as he was not Ingram’s supervisor.

At the human resources office, Anger and Wolffis were present. Ingram was issued a first warning for leaving his assigned workstation and missing two buttons. Wolffis told Ingram that he should have shown “more responsibility than being up there too long to get the supplies that I needed.” Ingram asked how he could be more responsible that trying get the supplies that he needed. He noted that Supervisor Stutts was also at the supply room. He did not report that Stutts had told him that he would “handle it.”

On October 29, Ingram and another employee had a verbal altercation regarding a work related matter. Shortly thereafter Supervisor Tom Gesme approached Ingram and told him that it had been reported that he was under the influence of alcohol. Ingram admitted drinking the night before but denied being under the influence. Gesme took him to the local wellness center where to took a breathalyzer test that reflected a blood alcohol content of .095.

Ingram was discharged. Gesme drove Ingram home. Ingram recalls that, as they were driving to his home, Gesme informed him that “you know you can come back in 30 days.” Gesme, who has no responsibility or authority with regard to hiring, credibly denied making any statement to Ingram that he could be rehired in 30 days.

In late November Ingram made multiple calls to the Company and, ultimately, in early December, spoke with Superintendent Anger who told him that in order to get his job back he needed to reapply through the unemployment office. Ingram did so in early December, but was never contacted by the Company regarding his application.

Human Resources Manager Chuck Wolffis testified, "I have not rehired anyone with a major violation.” Wolffis acknowledged that he was aware that his predecessor, Raquel Sanders, had done so. Documentary evidence establishes that employee Raymond Moore was fired for intoxication on the job on December 22, 2010, and was rehired on February 4, 2011. At that time, Human Resources Sanders was making rehire decisions. When asked why his approach was different, Wolffis explained that “[w]orking in a foundry, it's a safety situation. When you have a major violation such as being under the influence of alcohol, it is not a situation that we're going to rehire someone after a situation of that nature.”

Wolffis was cross-examined with regard to the hire of David Reyes who had been fired from the machine shop, a facility separate from the casting division, for being intoxicated on October 14 but was hired at the foundry on January 3, 2012. The machine shop is a separate facility, but Wolffis is the human resources manager for that facility. Cabadas explained that many employees are hired on the basis of recommendations of “some type of a sponsor,” a family member or friend. Wolffis explained that he was not a part of the hiring decision

with regard to Reyes, that Reyes "came in through the back door." When he become aware of the pervious discharge of Reyes, he looked at his application and "found that there was no indication on his application that he had worked at Grede Machine." Reyes was terminated for falsification of company documents.

The General Counsel argues that I should draw an adverse inference regarding the claim that Reyes falsified his application insofar as the application was not introduced into evidence and that, if it was not falsified, the Company discharged Reyes "in an attempt . . . to create a defense where none exists." That begs the question. The issue is whether Wolffis did not rehire employees who were discharged for major offenses. There is no evidence contradicting his testimony that he was not involved in the hire of Reyes.

b. Analysis and concluding findings

In assessing the evidence under the analytical framework of *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), I find that Ingram engaged in union activity and that the Respondent was aware of that activity. I also find animus. The August 5 warning was an adverse action that affected his employment. I find that the General Counsel has carried the burden of proving that union activity was a substantial and motivating factor for the action. *Manno Electric*, 321 NLRB 278 (1996). Thus, the burden of going forward to establish that the same action would have been taken against Ingram is upon the Respondent.

The Respondent has established that the same action would have been taken against Ingram notwithstanding his union activity. Employee Greg Clarke confirmed that nodularity checkers should not leave their workstations "without someone covering that position." The General Counsel presented no evidence that any nodularity checker ever abandoned his workstation for over 20 minutes without having obtained coverage.

Ingram's reason for going to the supply room is immaterial insofar as the offense was his leaving the workstation without obtaining coverage which resulted in two buttons not being analyzed in a timely manner. The Respondent's failure to contact Stutts after Ingram reported that Stutts had seen him at the supply room does not establish a failure to investigate. There was no issue with regard to where Ingram was. The issue was where he was not. I shall recommend that the allegation relating to the warning issued to Ingram be dismissed.

As already noted, the discharge of Ingram is not alleged as a violation of the Act. The failure of the Respondent to consider him for rehire and to rehire him are alleged as violations.

Pursuant to the Board decision in *FES*, 331 NLRB 9, 12 (2000), the General Counsel must, under the allocation of burdens set forth in *Wright Line*, supra, show that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; that the applicant had experience or training relevant to the requirements of the position; and that antiunion animus contributed to the decision not to hire the applicant.

As already discussed, the General Counsel established a prima facie case. The Respondent was hiring and Ingram had worked for the Respondent. The Respondent however, established that it does not rehire employees who have committed major rules violations. Intoxication on the job is a major rule violation.

I am mindful that a box on various termination forms reflects that employees terminated for major offenses, including failing drug screens, were checked as being recommended for rehire. Wolffis credibly testified that he did not check those boxes.

The Respondent has no written policy relating to rehire. In *Pontiac Osteopathic Hospital*, 284 NLRB 442, 465 (1987), the Board found no unlawful disparity, notwithstanding different treatment of employees, where the absence of uniformity, even assuming that the circumstances were similar, could "be attributed to the fact that different supervisors, acting without guidance from written disciplinary standards, made the disciplinary decisions at different times."

As already noted, Wolffis testified that he had "not rehired anyone with a major violation." His predecessor's rehiring of Raymond Moore, who was fired for being intoxicated, does not contradict that testimony; nor does the hire of David Reyes who had been fired for intoxication at the machine shop, a different facility. There is no evidence contradicting the testimony of Wolffis that he was not a part of the hiring decision with regard to Reyes. The Respondent has no written policy relating to eligibility for rehire. The credible testimony of Wolffis that it was a "safety situation" and that the Respondent was not "going to rehire someone after a situation of that nature" is rational and consistent with corporate concerns relative to potential workers compensation claims as well as the safety of other employees.

The Respondent established that Ingram would not have been rehired notwithstanding his union activity. I shall recommend that this allegation be dismissed.,

2. Walter Morrison

The complaint alleges that the Respondent discriminatorily issued a warning to Morrison on August 2 and another warning on August 30, which resulted in his discharge on that date pursuant to the Company's progressive discipline system, because of his union activities.

Morrison was one of the 10 employees who met with Organizer Rigsby in Albemarle, the meeting that resulted in the organizational campaign, and, at that meeting, initialed the authorization cards of Rojeilo Munoz and Stephen Andrew (A.J.) Jackson as a witness. As already discussed, Morrison was directed by Cabadas to wear a Grede T-shirt after Cabadas observed him continuing to wear a Steelworker shirt after the election.

Dario Lopez, who attended the meeting in Albemarle but thereafter ceased to support the Union, denied that he knew that Morrison supported the Union. That denial weighs heavily against his credibility as does his denial that he ceased supporting the Union. In late January, General Manager Cabadas was informed by Zebib that Lopez wanted to "talk with us" about "bringing the election to an end." Thereafter, Cabadas met with Lopez in his office, with Zebib and procompany employee Ray Little present, Cabadas credibly testified that Lopez told him that "he felt that . . . this process had taken its course and . . . that they could make the whole thing, quote, go away." Cabadas "just listened."

a. The August 2 warning

(1) Facts

Morrison was a forklift driver. On Saturday, July 31, he was working on the south end of the foundry. Morrison, corroborated by Supervisor David Stutts, credibly testified that, on Saturdays, at the end of the day when there is no more work to be done, the employees do not need to check out with anyone. As Stutts testified, they "can leave without checking out. They know when the work is done."

Dario Lopez was promoted to the position of leadman about a month after the election. On July 31, Stutts told Lopez to “make sure everybody stays and gets ready to get through pushing everything off,” i.e., clearing everything out before shutting down. At that point, all work had ceased on the south end and Morrison had left. Lopez did not mention receiving the foregoing directive from Stutts. He obviously did receive the directive insofar as he “realized that he [Morrison] was gone and “I went to look for him.” Stutts recalled that Lopez reported to him that Morrison had left. Lopez claims that he reported that Morrison had left to Supervisor John Ringley.

Lopez claimed that he told Morrison, at the beginning of the workday, “[Y]ou will stay over today, . . . you will stay with us.” He claims he did so because he had given permission to Juan Padron, the forklift driver on the north end, to leave early. Morrison credibly denied having received that instruction, noting that he gave a ride home to Freddie Bush, a sorter on the south end who clocked out 2 minutes before Morrison. Stutts confirmed that sorters stay longer than other employees.

Superintendent Anger recalled that Lopez reported to him that Morrison had left and that he did not have a forklift driver. Anger told Lopez that they would “deal with it on Monday.” Lopez made no mention of making a report to Anger.

I credit Morrison. Morrison received no instruction to remain after work was completed on the south end on Saturday. When Stutts issued the instruction that everyone was to remain, leadman Lopez “went to look for him.” He reported to Stutts that Morrison was gone.

On Monday, August 2, Lopez accompanied Morrison to Anger’s office. Anger issued Morrison a warning that he had already prepared. Morrison read the warning which states that Morrison left early. Morrison stated that it was “BS [bullshit] because I had took Freddie Bush home at the same time.” Lopez said nothing. Lopez left. Anger told Morrison “that he would check into the times and that he “was gonna slide it [the warning] under the table.” Anger did not deny the foregoing conversation. I credit Morrison.

The written warning, following the language relating to Morrison allegedly having left early, states, "Also, please be aware metallurgical [spectrometer] lab is for quality employees only." Morrison credibly testified that when he signed the warning that language was not on the warning, “It didn't have none of that on there.” Anger claims that he placed that “side note” on the warning because Morrison was seen in the spectrometer lab even though there was “no need for him to be in there.” “So I . . . . put it in writing that . . . this is becoming an issue.” He does not claim to have mentioned anything about the lab when speaking with Morrison.

The record is contradictory regarding whether Morrison, following the receipt of the warning in Anger’s office, was sent to the human resources office. Lopez recalled that the warning was issued in the human resources office and that he went there with Morrison. Wolffis recalled that Morrison was “brought to my office by Mr. Anger” and that “this discipline was administered.” Wolffis did not recall “any defense that he [Morrison] put up relative to leaving early on the 30th.” Anger, when asked whether he went to human resources with Morrison, answered, “I don't think I was there at this one.” Morrison did not mention going to human resources.

I find that Wolffis and Lopez were mistaken. Anger would not have sent an employee to the human resources office without a supervisor. The discipline was

administered by Anger in his office. Morrison told Anger that it was "BS," and, after Lopez left, Anger told Morrison that he would "slide it under the table."

(2) Analysis and concluding findings

In assessing the evidence under the analytical framework of *Wright Line*, supra, I find that Morrison engaged in union activity and the Respondent was aware of that activity. Anger did not deny that he was aware that Morrison, who wore "Steelworker" shirts to work, supported the Union. I also find animus. As already noted, General Manager Cabadas directed Morrison to wear a "Grede" shirt. The August 2 warning and August 30 warning and discharge were adverse actions that affected Morrison's employment. The preparation and issuance of discipline prior to giving Morrison an opportunity to give his version of the events establish that his protected union activities were a substantial and motivating factor for the discipline and his discharge. I find that the General Counsel has carried the burden of proving that union activity was a substantial and motivating factor for Respondent's action. Thus, the burden of going forward to establish that the same action would have been taken against Morrison is upon the Respondent.

Accepting one version of an event without obtaining or considering all the facts suggests a discriminatory motive. As stated, with Board approval, in *Bantek West, Inc.*, 344 NLRB 886, 895 (2005), "'The failure to conduct a meaningful investigation or to give the employee [who is the subject of the investigation] an opportunity to explain' are clear indicia of discriminatory intent. *K & M Electronics*, 283 NLRB 279, 291 fn. 45 (1987)." When addressing discriminatory discipline, the Respondent "not only must separate its tainted motivation here from any legitimate motivation, but it must persuade that its legitimate motivation outweighs its unlawful motivation so much that the Company would have imposed the discipline even in the absence of any union activities." *Formosa Plastics*, 320 NLRB 631, 648 (1996). Anger prepared and issued the August 2 discipline to Morrison without any investigation.

The admission by Supervisor Stutts that, on Saturday, employees may leave without checking out, "[t]hey know when the work is done," confirms that Morrison did not need permission to leave. Morrison credibly testified that work at the south end had ceased, thus he could leave, which he did, giving a ride to Freddie Bush, a sorter. Sorters remain longer than the gate breaking employees, which confirms that work at the south end had ceased.

There was no investigation. When the warning was issued Morrison explained that he had give Bush a ride home. Bush clocked out immediately before Morrison. Bush was not disciplined. I have not credited the testimony of Lopez that he told Morrison, at the beginning of the shift, that he could not leave. Lopez became concerned about Morrison only after Supervisor Stutts directed that "everyone stays." Insofar as work on the south end had been completed, Morrison and Bush had already gone. Although Anger told Morrison that he would "slide it [the warning] under the table," he did not do so.

Further evidence of the discriminatory nature of the August 2 warning is the addition of the comment that the "metallurgical lab is for quality employees only." Morrison credibly testified that when he signed the warning that language was not on the warning. Anger claims that he placed that "side note" on the warning because there was "no need for him [Morrison] to be in there." There is no evidence that any statement relating to the metallurgical lab was made when the discipline was issued. Insofar as it was common knowledge that the quality employees had spearheaded the campaign on behalf of the Union, the foregoing restriction, totally unrelated to the bogus leaving early offense, confirms the discriminatory nature of the warning.

When the reason given for a respondent's action is either false, or does not exist, the respondent has not rebutted General Counsel's prima facie case. *Limestone Apparel Corp.*, 255 NLRB 722 (1981). The Respondent, by warning Morrison for leaving early on August 2, an offense that he did not commit, violated Section 8(a)(1) and (3) of the Act.

b. The August 30 warning

(1) Facts

Morrison received two additional warnings in mid-August. They are not alleged as violations of the Act.

On August 30 Morrison received a warning for taking four breaks within 8 hours. Pursuant to the progressive disciple system, he was discharged.

Employees are allowed one 15 minute break and one 30 minute break each shift. They may use the restroom and that time does not affect their break schedule.

Morrison recalled that, after reporting to work at 3:45 a.m. he went to the restroom at about 3:55 for about 10 minutes because he had an upset stomach. Thereafter he took his 15-minute break at 8 or 9 a.m. After resuming work, Morrison recalled that a chain on his forklift broke and that the repair took about 30 minutes. He did not state the exact time that the repair was made. During the time the forklift was being repaired, he claims to have looked, but was unable to find, another forklift. He did not inform any supervisor that his forklift was broken. He resumed working after the forklift was repaired and took his lunchbreak from 12:15 to 12:45 p.m.

The warning states that Morrison took breaks from 4:45-5:15 a.m., 7:55-8:10 a.m., 9:35-10:05 a.m. and 12:00-12:45 p.m. and that these times were observed by Leadman Dario Lopez and Supervisor David Stutts.

Leadman Lopez, whose duties include assuring that employees are leaving and coming from breaks at their assigned times, noticed that Morrison was not on the floor when the shift started at 4:45 a.m. He did not see him until 5:15 a.m. He claims he asked Morrison where he had been, and Morrison explained that he had been in the bathroom. At 7:55 a.m., when Lopez was picking up paperwork, he observed Morrison enter the breakroom, get a cup of coffee, and sit, where he remained until 8:10 a.m. That would have been Morrison's 15-minute break. Lopez observed Morrison enter the breakroom again at 9:35 a.m. Around 10 a.m., Lopez claims to have explained to Supervisor Stutts that Morrison was on break. The warning reports that he left that break at 10:05 a.m. Lopez did not speak to him. At 12 noon, Morrison told Lopez that he was taking his lunchbreak. Stutts did not see him in the breakroom, but Morrison did not return to his work area until 12:45 p.m.

Although the warning reports that the foregoing times were observed by Stutts as well as Lopez, Stutts does not recall observing Morrison until about 11 a.m., when he saw Morrison sitting in the breakroom. That time is not reported on the warning.

Anger recalled that Stutts and Lopez reported to him Morrison was "taking excessive breaks." He asked if they had spoken to him previously in that regard, and they replied that they had. He directed them to "document the times then when he's away from his job, and then we'll put it in writing, and we'll talk about it [in] HR." Anger received the

report, which Lopez had recorded "on a little cardboard piece of paper." He noted that, the last time that Morrison had been missing, he, Anger, "went out, looked for him, couldn't find him anywhere." Anger prepared the warning.

Around quitting time, Lopez told Morrison to go to see Human Resources Manager Wolffis. Although Anger testified that he did not think that he was present, both Morrison and Wolffis agree that Anger was present. Wolffis presented Morrison with a warning which stated that he had taken four breaks within 8 hours. Morrison explained that the forklift had broken and that his stomach had been upset in the morning. Morrison recalled that Wolffis "didn't want to hear me, acted like he didn't care." Morrison asked Wolffis to call Kyle Henley, the maintenance mechanic. Wolffis did not call Henley.

Wolffis, upon hearing that the forklift was broken and that Morrison had sat "waiting for his lift truck to get repaired for a period of time," asked whether he "had reported back to his supervisor." Morrison answered, "No." Wolffis asked whether it was not "normal practice if your equipment is knocked down and you go back and look for reassignment somewhere else." Morrison answered that he "just didn't do that."

Kyle Henley explained that, when he reported to work at 7 a.m. on August 30, a forklift with a broken chain was in the shop. This particular forklift was rented from another company, Barloworld, and Barloworld sent a technician to make the repairs. It was the only forklift in the maintenance shop awaiting repair. The repair work order reflects that the forklift repair was completed at 11 a.m. Henley recalled that Morrison came by at about 8 a.m. to check upon the repair process. He did not recall that Morrison came for the forklift when the repair was completed. Morrison was not recalled to explain the discrepancy between his testimony and that of Henley. I credit Henley.

I am mindful that Lopez reported seeing Morrison's forklift parked "on the south side" at a point that Morrison "was gone," but the record does not establish the time of this observation. The forklift repair was completed at 11 a.m. and, according to Lopez, Morrison was gone at various times including from 12 noon until 12:45 p.m., after the forklift was repaired. His unspecific observation establishes nothing.

Counsel for the General Counsel's brief argues that the copy of the work order, which shows that 13 chains were used in the repair, leads to the conclusion that "multiple forklifts were repaired that day." I do not agree. The work order reflects that the repair to "replace chains" was upon one Hyster forklift with a specific serial number. Henley testified that only one forklift was repaired, and it was repaired by a technician from the rental company. Morrison was not recalled to dispute that testimony.

(2) Analysis and concluding findings

Morrison admits being in the restroom for 10 minutes because of an upset stomach. Restroom breaks do not affect an employee's entitlement to breaks, but Lopez observed that Morrison was missing for 30 minutes. Morrison admits taking a 15-minute break at 7:55 a.m. He claims that he was not working at some point in the morning when the chain on his forklift broke, presumably the 9:35-10:05 a.m. period recorded by Lopez. Morrison said he took his lunch from 12:15 until 12:45 p.m. Lopez says that Morrison told him that he was taking his lunchbreak at noon but did not return until 12:45 p.m.

Contrary to the warning, Stutts did not observe Morrison at the times Lopez recorded, but he did confirm that he observed Morrison in the breakroom about 11 a.m., a

time not noted on the warning. Although Morrison told Lopez that he was taking his lunchbreak at 12 noon, Lopez did not see him in the breakroom. Anger looked for him but was unable to find him.

Although claiming that he never saw Lopez or Stubbs observing him, Morrison did not dispute that he was not working at the times noted on the warning. Although claiming that he was in the restroom for 10 minutes, he did not contradict Lopez that he got to the work floor at 4:15 a.m. He did not address the other specific times noted on the warning. The 7:55-8:10 a.m. break would have been his 15-minute break. Presumably the 9:35 until 10:05 a.m. period was when he claims his forklift was being repaired. He did not dispute that he took a 45-minute lunchbreak, from 12 noon until 12:45 p.m., when Lopez did not see him in the breakroom. He did not address the testimony of Stubbs that he was in the breakroom around 11 a.m., a time not noted on the warning.

Although Morrison explained to Wolffis that the forklift had broken and that his stomach had been upset in the morning, he did not specifically address each of the time periods noted on the warning. When the forklift was being repaired he just waited. So far as this record shows, he did not tell Wolffis how long he had waited for the repairs to the forklift to be made. Morrison did not deny that he admitted to Wolffis that he did not go back to his supervisor and explain that his equipment was inoperable, that he “just didn't do that.” Morrison claims that he asked Wolffis to check with Kyle Henley. Wolffis had no need to do so insofar as Morrison admitted that he did not inform his supervisor of the broken forklift and that he was not working but waiting. If Wolffis had contacted Henley, he would have learned, as the documentary evidence establishes, that the repair took 3.5 hours.

The work order from Barloworld reflects that, on August 30, a technician from Barloworld preformed repairs upon one forklift with broken chains. The document reflecting the repair to the forklift reflects that the mechanic “replaced chains.” The repair involved replacement of chains, pins and cotter pins, and rollers. It took from 7:30 until 11 a.m. Kyle Henley testified that there was one forklift in the maintenance shop awaiting repair when he arrived at work at 7 a.m. and that was the only forklift needing repair.

Henley credibly testified that Morrison came by to check on the forklift at about 8 a.m. There is no evidence or claim that the forklift being repaired was not Morrison’s forklift. Morrison was not recalled to address the testimony of Henley that the broken forklift was awaiting repair at 7 a.m., that he came to maintenance to check upon it at about 8 a.m. The absence of any explanation from Morrison regarding the discrepancy between his testimony 30-minute repair and the documentary evidence establishing that the repair of the broken forklift took 3.5 hours suggests that he was not working during that time. The observations of Lopez and Stutts confirm that fact. Morrison did not deny that he did not inform his supervisor that the forklift was inoperable.

I find that the Respondent established that the August 30 warning would have been issued to Morrison notwithstanding his union activities. Because that warning constituted his fourth warning, he was discharged pursuant to the progressive discipline system. I have found that Morrison was unlawfully warned on August 2, and I shall recommend that the August 2 warning be rescinded. Thus, the August 30 warning would be Morrison’s third warning. Insofar as Morrison was discharged pursuant to a progressive discipline system that included the unlawful August 2 warning, Morrison’s discharge violated Section 8(a)(1)and (3) of the Act.

F. Appropriateness of a Bargaining Order

1. Majority status

Employees began signing single purpose union authorization cards on November 29, 2010. All of the cards admitted into evidence in this proceeding were received in the Regional Office on December 22, 2010, when the petition for the election was filed. The Company was unaware of the organizational efforts of the Union until the petition was filed. At the hearing, 200 cards of employees whose names appear on the *Excelsior* list were admitted into evidence. Of those, 164 were authenticated through witness testimony. Exhibit 30 contains the cards and handwriting exemplars of 38 employees. Two of those cards had already been received, leaving a total of 36 to be authenticated by signature comparison. I have carefully compared the signatures on the cards with exemplars from company documents and find the signatures to be authentic. I note that several of exemplars reflect that employees sign official documents with printed signatures. As of December 22, 2010, the Union had obtained authorization cards from a majority of the unit employees.

2. Bargaining order

The General Counsel and the Charging Party herein seek a bargaining order. In *NLRB v. Gissel Packing Co.*, 395 U.S.575 (1969), the Supreme Court identified two types of cases in which a bargaining order would be warranted: Category I cases in which the unfair labor practices were "outrageous and pervasive," and Category II cases involving "less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election process." In Category II cases a bargaining order should issue where the Board finds that "the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order." *Gissel*, supra, 395 U.S. at 613, 614–615.

In evaluating violations justifying a bargaining order, the Board has referred to "hallmark violations" which include threats of closure, discharge of leading union adherents, and the grant of significant benefits. The only hallmark violation occurring in the preelection critical period herein was threatened plant closure. Thus, at best, this case is a Category II case.

The Respondent took no disciplinary action against any of the known prounion employees during the course of the campaign. No wage increases were given. Two threats of closure were made directly to employees. Both were made by Nystrom: the threat to Clarke regarding moving to Mexico at a meeting at which there is no evidence that other unit employees were present and the threat to Harris in the final inspection office. The closure threat in the article in the Montgomery Herald was not made by a management official, although it was adopted by the Respondent as established by the purchase and distribution of the newspapers. The Union responded in a flier telling the employees not to be fooled by the "rumors" being disseminated by the Company "and its cronies in city hall."

An additional consideration relating to the propriety of a bargaining order is the large size of the unit, "a factor long-recognized by the Board as diluting the impact of even the most serious unfair labor practices." *Jewish Home for the Elderly of Fairfield* County, 343 NLRB 1069, 1121 (2004).

Campaigns, whether political or representational, serve a purpose. Facts not known and positions not stated are revealed. Only when the issues are directly addressed can the members of the electorate intelligently decide what is in their best interest. In *Washington Fruit & Produce Co,* 343 NLRB 1215, 1279 (2004), Administrative Law Judge James Kennedy noted

that the majority of the authorization cards were signed "before the debate began in earnest." In this case, all of the authorization cards were signed before any debate began.

In *Times Wire & Cable Co.*, 280 NLRB 19 (1986), the Board refused to adopt the administrative law judge's remedy of a bargaining order and directed a third election. Prior to the first election, the respondent committed numerous 8(a)(1) violations, including threats of plant closure. The union won the election, and the respondent filed objections. The union, in order to avoid delay, agreed that certain objections be sustained and that a second election be held. The union lost this election and filed objections and unfair labor practice charges. The administrative law judge found, and the Board agreed, that the respondent had unlawfully threatened plant closure, coercively solicited employees to revoke union authorization cards, and failed to grant a general wage increase. The withholding of the wage increase was the only violation that occurred between the first and second election. In refusing to impose a bargaining order the Board stated that the withholding of the wage increase "even in light of the violations occurring before the first election, cannot be viewed in these circumstances as being sufficiently serious to justify the imposition of bargaining." The Board found that traditional remedies and a third election would enable employees to express their true sentiments. In that case, the respondent had, some 5 months after failing to grant a wage increase, granted the increase, but not retroactively. The respondent was ordered to make whole the employees by retroactive payment of the increase. I shall recommend the same remedy in this case.

The extraordinary remedy of a bargaining order is properly imposed in order to assure that employees are not deprived of union representation because of unlawful conduct by an employer. I am mindful that the overwhelming rejection of the Union in the representation election, 204 to 86, suggests that the unfair labor practices of the Respondent played a role in the defeat of the Union; however, there is no objective evidence establishing that the Union's loss of support resulted from the Respondent's unfair labor practices rather than the propaganda that was disseminated to employees in the weekly presentations of Zebib and Nystrom. In this unit of 313 employees, a majority would consist of 157. I received into evidence 200 authenticated cards, all of which were signed "before the debate began." The Montgomery Herald article, which contained the threat that "local officials fear the county's largest employer might close their doors rather than go union," was published only in English and, as already noted, a significant number of employees are Hispanic. If only 45 of the employees who signed cards ceased to support the Union for reasons unrelated to the Respondent's unfair labor practices, the Union would have no longer enjoyed majority status.

Times Wire & Cable Co. involved conduct far more coercive than the conduct in this case. I find that traditional remedies, including posting an appropriate notice in English and Spanish and making whole the employees for the withdrawal of the benefits announced on February 10, will enable a fair election to be conducted.

G. The Objections to the Election

Objections to the election held on February 2, 2011, were consolidated with the complaint. At the hearing Objections 1, 2, and 9 were withdrawn. All remaining objections are coextensive with complaint allegations.

Objections 3, 4, 5, 6 and 7 relate to alleged surveillance while voting was taking place, handing out "I Voted" stickers, paying antiunion employees Flores and Reynolds, and directing antiunion employees to engage in electioneering. As discussed above, there is no evidence that the employees handing out the "I Voted" stickers questioned any employee regarding how that employee had voted. There is no evidence that any statements were made encouraging any

employee to vote in a particular manner or any other form of electioneering. Although the employees who voted were observed as they went to and returned from voting, there is no evidence that any list was made or kept. The mere observation of employees going to or coming from the voting place does not constitute objectionable conduct. There is no evidence that the secrecy of any ballot was compromised. I have recommended dismissal of the complaint allegations relating to the conduct encompassed by these objections, and I recommend that these objections be overruled.

Objection 8 relates to the conversations that Cabadas had with Patterson and Ingram on January 29 when he interrupted their discussion relating to the petition to cancel the election and directed them not to be passing out anything or talking about the Union. In so doing, the Employer interfered with the employees' exercise of their Section 7 rights.

Objection 10 relates to the newspaper article which is fully discussed above. The adoption by the Employer of the article that threatened plant closure, as established by the Employer's purchase and distribution of the newspapers in the breakroom and to consultants Zebib and Nystrom, interfered with the employees' exercise of their Section 7 rights.

Objection 11 contends that the newspaper article constitutes objectionable third party conduct. I agree, but insofar as I have found that the article was adopted by the Employer, I need not make any further finding relative to this objection.

Objection 12. relates to disparate enforcement of the Employer's solicitation policy. I have found that the policy itself is unlawful insofar permission from management is required. As already discussed, prounion employees Ingram and Patterson were confronted by Cabadas when they spoke with employees about the petition sent to the Union on January 29. The Employer's solicitation policy and disparate application of the policy by prohibiting discussion about the Union interfered with employees' exercise of their Section 7 rights.

Objection 13 relates to threats of plant closure in meetings with employees. I have found that Nystrom threatened that the plant would move to Mexico and also threatened closure if the employees selected the Union as their collective-bargaining representative. The foregoing threats interfered with employees' exercise of their Section 7 rights.

Objections 8, 10, 11, 12 and 13 are sustained. I find that the violations of the Act that occurred during the critical preelection period and are coextensive with the foregoing objections interfered with the employees' free choice of representation and that the election must be set aside and a new election held.

CONCLUSIONS OF LAW

1. The Respondent, by informing employees that unspecified benefits would be withheld because they had engaged in union activity; rescinding announced increased benefits and informing employees that the rescission was because of their union activities; adopting and distributing a newspaper article that threatened plant closure; threatening plant closure or that the plant would move to Mexico if the employees selected the Union as their collective-bargaining representative; informing employees that selection of the Union as their collective-bargaining representative would be futile; soliciting grievances, promising to remedy them, and remedying them, in order to discourage union activity; prohibiting employees from talking about the Union during worktime in work areas while permitting conversations unrelated to the Union; more closely monitoring the movements and activities of prounion employees; threatening loss of overtime if the employees selected the Union as

their collective-bargaining representative; denying access to the facility to employees while off the clock; prohibiting employees from wearing shirts reflecting their support of the Union or Company; prohibiting employees from taking breaks in the spectrometer/metallurgical lab; prohibiting solicitation without management permission during nonworking time and prohibiting distribution without management permission in nonworking areas during nonworking time; and by requesting that employees report upon the protected union activities of their fellow employees, violated Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. The Respondent, by discharging Walter Morrison because of his union activities, violated Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent must rescind the provision in the employee handbook that requests employees to report to management "anyone asking you to sign a union affiliation card."

The Respondent must rescind the unlawfully broad rules prohibiting solicitation without management permission during nonworking time and prohibiting distribution without management permission in nonworking areas during nonworking time.

The Respondent, having unlawfully rescinded the 2.5-percent wage increase announced on February 10, 2011, it must make whole all employees for the loss of wages caused by its unlawful rescission with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010), enf. denied on other grounds sub.nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).[5]

The Respondent must pay the $250 bonus with interest as prescribed above and make whole any employees affected by the rescission of the boot allowance.

The Respondent, having discriminatorily discharged Walter Morrison, must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be computed on a quarterly basis from August 30, 2011, to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed above.

The Respondent will also be ordered to post and email an appropriate notice in English and Spanish.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

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[5] Cabadas testified that, in July 2011, "the entire company, all plants, received a two percent raise across the board." The foregoing raise, implemented for the entire company, should have no effect upon the Respondent's obligation to make whole the Biscoe employees for the rescinded 2.5-percent February 2011 wage increase.

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

Continued

ORDER

The Respondent, Grede II, LLC, Biscoe, North Carolina, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Informing employees that unspecified benefits would be withheld because they had engaged in union activity in support of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC, or any other labor organization.

(b) Rescinding announced increased benefits and informing employees that the rescission was because of their union activities.

(c) Adopting and distributing a newspaper article that threatened plant closure.

(d) Threatening plant closure or that the plant would move to Mexico if employees selected the Union as their collective bargaining representative.

(e) Threatening employees that selection of the Union as their collective-bargaining representative would be futile.

(f) Soliciting employee grievances, promising to remedy them, and remedying them, in order to discourage union activity.

(g) Prohibiting employees from talking about the Union during worktime in work areas while permitting conversations unrelated to the Union.

(h) More closely monitoring the movements and activities of prounion employees.

(i) Threatening loss of overtime if employees selected the Union as their collective-bargaining representative,

(j) Denying access to the facility to employees while off the clock.

(k) Prohibiting employees from wearing shirts reflecting their support of the Union or Company.

(l) Prohibiting employees from taking breaks in the spectrometer/metallurgical lab.

(m) Prohibiting solicitation without management permission during nonworking time and prohibiting distribution without management permission in nonworking areas during nonworking time.

(n) Requesting that employees report upon the protected union activities of their fellow

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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.

employees.

(o) Discharging employees because of their union activities.

(p) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the provision in the employee handbook that requests employees to report to management "anyone asking you to sign a union affiliation card."

(b) Rescind the unlawfully broad rules prohibiting solicitation without management permission during nonworking time and prohibiting distribution without management permission in nonworking areas during nonworking time.

(c) Make whole all employees in the appropriate unit for the loss of wages caused by its unlawful rescission of the wage increase, bonus, and boot allowance, announced on February 10, 2011, with interest in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, offer Walter Morrison full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(e) Make Walter Morrison whole for any loss of earnings and other benefits suffered as a result of his discharge, in the manner set forth in the remedy section of the decision.

(f) Within 14 days from the date of this Order, remove from our files any reference to the discharge of Walter Morrison, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to determine the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facilities in Biscoe, North Carolina, copies of the attached notice marked "Appendix"[7] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 11 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by

[7] 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."

such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. 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 January 4, 2011.

(i) 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 ALSO ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the election is set aside and Case 11–RC–6748 is severed from Cases 11–CA–22980, 11–CA–22984, 11–CA–22997 and 11–CA–66972 and remanded to the Regional Director to conduct a second election when the Regional Director deems the circumstances permit a free choice.

Dated, Washington, D.C., April 19, 2012.

George Carson II
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT inform you that unspecified benefits will be withheld because of your activity in support of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, or any other labor organization.

WE WILL NOT rescind announced increased benefits and inform you that the rescission was because of your union activities.

WE WILL NOT adopt and distribute a newspaper article that threatens plant closure.

WE WILL NOT threaten plant closure or that the plant will move to Mexico if you select the Union as your collective bargaining representative.

WE WILL NOT threaten that selection of the Union as your collective bargaining representative would be futile.

WE WILL NOT solicit your grievances and promise to remedy them or remedy them in order to discourage your union activity.

WE WILL NOT prohibit you from talking about the Union during work time in work areas while permitting conversations unrelated to the Union.

WE WILL NOT more closely monitor the movements and activities of prounion employees.

WE WILL NOT threaten loss of overtime if you select the Union as your collective bargaining representative.

WE WILL NOT deny access to the facility when you are off the clock.

WE WILL NOT prohibit you from wearing shirts reflecting your support of the Union or Company.

WE WILL NOT prohibit you from taking breaks in the spectrometer/metallurgical lab.

WE WILL NOT prohibit solicitation without management permission during nonworking time or distribution without management permission in nonworking areas during nonworking time.

WE WILL NOT request that you report upon the protected union activities of fellow employees.

WE WILL NOT discharge or warn any of you because of your union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the provision in the employee handbook that requests you to report to management "anyone asking you to sign a union affiliation card."

WE WILL rescind the unlawfully broad rules prohibiting solicitation without management permission during nonworking time and prohibiting distribution without management permission in nonworking areas during nonworking time.

WE WILL make whole all of you for the loss of wages caused by our unlawful rescission of the wage increase, bonus, and boot allowance, announced on February 10, 2011, with interest.

WE WILL, within 14 days from the date of the Board's Order, offer Walter Morrison full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Walter Morrison whole for any loss of earnings and other benefits suffered as a result of his discharge, with interest compounded daily.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful warning and discharge of Walter Morrison, and within 3 days thereafter, notify him in writing that this has been done and that the warning and discharge will not be used against him in any way.

GREDE II, LLC
(Employer)

Dated _____ By _____
(Representative) (Title)

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

Republic Square, 4035 University Parkway, Suite 200, Winston-Salem, NC 27106-3325
(336) 631-5201, Hours: 8 a.m. to 4:30 p.m.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (336) 631-5216.