

**National Labor Relations Board**

Case: 1-RD-2144

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In the Matter of )  
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 BRADFORD PRINTING & FINISHING, LLC. )  
 Respondent )  
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**RESPONDENT BRADFORD PRINTING & FINISHING, LLC'S REQUEST FOR REVIEW**

Now comes the Respondent Bradford Printing & Finishing LLC ("Bradford") and submits the following Request for Review of the Regional Director's decision dated August 16, 2010 to dismiss the petition for decertification submitted by a majority of Bradford's employees.

**I. INTRODUCTION**

The present case arises out of or is related to the Board's unfair labor practices complaint against Bradford for (1) Bradford's alleged failure to recognize and bargain with the New England Joint Board – UNITE HERE ("Union"), (2) Bradford's February 4, 2009 written message to employees which the Petitioner alleges unlawfully solicited and/or interrogated employees and (3) Bradford's establishment of a management employee committee called the Guiding Coalition in 2009, thereby alleging dominating and interfering with the formation/administration of or rendering unlawful assistance and support to, a labor organization as well a petition for decertification filed by a majority of employees in the present RD action.

Throughout the period of December 2008 to February 5, 2009, Bradford's employees notified Bradford's managers on numerous occasions that they did not want to be

represented by the Union. These statements culminated in the filing of a petition (signed by 31 of 35 production employees) with Bradford's management on February 5, 2009 (hereinafter "Petition"). In that Petition, the substantial majority of Bradford's employees indicated that they did not want to be represented by the Union.

Bradford also holds that denies that the February 4, 2009 message to employees from Bradford's President Nicholas Griseto ("Griseto") was unlawful. In his decision, the Board's Administrative Law Judge agreed with Bradford and has ruled that the message was protected speech. Contrary to the Board's assertion, the message on its face, did not threaten, solicit or interrogate employees in any way. It merely stated Griseto's belief that a Union was not necessary and urged employees to exercise their rights under the Act. Bradford also denies that the Guiding Coalition, a management employee committee designed to improve communication between management and employees, was unlawful.

The Board's Administrative Law Judge issued a decision on April 14, 2010 on the General Counsel's Complaint, ("Decision"). In the Decision, despite the unrebutted and overwhelming evidence in the record, the Administrative Law Judge found that Bradford had a duty to bargain with the Union because the previously signed Petition was somehow "tainted" by Bradford's establishment of the Guiding Coalition which was an unlawful employer dominated labor organization. The Administrative Law Judge also found, based on the overwhelming and unrebutted evidence in the record, that Griseto's February 2009 message to employees was protected speech and did not threaten, coerce, solicit or interrogate employees. The decision thus did not find any violation of the Act by Bradford through its posting of a message to employees by Griseto.

On May 12, 2010, both Bradford and Petitioner filed Exceptions to the Administrative Law Judge's Decision with the Board. Bradford conceded that the Guiding Coalition was an unlawful organization as construed under current Board case law but denied that its creation tainted the Employee Petition presented to it which indicated that it had lost its majority status. The Petitioner, in its Exceptions, seeks to overturn the Administrative Law Judge's finding that the February 2009 message to employees was protected speech and argues that it tainted the Petition. The Board has yet to issue its final order and decision.

In the present case, Bradford holds that the Regional Director's decision is unwarranted as the only unfair labor practice violation found by the Administrative Law Judge that "tainted" the employees' disaffection for the Union was the creation and establishment of the Guiding Coalition. In regards to the Guiding Coalition, Bradford's President, at the hearing on the General Counsel's complaint, testified that it had not been convened since November 2009 due to the Board's complaint and, given the Administrative Law Judge's decision, now states that it shall be disbanded. The evidence was also clear that the creation of the Coalition had no causal impact on the employee's desire to decertify the Union.

Bradford notes that there have been no further complaints or charges of unfair labor practice against it by the Board or the Union. Thus, the alleged objectionable and "tainting" conduct set forth in the Regional Director's decision does not exist. In light of the above, this Board should overturn the dismissal of the employees' petition to decertify.

## II. **FACTS**

The administrative record on Bradford contains the following facts:

A. **Bradford's Background and Corporate Structure**

Nicholas Griseto is the President and CEO of Bradford. (Transcript of 2/16/10 ALJ hearing, (hereinafter "TR") p.19). Bradford is a manufacturer of military uniform cloth and a supplier of the Department of Defense (TR p.21-22). BDA was owned by the Grills family for thirty years. (TR p.21). After a fire 1992, the volume and revenue of BDA's business decreased. (Id.)

Griseto stated that he is the presently the sole owner of Bradford. (Id. p. 26). In early 2009, the ownership was different. At that time, Griseto owned approximately 51% of the company, Vasco Ferreira, Bradford's CFO, owned 35% and the company's Vice President of Operations, Craig Nichols owned 14%. (TR p.26). The ownership changed in 2009 due to business concerns and matters. (Id. p. 27).

Griseto identified General Counsel's Exhibit 6 as a list of employees hired by Bradford since January 5, 2009 that was prepared by Bradford's HR office. (Id. p. 22) At the hearing, Griseto identified each employee's job title and/or function. (Id. p. 22-25

Griseto testified that 35 hourly employees were hired by Bradford in 2009. (Id. p. 28). That number of employees is much the same at present. (Id.)

B. **Employee meeting in November 2008 at BDA**

Carlos Visinho, a witness called by the General Counsel, testified that he attended an employee meeting in November 2008 at BDA. (TR p. 110). Visinho is the Union Business Agent of the Union assigned to work with the bargaining unit of Bradford's predecessor. (Id. p.

102). Visinho testified that at the November 2008 employee meeting, Mr. Griseto addressed the employees about his plan to open a new business at the plant. (TR p.110).

Vasco Ferreira, Bradford's CFO since January 2009, was also at the November 2008 employee meeting at BDA. (TR p. 215) Mr. Ferreira was employed by BDA in November 2008 (TR p. 214). Ferreira testified that Mr. Griseto addressed the employees at the meeting and that in response to a question about union representation, Griseto stated that whether the employees wanted a union or not is not something he (Griseto) could control or wanted to control and that it was up to the employees to decide. (TR p. 215). Visinho testified he could not recall Griseto saying that it was up to the employees to decide whether there would be a union or not. (TR p. 122).

C. **December 2008 Job Fair**

Bradford began recruiting its workforce in December 2008. (TR p. 64). One of the ways that Bradford recruited was a job fair at the Armory in Westerly, Rhode Island. A number of former BDA employees attended the job fair and applied for positions. (Id. p. 65). These employees were formerly in the union at BDA. (Id.). A number of the jobs to be filled at Bradford were formerly in the bargaining unit at BDA. (TR p. 66). Several former BDA employees asked Griseto if Bradford was going to be a union or non-union shop. (Id.). Griseto recalled three female former BDA employees approaching him and asking if Bradford was going to be a union organization. (Id.). Griseto identified two of the employees as Debra Humph and

Pam Austin. (Id. p. 66). Griseto told them “that’s not a decision I’m going to make. It is something that you are going to do.” (Id.). The three females asked Griseto to do everything he could to keep the union out. (Id.).

Griseto testified that he spoke to other BDA employees at the job fair about the Union issue. (TR p. 67-68). Griseto can’t recall their names but estimates that it was between 10 – 12 employees. (Id.)

Charles Treiber, one witness called by the General Counsel, was a former employee of BDA and a member of its bargaining unit. (TR p. 140). At the time of BDA’s closing, Treiber was a steward. (Id.). He also held several other union offices while employed at BDA. (Id.). Treiber attended the December 2008 job fair in the Westerly Armory. (TR p. 141). He was hired by Bradford two weeks later and began work at Bradford in January 2009. (Id. p. 140).

Another employee called by the General Counsel as a witness, Brian Maggs, was also hired by Bradford. (TR p. 155, 156). Prior to working at Bradford, Maggs worked at BDA and was a member of the Bargaining Unit. (Id.) At the time of BDA’s closing in November 2008, Maggs was the Union’s vice president and past steward. (TR p. 157).

John Parker, yet another employee of Bradford called by the General Counsel, also was formerly employed by BDA. (TR p. 123). While employed at BDA, he was a member of the Union. (Id.).

D. **Employee Orientation at Bradford on January 5, 2009**

Bradford held an orientation session for its new employees on January 5, 2009. (TR p. 33). Griseto spoke to the employees at the orientation. (Id.). Prior to that meeting, Griseto prepared some written talking points to aid him in his address to the employees. (Id. pp. 32,33). The talking points were marked and admitted as General Counsel's Exhibit 7.

Griseto testified that the issue of union representation was not discussed at the orientation. (TR p. 33-34). The issue was mentioned in the talking points in case it was raised at the meeting. (Id.). John Parker, who was at the orientation meeting, does not recall Griseto discussing the union representation issue. (TR p. 124). At the meeting, Griseto mentioned the Guiding Coalition and asked for volunteers to serve on it (TR 41, 91).

E. **Griseto's Employee Message in January 2009**

Subsequent to the December 2008 job fair and after Bradford's opening, Griseto had one on one conversations with numerous employees as he walked around the plant or had lunch. (TR p. 70). In all these conversations, there were comments about the "scuttlebutt" on the union's attempt to be recognized. (Id.) In these conversations, the employees told Griseto they did not want the Union. (TR p. 71). Griseto recalled conversations with a number of specific employees by name. (TR p. 71).

Griseto received a copy of the Union's written demand for recognition dated January 16, 2009 at some point subsequent to that date. (TR p. 72). After receiving that demand letter, Griseto posted his message to employees marked as General Counsel's Exhibit 8. (TR p. 72). It was posted on or about January 24, 2009. (TR p. 73). It was posted on the bulletin board. (Id.) Griseto had the message posted as a result of the comments made by employees to him that they did not want the Union. (TR p. 73). After the message's posting, Griseto did not

have discussions about it with any production employees. (TR p. 73). He also did not receive any complaints about the posted message from any employees. (Id.).

F. **Griseto's February 2009 Message to Employees**

In early February 2009, Griseto wrote another general message to employees. (TR p. 56). The message was marked as General Counsel's Exhibit 18. It was posted in the first week of February 2009. (TR p. 38) Griseto posted the message as a result of the comments made by employees that they did not want the union. (Id. p. 73) It was posted on the same bulletin board as Griseto's first message. (TR p. 74). The bulletin board is in the plant hallway near the vending machines. This was the only place the message from Griseto was posted. (TR p. 75).

Griseto's message concerned the Union's demand to be recognized (General Counsel's Exhibit 16) and employees' statements to Bradford's managers that they did not want the Union. (TR p. 59). The message was posted on the bulletin board commonly called "Nick's Notes". (TR p. 75) This bulletin board was used to post messages from Griseto or articles or newspaper stories about business that Griseto wanted to share with employees. (TR p. 97).

After the memorandum was posted in the first week of February 2009, Griseto did not speak to any employees about it. (TR p. 75). No employees approached Griseto about it nor did he receive any complaints about it. (Id.). No employee told Griseto they felt threatened or interrogated by the message. (Id.) Griseto never asked any employee whether they were in favor of a union or against a union. (Id. p. 76). He also did not ask managers or supervisors to poll employees on the topic. (TR p. 76-77). Griseto never had discussions with employees about what would happen if a union came in and represented employees. (TR. p. 78).

Griseto's position on the union in February 2009 was that if a majority of the employees wanted a union, he would be happy to talk to them. (TR. p. 77).

Griseto testified that his message (General Counsel's Exhibit 18) merely urged employees to exercise their legal rights to speak to either the union, the NLRB or Bradford on their wishes. (Id. p. 78). The message also stated his belief that the union was not needed. (Id.). It did not mention the Guiding Coalition. See, General Counsel, Exhibit 18.

The testimony of Bradford's employees and Bradford's plant manager corroborated Griseto's testimony.

John Parker testified he recalled seeing Griseto's February 2009 message to employees. (TR p. 125). He stated he saw it posted in the main hallway. (Id.). Brian Maggs testified that he also saw Griseto's February 2009 message posted on the bulletin board in the main hallway. (TR p. 160). It was the only bulletin board with the posted message. (Id.). Charles Treiber testified that he also recalled seeing Griseto's message marked as General Counsel's Exhibit 18. (TR p. 148). He thought the message was posted in March 2009. (Id.). He testified that the message was posted on the bulletin board in the main hallway in the area called Nick's Notes. (Id. p. 148-149). Treiber did not recall seeing Griseto's first posted message. (Id. p. 150).

Two other Bradford employees testified about posted message. (TR p. 179-188). The employees were James DeCoste and Charles Ring. (TR p. 173-180). The employees corroborated Griseto's testimony that no manager or supervisor talked to them about Griseto's posted message. (TR p. 166, 179, 189). All employees testified that no manager or supervisor spoke to other employees about the posted message. (TR p. 129, 148, 166, 179, 189). They also

testified that no manager made them read the posted message. (TR p. 166). Bradford employees also testified that they received no other written documents from Mr. Griseto or any other manager or supervisor regarding the issue of union representation. (TR p. 166). Mr. Treiber also testified that he received nothing in writing from Mr. Griseto or other managers about the issue of union representation. (TR p. 148).

Robert Jakobs, Bradford's plant manager, testified that he did not speak with any production employee about the issue of union representation. (TR p. 197). Mr. Jakobs also received no complaints from employees about the posted message. (Id.). To his knowledge, no employee ever received any written document from Griseto or any other manager or supervisor about the issue of union representation. (Id.). Jakobs also did not initiate any discussions with employees on the issue of union representation. (Id.). In early 2009, however, while walking around the plant, Jakobs had discussions with an employees, Brian Maggs and John Parker, in which they brought up the issue of the union. (TR p. 198).

Patty Bowen, Bradford's HR Administrator, also testified that she was not asked by Griseto or any other manager to question employees about whether they wanted a union. (TR p. 200). She testified that Griseto's February 2009 message was posted on the bulletin board in early February 2009 and that she was the person who posted it. (TR p. 202). She never discussed the posting with any employee. (Id.) She never gave the employees any written documents about Bradford's position on union representation. (TR. p. 203). Lastly, she testified that she was never asked by Griseto or any other manager to question employees about whether they wanted a union or not. (TR p. 200).

G. **The February 5, 2009 Employee Petition**

John Parker, a Bradford production employee, testified that after seeing Mr. Griseto's February 2009 posted message, he had some discussions with two other employees. He and two other employees, on talking about the Union, stated "we should take a petition. We said let's give Nick a chance to prove to us what he wants to do, what he said he wants to do." (TR p. 130). As a result, Parker drafted the Petition. (Id.). In a prehearing statement to the Board's investigator, Parker stated that he passed the petition around because he was afraid of "losing his job" and he wanted to give the employer a chance to see how they treated us. (TR 137-138). At hearing, Parker testified that he was afraid the company might not survive if the Union came in and would lose his job. (Id.). He thus created and circulated the petition marked as General Counsel's Exhibit 19. (TR p. 125, 130). He testified that he had his wife type it on their home computer and that he took it around to other employees. (TR p. 125 – 126). He further testified that he did not "solicit" signatures. Rather, he put the petition in front of the employees and told them that "if they wanted to sign it, sign it. If you don't, don't." (TR p. 126, 131). It took Parker about 45 minutes to procure all the signatures on Exhibit 19. (TR p. 127). Some employees did not sign the petition. (Id.). Parker made copies of it at home and sent a copy of the signed petition to the Union. (Id.).

Parker also gave a copy of the petition to Patty Bowen. (TR p. 128, 203). Parker also gave another copy of the petition to a co-worker. (TR p. 128).

No manager at Bradford said anything to Parker about the petition. (TR p. 128). He said no manager asked or ordered him to do it. (Id.).

Bowen testified on February 5, 2009, Parker visited her and gave her General Counsel's Exhibit 19. (TR p. 203). Parker told her that he believed a union was not necessary

and that he felt the owners were treating employees fairly and it was not necessary to have a union. (Id.). Bowen prepared a memo on their conversation and gave it and the petition to Vasco Ferreira. (TR p. 203 -204). General Counsel's Exhibit 21 was the memo prepared by Bowen. (TR p. 204).

Griseto testified that he recalled receiving a copy of the petition submitted by Bradford employees regarding the desire for no union. (TR p. 78). Griseto identified the petition as General Counsel's Exhibit 19.

Griseto recalls that 31 of the 35 production employees signed the petition. (TR p. 80, 98) About 95% of these 35 production employees were previously employed by BDA. (TR p. 98). Griseto was in South Carolina at the time the petition was delivered to Bradford's management. (TR p. 62). Griseto had no knowledge of the petition before February 4, 2009. (TR p. 79). On that date, he received an email from Vasco Ferreira marked as General Counsel's Exhibit 22. In that email, Ferreira informed Griseto of rumors in the plant that employees were circulating a petition about the union. (TR p. 79). At that time, Griseto had no knowledge of whether that rumor was true. (Id.). The delivery of the petition to Bowen on February 5, 2010 was when Griseto knew there was an actual petition. (Id.). Griseto recalled receiving a copy of the petition from Patty Bowen. (TR p. 62). He also received a copy of the memorandum that Bowen had prepared. (TR p. 62).

Griseto did not ask any manager or supervisor to create the petition nor did he ask any of them or any other employee to circulate it. (TR p. 80). Griseto also did not help create the petition. (Id.). Griseto testified that he did not discuss the petition with John Parker at any

time. (TR p. 63). In fact, he testified that he did not even know who John Parker was. (TR p. 63, 79).

After receiving a copy of the petition, Griseto did not talk to any production employee about it. (TR p. 62). Griseto admitted that much later on, he sent an email inquiring who had not signed the petition. (TR p. 63). The email was marked as General Counsel's Exhibit 20. Griseto stated he wanted the names because he was interested in knowing who had not signed the petition. (Id.).

#### H. **Employee Meeting on February 19, 2009**

On February 19, 2009, there was a regular plant wide employee meeting. (TR p. 80-81). The meeting was not called to specifically discuss the union issue. (Id.) Prior to the meeting, Griseto prepared written talking points and notes for his address to employees at that meeting. These notes were marked as General Counsel's Exhibit 9.

The last page of the document states "UNITE". (General Counsel's Exhibit 9). This refers to the Union. (TR p. 36). This was the last item Griseto wanted discussed at the meeting. (Id. p. 82). He discussed the employee message that he had posted earlier and gave the employees an update on the Union's demand for recognition. (TR p. 82). He also thanked employees for their participation in the petition. (Id. p. 82). He told employees that it was not Bradford's decision whether Bradford had a union or not. (Id. p. 82). That would be left to the employees and Griseto indicated that he would stand behind any decision they made on the union. (Id. p. 82). Parker corroborated Griseto's testimony about this meeting. (TR p. 133).

Shortly after that meeting, Bradford, through counsel, sent the Union a response to their demand for recognition in 2009 on February 20, 2009. (TR p. 83). Bradford's response to the Union's demand for recognition was marked and admitted as General Counsel's Exhibit 17. (Id.).

I. **The Guiding Coalition**

On direct examination, Griseto testified that he believed the lack of communication and respect to employees were the major problems with BDA. (TR p. 38, 48). Griseto wanted the Guiding Coalition because he felt it would address these communication problems. (TR p. 38). Griseto read about the concept in a book from Harvard Business School. (TR p. 38).

Griseto conceptualized the concept of a Guiding Coalition in October 2009 when he began to set up Bradford. (TR p. 38-39). Griseto discussed the concept with managers before Bradford was formed. (TR p. 40).

Griseto mentioned the Guiding Coalition at the January 5, 2009 employee orientation. (TR p. 41). At that meeting, he asked employees to volunteer to serve on the Guiding Coalition. (TR p. 41). The management employees on the Guiding Coalition were picked by Griseto. (TR p. 41). There was an equal number of managers and production employees on the Guiding Coalition. (TR p. 41-48). At the orientation, Griseto received six employee volunteers for the coalition. (TR p. 48).

The primary purpose of the Guiding Coalition was to address the lack of communication and to discuss policies involving attendance and discipline. (TR pp. 38, 48).

The Guiding Coalition was to be the focal point for discussing these types of matters. (TR p. 43, 48). Parker testified that the Guiding Coalition could handle problems any employee had and make decisions on policies. (TR p. 135). Brian Maggs stated that every Guiding Coalition member had an equal vote. (TR p. 166). Patty Bowen also testified that the decisions were made by a majority vote. (TR p. 205 -206). If there was a deadlock on an issue, discussion would continue until a coalition reached a majority decision. (TR p. 43, 93).

Griseto testified that initially the employee terms on the Guiding Coalition were for six months. (TR p. 84). The staggering of terms were also instituted by the Coalition in order to avoid a complete turnover of membership. (Id.). The production employees provided or selected the new employee representatives. (TR p. 85, 87). If the number of employees present at a Coalition meeting were less than the number of managers present, the number of managers allowed to vote would be reduced by the same amount of absent employee members. (TR p. 93, 99-100). There was a six meeting term limit on management members on the Guiding Coalition. (TR p. 95).

The Guiding Coalition met once a month. However, any member could call for additional meetings. (TR p. 48, 205, 65). Any member could add agenda items to it. (TR pp. 165, 49). Any member of the Guiding Coalition could decide when to call a meeting. (TR p. 211). She further testified that each member of the Guiding Coalition decides what will be talked about at the meetings. (Id. p. 212). No bargaining between managers and employees occurred at the Guiding Coalition meetings. (TR p. 207 and p. 92).

Brian Maggs testified that employees who were not Guiding Coalition members could go to Guiding Coalition meetings and talk about concerns. (TR p. 164). Maggs also

confirmed that Guiding Coalition employees could add items to the agenda prepared by Griseto. (TR p. 165). Maggs in fact did raise issues at meetings. (TR p. 165). Maggs believed that all employees had a say on issues at Bradford. (TR p. 170). He didn't believe that the Guiding Coalition was representing employees. (TR p. 170).

At meetings of the Guiding Coalition, minutes for the meetings were drafted. (TR p. 44). The minutes were then shared with all members of the Guiding Coalition for review and comment. (TR p. 44). If all were in agreement with the minutes, they would be posted in the plant for the employees to read. (Id. p. 44).

The first meeting of the Guiding Coalition occurred on February 19, 2009. (TR p. 50). The minutes of that meeting were marked as General Counsel's Exhibit 24. The next meeting of the Guiding Coalition did not occur until March 25, 2009. (TR p. 51).

At the September 2009 meeting, the issue of the Union's demand for recognition and its filing of an unfair labor practice was discussed. (General Counsel's Exhibit 20). The issue was raised by Patty Bowen. (Id.). Bowen reported that there were employee rumors in the plant about the Union's demand for recognition. (Id.) (General Counsel's Exhibit 28).

Griseto, at that meeting, denied rumors that Bradford would shut down if the Union were to organize. (General Counsel's Exhibit 28). He also reiterated his consistently announced position that if the employees wanted a Union, he had no problem with it. (Id.) He also stated he did not believe a Union was needed. (Id.).

Three employee members of the Guiding Coalition also discussed the issue. One of them, Charles Treiber, stated that “the Union can’t offer anything and noted how the Union didn’t help when BDA was closing.” (General Counsel’s Exhibit 28, p. 2).

Treiber, at the hearing, testified that he was at the meeting and that the issue of the Union was discussed. (TR p. 151). He stated that Gristeo stated that he really didn’t care if there was a Union or not. (TR p. 151). Treiber told Gristeo that the Union had talked to all of the employees and that the Union couldn’t do anything and that the Union didn’t help when BDA closed. (TR p. 152).

The employee members of the Guiding Coalition as a group said they felt that they did not want a Union because the Union, among other things, sold them out with the plant closing agreement with BDA and they were not willing to pay Union dues. (General Counsel’s Exhibit 28).

No employee grievances were ever discussed or presented to the Guiding Coalition. (TR p. 91, 94).

### III. **ARGUMENT**

#### **The Regional Director’s Decision Should Be Overturned.**

The Regional Director has failed to make out a sufficient supportable showing of that Bradford’s conduct tainted the present employee petition to decertify. In the decision, this the Regional Director found that Bradford “serious unfair labor practices tainted the petition. However, in regards to Bradford’s President’s February 4 ,2009 message to employees, the

Administrative Law Judge found that the message contained nothing that would constitute a threat of reprisal or a promise of a benefit. ALJ Decision, p. 6, Lines 42-44. He also reviewed the message in the context of the totality of the circumstances existing at the time. He thus found that the message was not violative of the Act as the message echoed Bradford's earlier statements to employees that the decision to unionize was their own and not the employers. (Id.) The Administrative Law Judge also found that the message did not unlawfully interrogate employees. (Id. Lines 46-48). He thus concluded that the message was protected speech under Section 8(c) of the Act.

In light of these findings and conclusions of the Administrative Law Judge based on all the evidence in the Administrative Record, the Regional Director cannot make out any argument that Griseto's messages or conduct tainted the present petition.

As for the creation of a Guiding Coalition, Bradford does not contest the Administrative Law Judge's findings that the organization was unlawful under current interpretation of the Act. As testified to at hearing, Bradford stopped conducting meetings of the Guiding Coalition back in November 2009. The Guiding Coalition has not met since and Bradford has no intention of conducting any further meetings of it. Moreover, in light of the Administrative Law Judge's decision, it has disbanded the Guiding Coalition. The Administrative Law Judge, in his decision, partially agreed with the Petitioner and despite the un rebutted evidence in the record, erroneously found that the Petition was somehow tainted by the creation of the Guiding Coalition. Decision, pp. 7-8.

Bradford strongly disagrees with the Regional Director's findings in this regard. As it has argued before to the Board in conjunction with its exceptions to the Administrative Law

Judge's decision, Bradford asserts that the Administrative Law Judge's decision mischaracterizes the testimony of John Parker on which the Administrative Law Judge based his decision about eth tainting caused by the Guiding Coalition. Contrary to the Administrative Law Judge's finding, Parker never testified that the Guiding Coalition motivated him to create the employee petition or that he and the other employees had "figured that with the Guiding Coalition in place, there was no need for union representation at this time." Decision, p. 5, Lines 40-45. Rather, Parker testified he created the petition after reading Griseto's February 2009 message which did not mention the Guiding Coalition at all. (TR p. 125), (General Counsel's Exhibit 18). He also testified that he wanted to give "Nick a chance to prove to us what he wanted to do." (TR p. 130). This belief was based on Mr. Griseto's repeated statements to employees about his vision for the new company rather than just the Guiding Coalition. ( See, e.g. TR p. 44, 55, 70, 100-114, 214). Additionally, testimony from other employees at the Administrative Law Judge's hearing also indicated that they signed the Employee Petition because of Griseto's vision for the company rather than the Guiding Coalition. (See, TR p. 152-185-186).

The Administrative Law Judge also expressed an "opinion" that under Master Slack, 271 NLRB No. 15 (1984), there was a direct causal relationship between the establishment of a Guiding Coalition and the Employee Petition. The Administrative Law Judge based this faulty analysis on two lines in a January 24, 2009 email to employees that Griseto had posted on one wall and which was never discussed with any employee by any manager. The evidence in the entire record belies the Administrative Law Judge and the Regional Director's position.

The Board had held that not every violation or unfair labor practice will taint evidence of a Union's subsequent loss of majority status. Lee Lumber and Building Material

Corp., 322 NLRB No. 14 (1996). For an unfair labor practice to taint evidence of loss of majority status, there must be specific proof of the causal relationship between the unfair labor practice and the subsequent loss of majority support. (Id.) To taint proof of a loss of a majority status, the unfair labor practice must also be of a character as to either affect the union status, cause employee disaffection with the union or improperly affect the bargaining relationship itself. Master Slack, *supra*.

In the present case, a number of un rebutted facts discount any possibility that the Guiding Coalition tainted the Petition. First, the employee disaffection for the Union existed as far back as December 2008 long before the creation of the Guiding Coalition. (TR. p. 70-72). Additionally, the Guiding Coalition was only mentioned twice in January 2009. It was briefly described at the January 5, 2009 employee orientation and mentioned in two lines of the January 24 email from Griseto. There is no other evidence in the record that the January 24<sup>th</sup> email was discussed with employees. Thirdly, the Guiding Coalition had yet to meet before the Petition was created and submitted to management. The first meeting of the Guiding Coalition was on February 19, 2009. Thus, at the time of the Petition, the Guiding Coalition was an unknown animal that had not yet done anything. It thus certainly does not support a finding that it swayed employees into signing the Petition. Fourth, the testimony of Mr. Parker and other employees made clear that the Guiding Coalition was not a motivating factor in their decision to sign the petition. One exhibit at hearing, however, does sheds light on the employees' real motivation. At a Guiding Coalition meeting on September 2009, an employee, Charles Trieber, and other employees met and stated that they did not want the Union because it, among other things, sold them out with the plant closing of Bradford's predecessor. See, General Counsel, Exhibit 28, p. 2.

The record and the Administrative Law Judge's Findings as well as the present situation at Bradford indicate that the employee petition was freely created by employees with no involvement or pressure from management. Additionally, all employees freely signed it without any coercion. The Petition was created in a work environment in which Bradford's President, Griseto had repeatedly told employees that it was for them to decide whether to have a union or not and that he would respect any decision that they made on that topic.

When applying these facts to the type of factors set out in Master Slack, it is evident that there is no direct causal relationship between the Guiding Coalition and the Employees' two Petitions. Moreover, the creation of a committee to foster a communication cannot be said to be that type of conduct that would create an atmosphere of coercion or have a long lasting effect on employees in the unit. It certainly differs from cases where the cutting of wages or pressuring employees to sign letters created by the employer have been found to be so coercive as to taint evidence of a Union's lost of majority status. See, e.g. Atlas Refinery Co., 354 NLRB No.120 (2010); Penn Track Lines, 336 NLRB No. 112 (2001); Lee Lumber, *supra*.

**A Number of Factors support a Reversal of the Present Decision Including the Fact That Substantial Time has Expired Since the Alleged Unfair Labor Practices and the Employees Exhibited Anti-Union Animus Prior to any Unfair Labor Practice by Bradford.**

Despite the regional Director's unsubstantiated claim of a critical need for a dismissal order, the events or alleged misconduct which are the subject of the regional director's decision are one and a half years old. Since that date, there have been no further charges against Bradford. The present petition was thus created in an atmosphere free from employer pressure or coercion. As Bradford has acted in compliance with the Act since the Board's complaint over a

year ago, it is unlikely that Bradford will commit further unfair labor practices in the future thus tainting an election.

Second, the Regional Director fails to mention that there was a demonstrated lack of support for the Union by employees long before Bradford opened and created the Guiding Coalition. As far back as the employee job fair in December 2008, employees told Griseto and Bradford's management that they did not want the Union. These statements continued in January in 2009 before the posting of Griseto's February 4, 2009 message, the creation of the Petition and the first meeting of the Guiding Coalition. Given such evidence, there is no danger that Union support will be whittled away by Bradford's alleged misconduct. There is no danger because there is no employee support for the Union. Any dissipation of the Union's support was the result of the employees' unhappiness with the Union during the closing of BDA. Thus, the employees' disaffection with the Union cannot be attributed to Bradford nor can it be changed through the dismissal of the present petition. The employees have made it abundantly clear that they do not want to be represented by the Union and any attempt by the Union to force itself on the employees will not be met happily by the employees. Consequently, the interests sought to be protected by the present dismissal Petition are not at risk in this case.

Third, there is absolutely no evidence of any further unlawful conduct or unfair labor practices by Bradford. The present complaint before the Board deals with limited instances occurring in January and February 2009. Since that time, there have been no further charges filed against Bradford nor any accusation of coercion or illegal conduct. Bradford has conducted itself in accordance with law and has respected the Board's proceedings. In fact, Bradford, on its own, stopped meetings of the Guiding Coalition in November 2009 as a result of the Board's complaint. It thus cannot be said that a dismissal is warranted here. The absence of any ongoing

unfair labor practices by the employer makes it highly unlikely that Bradford has or will destroy any employee interest in collective bargaining.

Fourth, given the Administrative Law Judge's decision, any claim by the Regional Director relative to Bradford's February 2009 message to employees must fail as the Administrative Law Judge has found such speech to be protected. Thus, there is no harm in these matters and cannot be the basis of the dismissal.

Fifth, the Regional Director, other than with some unsubstantiated factual assertions, has offered no direct evidence that Bradford's alleged wrongdoing has had a chilling or undermining impact on any remaining unit employee support for the Union or tainted the creation of the petition.

Sixth, give the employees' repeated disavowal of the Union, a dismissal is inefficient and will only lead to the employees having to file a new petition once the unfair labor practice case resolves. It would make more sense to hold the petition in abeyance until the pending case is closed. At that time, all parties can advance their arguments on whether the petition should go forward to election. Holding the case in abeyance rather than dismissing it will prevent needless administrative work and will lead to the more orderly processing of the employees' wishes at the appropriate time.

#### IV. CONCLUSION

For the above stated reasons, the Regional Director's August 16, 2010 decision to dismiss the employees' RD petition to decertify the Union should be overturned and the petition,

at a minimum, should be held in abeyance until the resolution of the unfair labor practice case against Bradford.

Respectfully Submitted,

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DATED: August 30, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants by first class mail, on this 30 th day of August 2010 to the following:

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