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September 17, 2013

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National Labor Relations Board  
c/o Gary Shinnars, Executive Secretary  
1099 14th Street, N.W.  
Washington, DC 20570-0001

Re: UniFirst Corporation and Robert  
A. Fusillo, an Individual, and  
United Steel, Paper and Forestry,  
Rubber, Manufacturing, Energy  
Allied-Industrial and Service  
Workers International Union,  
AFL-CIO, CLC, Local 1324-15  
Case No. 06-RD-097418  
File No. 213-13

To The Honorable Members of the National Labor Relations Board:

This letter is being sent on behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied-Industrial and Service Workers International Union, AFL-CIO, CLC, Local 1324-15 in opposition to the Exceptions filed on behalf of UniFirst Corporation to the Hearing Officers Report on Challenged Ballots and Objections to Election. I enclose an original and seven copies of this letter.

The Hearing Officer conducted a full hearing and developed a comprehensive record in this case. Her findings and conclusions, particularly including those challenged by the Employer's Exceptions, were fully supported by abundant evidence properly admitted into the record by the Hearing Officer.



The evidence included testimony by a number of employees, each of whom attended meetings with numerous other employees, at which management representatives repeatedly informed employees that if the Union was decertified, the employees would be covered by the employer's 401(k) and profit sharing plans, which were not provided to employees at facilities of the Employer at which the employees were represented by a labor organization. At the meetings, employees were given an exact dollar amount that they would receive based upon their annual salary, from participation in the Employer's profit sharing plan. Numerous employees were told that their pension plan participation, provided for pursuant to the Union's collective bargaining agreement with the Employer, would be frozen if the employees voted to decertify the Union. While the Employer claimed that it offered disclaimers about promising anything at the outset of some meetings, employee witnesses repeatedly declared that such disclaimers were not made at meetings they attended at which the specific promises of profit sharing and 401(k) plan participation were made over and over by Employer representatives. Details concerning such matters are set forth in pages 5 -15 of the Union's post-hearing Brief to the Hearing Officer, which are appended as Exhibit A to this letter.

There is no arguable merit in the Employer claims that employees' testimony should be rejected because it was the product of a pattern of leading questions by Union counsel. The Hearing Officer consistently sustained objections to any leading or improper questioning by either counsel. The Hearing Officer properly credited the testimony of witnesses which supported her findings, and such testimony was not based upon any type of improper questioning.

The Employer's objectionable conduct was particularly significant in this case because of the close results in the election. There was a single vote difference in the valid votes counted, and only three challenged ballots, in an election involving 142 voters out of 149 eligible employees.

Finally, the case precedents cited by the Hearing Officer to support her findings and recommendations were clearly appropriate and applicable. In addition, I am attaching pages 21 to 24 of the Union's post-hearing Brief as Exhibit B to this letter; they reference additional case authority to support the Hearing Officer's findings and recommendations which are the subjects of the Employer's Exceptions.

Based upon the entire record, it is evident that Employer has failed to raise a single valid Exception in its challenge to the Hearing Officer's Report and recommendations. Accordingly, the Union respectfully urges the Board to adopt the Hearing Officer's Report and recommendations.

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This Union letter response to the Employer's Exceptions is being served on this date, by first-class United States Mail, postage prepaid, upon:

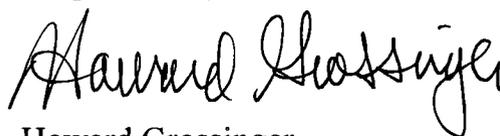
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If the Board desires any additional information or cooperation, please do not hesitate to contact me.

Respectfully yours,



Howard Grossinger

HG:jlb

cc: Amanda Fisher, Assistant General Counsel (via email)  
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Rick Rainey, Local Union President (via email)  
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Marsha Cryzter, Local Union Unit Chair (via email)

4. During the critical period before the election, the Employer, by and through its agents provided employees with free meals as a gift thereby interfering with their rights to a fair and uncoerced election.

In addition, based upon the post-election investigation, the Regional Director determined that the following Objection was arguably encompassed by the Union's Objection No. 3, and should also be considered by the Hearing Officer:

5. During the critical period before the election, the Employer, by and through its agents, paid employees to attend anti-union meetings and provided a monetary gift for attending anti-union meetings thereby interfering with their rights to a fair and uncoerced election.

**B. Facts Relating to the Objections**

A number of witnesses testified about matters germane to the Objections. The relevant testimony by each witness follows:

Melissa Brumbaugh is a production employee who has worked at the Employer's New Kensington facility for two and a half years. (116) She recalled she attended meetings with management representatives about the pending decertification election in April, the first or second week in May, the third week in May and on June 10. (116-17, 145-147) About 15 employees attended the first meeting and approximately 20 employees attended the next two meetings. (117-118) The meetings were held in the Employer's conference room during work hours. (118)

Ms. Brumbaugh recalled Employer Senior Vice President Michael Croatti, Employer attorney Peter Kraft and management personnel Jim Lang and Kevin Stover

attended these meetings. (119-120, 128-129) Croatti discussed the Company's 401(k) plan during two of the meetings. (118-120) He told employees to trust him, vote to decertify the Union and take the dues money they were paying to the Union and put it into the Employer's 401(k) plan. (120, 139) He explained that the dues money amounts the employees invested in the 401(k) plan would be matched by the Employer. (120-121, 139-140) Lang said the match would be three or four percent. (141-142) Brumbaugh recalled that Lang also discussed the profit sharing plan and said the employees could get into that plan too by voting no in the pending decertification election. (121) Based on these comments Brumbaugh understood the Employer wanted the employees to decertify the Union, and that if they did so, they could enroll in the 401(k) plan and would be entitled to benefits from the profit sharing plan. (121-122) She testified Croatti said that about the 401(k) plan. (140) Brumbaugh also testified management said at these meetings that if the Union was decertified, the employees' pension rights would be frozen and not lost. (122)

Brumbaugh was questioned about Kraft's comments at the meetings. (119,128-131) She did not recall Kraft saying he was going to describe the Employer's corporate-wide program. (131) She also did not remember Kraft asserting that he was not saying the benefits are only available to the employees if they decertified the Union. (131-132) She also said Croatti did not say the 401(k) plan was something he could not promise or guarantee. (134) Further, she testified she did not remember Lang making a declaration that he could not make any promises when he told the employees about the opportunity to have coverage of the profit sharing plan. (148-149)

Brumbaugh said that she attended a barbecue employees were invited to by UniFirst on June 12, 2013, the day prior to the election. (124-125) She said the food provided was really good - better than what the Employer provided to the employees at its annual Founder's Day picnic. (124-126)

Val Jean Barnett has been a production employee at the New Kensington plant for over 26 years. (150) She sews emblems on garments and works in the stockroom. (150-151) She attended four meetings with other production employees at which management representatives addressed them about the decertification petition and pending election. (151-152)

She did not recall the dates of the first three meetings, but she thought they occurred within several weeks before the election; the fourth was on June 7, 2013. (152-153) Approximately 12 -14 employees attended each of the first three meetings. (152) The June 7, 2013 meeting was attended by four employees, including Barnett, Karen Berger, Denise Rupert and Marriane Trozza. (153)

Barnett testified that management personnel discussed both 401(k) and a profit sharing benefit plans at more than one meeting. (153) She said the first meeting when that came up, Kraft, Lang, Stover and stockroom supervisor Diane Rigatti were in attendance. (153-154) Barnett recalled that Michael Croatti was not at the first meeting she attended. (154) She said that at the first meeting employees were told that they could put their Union dues into a 401(k) plan; she did not think profit sharing came up at the first meeting. (154-156) At one or more meetings, management representatives said that

if the employees would vote the Union out, they could get profit sharing and a 401(k) plan. (154) Based upon what was stated by management representatives, her understanding was that instead of paying dues to the Union, if the Union was decertified employees could put that money into the 401(k) plan. (155, 157-158)

Barnett was questioned about statements made by Mr. Croatti at the June 7, 2013 meeting with her and three co-workers. (156-161) She said Croatti discussed profit sharing participation at that meeting and also repeated that the employees could put their Union dues into the 401(k) plan if the Union would be voted out. (157) When Michael Croatti discussed profit sharing, he asked Barnett if she wanted free money; she responded that everybody wants free money. (158-159) When she asked him what he was talking about he said the profit sharing plan. (158) She asked for an explanation and Croatti responded to her and the other employees that it was like having a big bowl of spaghetti in the middle of the table and everybody gets a share of it. (158-159) He said to Barnett that she made between \$20,000.00 and \$21,000.00 a year, and after she confirmed that, he explained that she would get \$600.00 every year. (159) He also said employees had to work two years to become vested in the plan, but if they did not work for two years, their money went back into the pot and it was distributed among the rest of the people who worked there, like a bowl of spaghetti. (159-160) Based upon Croatti's assertions, Barnett understood if the Union was voted out they would get a profit sharing plan as well as coverage under a 401(k) plan. (160, 165)

Barnett specifically denied that Croatti said he was not promising or guaranteeing her anything; she testified he did not do that. (165) Further, she related that Lang, who

also attended the June 7 meeting, did not say anything about not promising or guaranteeing the employees any of the benefits which were discussed. (165)

Ms. Barnett also testified that Croatti stated to the employees that if the Union was not going to be their representative, the Company was going to freeze their pension plan and then they could elect to go into a 401(k) plan. (171-173) Based upon all of what was stated at the meetings by management representatives, she was left with the clear understanding that if the Union was voted out she could participate in 401(k) and profit sharing plans. (174)

Val Jean Barnett also testified about the picnic the Company provided for employees on the day before the election. (162) She said that the food was different than what the employees usually received on the annual Founder's Day picnic. (162)

The next employee to testify regarding the matters covered by the Objections was industrial driver George Bowman, who has worked for the Employer for 28 years. (177) Bowman stated that he attended two voluntary Saturday meetings, which were also attended by other drivers, from both the uniform and dust divisions. (177-178, 186) Drivers in attendance were informed at both meetings that they would be paid \$100.00 for attending each meeting. (178, 186) Bowman explained that weekend sales conferences, which are mandatory under the collective bargaining agreement, normally take somewhere between four and six hours, and employees are required to be paid \$100.00 for attendance at such mandatory meetings. (201, 202) The May 18 and June 8 meetings each lasted about two to three hours. (201-202)

Bowman recalled that Peter Kraft spoke at the May 18 meeting. (178, 180)

About 10 -15 drivers attended that meeting. (180) Other management and supervisory representatives also attended the first drivers' meeting with Kraft. (178) At the meeting, Kraft stated that they could get into the 401(k) and profit sharing plans, explained that if they had three years with the Company they were fully vested and told them if they wanted to get into the voluntary 401(k) plan, they could put between 2% and 8% of their salaries into it. (179-180) Kraft compared the Union benefits with the non-union benefits. (191-192)

Michael Croatti attended the second meeting with the drivers on June 8, and also discussed benefits. (180-182) Bowman recalled Croatti saying that the Company would match the employee contributions by paying \$.50 for each dollar contributed by the employee. (180) Croatti also said that if there was no union their pensions would be frozen and they would have the 401(k) and profit sharing plans available to them. (182) Bowman said the management people who spoke made it clear that the Union had to be gone in order for the employees to get the 401(k) or profit sharing plans. (181)

George Bowman also discussed the food served to drivers at the semi-annual service meetings, as compared to the food provided at May 18 and June 8 meetings about decertification. (187) He explained that at service meetings, the drivers got bagels and coffee and chips and pop. (187) At the two anti-Union meetings, the drivers were served a full breakfast which was better; it included scrambled eggs, sausage, bacon, home fries, juice, milk and coffee. (187)

Another employee who testified was Denise Waterloo. She has been a production employee at the plant for 30 years. (210) She recalled attending one meeting, in mid-May, with about six other employees. (211) She said Kraft, Croatti, Lang and Stover were present. (211) She remembered that management told the employees what they would offer the employees if they would go non-Union that they could not get if they were represented by the Union. (212) She explained that the employees were told if they were non-Union they would be covered by 401(k) and profit sharing plans. (212) Waterloo recalled that both Kraft and Croatti talked about these matters. (212) Significantly, Waterloo recalled she asked the management representatives why the employees could not stay with the Union, and still get a 401(k) plan. (212) The response from Michael Croatti was that no companies will offer both packages. (212) The management representatives said that if the Union lost the election the 401(k) and profit sharing plans would be provided to the employees. (213, 219)

Waterloo was also questioned about the picnic that the Company held on June 12, the day before the election. (213-214) She responded that she had worked at the Company for 30 years and never saw a lunch like that. (213-214) She said that the buffet had everything that you could want, including pulled pork, hotdogs, hamburgers, cake and fruit; she said that it was a very nice luncheon. (213-214) It was even served by two former supervisors, who were very well-liked by the employees, but who no longer worked at the New Kensington facility. (214) Both had been gone for nearly five or six years, and one was brought back from Illinois to serve the food. (214-215)

Waterloo did not recall Michael Croatti discussing job security issues when he talked with the employees. (215) She could only recall the offer to the employees of the 401(k) and profit sharing plans. (215-216)

Next, Beverly Hughley was called as a witness. She has worked at the plant less than a year as a production employee in the stockroom. (220-223) She attended three meetings called by management, all within the two month period prior to the June 13, 2013 election. (223) She testified that 20 other employees attended the first meeting, 15-20 attended the second meeting and 11-13 attended the last meeting. She heard Mr. Croatti speak about the 401(k) plan and the profit sharing plan at two of the meetings. (224-225) She remembered that he said instead of paying Union dues, invest that money in a 401(k) plan, and it would be matched by the Employer. (225-226) She recalled that Croatti referred to a two or three percent match. (226) She testified that Michael Croatti also spoke about profit sharing; she did not fully understand it but recalled that \$600.00 was mentioned by Mr. Croatti. (226-227)

Hughley explained that based upon what was discussed by Employer representatives at the meetings, she understood she would become eligible to participate in 401(k) or profit sharing plans only if there was no Union; otherwise, she would not be able to get into those plans. (227-228) She also remembered that Mr. Croatti said that if the employees would give the Company a chance to go with them, at least give it a try for a year, after the year if they were not happy they could always go back to the Union. (227-228) All of these discussions related to the pending NLRB decertification election. (228)

Hughley was also questioned about alleged comments by management representatives when they spoke to the employees about the benefit plans they were explaining. (230-235) She testified at the meeting where Mr. Kraft spoke, she did not recall him saying that because he was explaining the Company's corporate benefits, it did not mean that you could not obtain them through Union negotiation. (233) Likewise, she testified that she did not remember him declaring that he was not saying these Corporate benefits were only available if the employees decertified. (234) Further, she related that she did not recall him saying that the Company's benefits were not contractually guaranteed, or saying please do not ask what the Company is offering you, because he could not make any promises in exchange for a vote to decertify. (234) When questioned about Mr. Croatti's comments, she said that she did not remember Croatti saying that 401(k) and profit sharing benefit plans were negotiable for inclusion in a Union contract. (235)

Gregory Beighley was also called to testify. He has been a route salesman in the industrial division, handling uniform rentals at the New Kensington facility, for 26 years. (238-239) He attended one Saturday meeting on June 8, 2013. He said that between 30 and 40 other drivers were present. (239) Michael Croatti, Peter Kraft, Jim Lang and other management personnel were present. During the meeting, the drivers were told by the Company representatives that they were going to get paid \$100.00 for attending the meeting. (241) Beighley recalled that the June 8 meeting lasted two hours, from 8:00 a.m. to 10:00 a.m. (241) He has attended the twice a year sales meetings for drivers, and said that they usually ran from 7:00 a.m. to 12 noon or 1:00 p.m. (241)

Beighley stated that Michael Croatti spoke and said that the 401(k) and profit sharing plans are what the rest of the Company got, and without the Union, that is what the drivers would have. (242-243) Beighley also remembered Croatti explaining that with the 401(k) plan, if a driver would put in \$20.00, the Company would put in \$20.00, and if the driver put in \$25.00, the Company would still put in \$20.00. (243) With regard to profit sharing, Beighley said the bowl of spaghetti analogy was used by Croatti. (244) Croatti said that everyone in the Company would get a share. (244) Croatti further stated that the drivers were not getting any of it, and without a Union they could be getting their share of it through the profit sharing plan. (244) Based upon what was discussed, Beighley understood that the drivers could get into the 401(k) and profit sharing benefit plans if there was no Union. (243, 248)

Like other employee witnesses, Beighley was asked about any qualifying statements expressed by Kraft, Croatti or other management representatives at the meeting. Beighley said that he did not recall anyone from management at the Saturday meeting qualifying any comments by saying that everyone should understand if they were talking about benefits it did not mean that they could not be obtained through negotiations. (246) Further, he did not remember anyone saying that the drivers were not being promised or offered anything, or asserting that the Company's benefits weren't contractually guaranteed. (247)

The employer called New Kensington General Manager James Lang as a witness. (250). He spoke about various meetings with employees he attended with other management representatives, and also testified about the June 12, 2013 barbecue. (250-

319) During his extensive testimony, his responses to a number of questions were highly relevant to both the Union's Objections and issues of credibility. For instance, he maintained that at numerous meetings he attended, Peter Kraft had asserted that any benefits being discussed with the employees would be available through collective bargaining. (262, 273) However, contrary to such assertions, he said at least twice that Kraft had told the employees that they would not be able to have both the pension plan provided in the Union contract and the Company's 401(k) benefit plan. (285, 316-317) Lang also asserted that Croatti told employees the same thing: you would not have a situation where the pension as well as the 401(k) and profit sharing could be bargained in by the Union at the same time. (316)

In evaluating his testimony, it is important to note that Lang initially claimed that Croatti did not say anything about the 401(k) or profit sharing plans in meetings with the employees. (295) He later acknowledged such topics were discussed by Croatti. (296, 299-306). Lang was questioned about Croatti's comments to employees in the third round of meetings he attended. (294-296) In that regard, his testimony on one important point directly contradicted Mr. Croatti's testimony. Although Mr. Croatti testified that he only used the spaghetti dinner example in describing the profit sharing plan at one meeting with four employees on June 7 (366-367), Lang testified Croatti brought up the spaghetti dinner example at the third round of meetings with the production employees, as well as the June 7 meeting with four stockroom employees. (296-297, 303, 306)

Michael Croatti was called as a witness by UniFirst. (325) The Employer's Senior Vice-President said that he attended rounds of meetings with the employees

However, because he had been sequestered, he obviously did not realize he was contradicting Croatti when he testified that he had attended more than one meeting at which it was stated to employees that they should not send their dues to the Union when they could put that money into a 401(k) plan. (400) Stover acknowledged that Michael Croatti had made that statement at more than one meeting with employees. (401)

The Union recalled Stover to the stand as an adverse witness. (414) In such further testimony, he admitted that Croatti had made statements to employees at the meetings about getting rid of the Union, and said Croatti told them to just give the Company or him a chance for a year, and if they were not happy they could vote the Union back in. (415-417) During this time on the stand, he continued to claim that the meetings were not a part of any concerted Employer plan to urge employees to vote to decertify. (416-417)

#### IV. ARGUMENTS RELATING TO OBJECTIONS

##### A. Applicable Law

A party which submits objections to an election has the burden of proof to establish that: (1) conduct by the other party's agents (or in some situations third parties) had an undue and adverse impact on the election; and (2) the conduct occurred within the time period from the date the petition was filed until the date the election was held. *Ideal Electric Manufacturing Co.*, 134 NLRB 1275 (1961). In *Taylor Wharton Harsco Corp.*,

336 NLRB 157, 158 (2001) the Board outlined the standards for judging whether the conduct objected to established grounds for setting aside an election:

[T]he proper test for evaluating conduct of a party is an objective one - whether it has “tendency to interfere with the employees’ freedom of choice.” *Cambridge Tool Mfg.*, 316 NLRB 716 (1995). In determining whether a party’s misconduct has the tendency to interfere with employees’ freedom of choice, the Board considers: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among the employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election; (5) the degree to which the misconduct persists in the minds of the bargaining unit employees; (6) the extent of dissemination of the misconduct among the bargaining unit employees; (7) the effect, if any, of misconduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; and (9) the degree to which the misconduct can be attributed to the party. See, e.g., *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986).

With respect to the Union’s Objections relating to the statements by Employer representatives about 401(k) and profit sharing benefit plans participation for the New Kensington employees made during the critical pre-election period, it is helpful to refer to the Board’s guidance regarding whether such employer statements establish grounds for setting aside an election. In *G & K Services, Inc.*, 357 NLRB No. 109 (2011) the Board set forth the considerations to be applied:

It is well settled that an employer may lawfully inform employees of the wages and benefits its nonunion employees receive and respond to requests for information from employees about such benefits. See, e.g., *Suburban Journals of Greater St. Louis, LLC*, 343 NLRB 157, 159 (2004) (citations omitted). The Board will set aside an election, however, when an implied promise of benefits is made to employees. See, e.g., *Etna Equipment & Supply Co.*, 243 NLRB 596 (1979). The Board infers that such a promise interferes with employees’ free choice in the election; an employer may rebut this inference by showing a legitimate purpose for the timing of the promise. See *Sun Mart Foods*, 341 NLRB 161, 162 (2004).

Determining whether a statement is an implied promise of benefit involves consideration of the surrounding circumstances and whether, in light of those circumstances, employees would reasonably interpret the statement as a promise. See *Viacom*, supra, 267 NLRB at 1141 (“the question is, was there a promise, either express or implied from the surrounding circumstances”); *Crown Electrical Contracting, Inc.*, 338 NLRB 336, 337 (2002) (finding employees could not reasonably interpret employer statement as implied promise). Although an employer may compare union and nonunion benefits and make statements of historical fact, the Board has long held that even comparisons and statements of fact may, depending on their precise contents and context, nevertheless convey implied promises of benefits. See e.g. *Grede Plastics*, 219 NLRB 592, 593 (1975) (factually accurate letter contained implied promise); *Westminster Community Hospital, Inc.*, 221 NLRB 185, 185 (1975), enfd. mem. 566 F.2d 1186 (9th Cir. 1977) (wage rate comparison implied promise). (emphasis added)

With particular regard to the evidence that the Employer’s representatives told employees the 401(k) plan benefit was only available to non-Union employees, and statements that there could not be both a 401(k) and a Union retirement plan achieved in collective bargaining, see *Georgia-Pacific Corp.*, 325 NLRB 867 (1998), where comparable employer statements were found to be objectionable. On the issue of implied promises of benefits by an employer being objectionable, see *E.L.C. Electric, Inc.*, 344 NLRB 1200 (2005). As to the discussions with employees that resulted in their understandings that they would only enjoy participation in UniFirst’s profit sharing benefit plan if they decertified from the Union, see comparable employer conduct deemed to be objectionable by the Board in *Cooper Tire & Rubber Company*, 340 NLRB 958 (2003).<sup>3</sup> Also compare *E.L.C., Inc.*, supra.

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<sup>3</sup> It can be anticipated that Employer will claim that all of its promises that employees would have 401(k) and profit sharing plan participation if the Union would be decertified were protected or cured by alleged comments by Kraft and others that there were no

Other aspects of the Objections at issue in this proceeding involve the Employer's provision of the benefits of free meals to all employees at the June 12, 2013 picnic, and the payment of \$100.00 per meeting and free meals to the drivers for voluntarily attending the two Saturday anti-Union meetings. The Board infers that both announcements and actual grants of benefits during the critical period are coercive, but an employer can rebut that inference by clearly establishing an explanation other than the pending election for the timing of the announcement or bestowal of the benefit. *E.L.C. Electric, Inc. supra*. Among other salient factors, the Board will examine the size of the benefit, the number of employees receiving any benefit which was conferred, and the timing of the benefit. *B & D Plastics, Inc.*, 302 NLRB 245 (1991). On the issue of financial benefits, like the \$100.00 payments to drivers who attended the Saturday meetings, see *Action Carting Environmental Services, Inc.*, 354 NLRB 732 (2009) and *Vasaturo Brothers, Inc. d/b/a Vesuvio Foods Co.*, 321 NLRB 328 (1996).

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promises being made, nothing was guaranteed, and the same benefits could be negotiated by the Union. Such a contention should be rejected for several reasons. Such purported curative comments do not necessarily immunize other objectionable employer pre-election benefit comments to employees. See *Cooper Tire and Rubber Co., supra*. What is important is whether the employees were left with the understanding they would receive benefits from the employer if they voted against the union. *G & K Services, Inc., supra*. All of the Union witnesses believed they would have 401(k) and profit sharing plan coverages if the Union was decertified. Next, many of the employee witnesses credibly testified that such limiting declarations were not made at meetings they attended. The Employer witnesses who discussed such purported declarations – Croatti, Lang and Stover – all had significant credibility problems involving internally inconsistent and contradictory testimony on a number of points. Finally, even though Kraft and Croatti allegedly stated that the benefit plans they discussed could be negotiated by the Union, it was clear that both told employees the Company would not agree to provide 401(k) and profit sharing plans if the Union pension plan remained in place.

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