

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

GREDE II, LLC

and

Case 11-CA-071297

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

*Jasper C. Brown, Jr. and Shannon R. Meares, Esqs.*,  
for the General Counsel.

*John C. Cashen and Jonathan A. Young (on brief),  
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 April 17, 2012, pursuant to a complaint that issued on March 1, 2012.<sup>1</sup> The complaint alleges that the Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by discharging employee Stacy Ewings because of his union activities. The Respondent denies any violation of the Act. I find that the Respondent violated the Act as alleged in the complaint.

On the entire record, including my observation of the demeanor of the witnesses and after considering the briefs filed by the General Counsel and the Respondent, I make the following

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.

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<sup>1</sup> All dates are in 2011 unless otherwise indicated. The charge was filed on December 22.

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.

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## II. ALLEGED UNFAIR LABOR PRACTICES

### *A. Background*

10 This is the second case involving the Company. I heard the prior case in late January and early February 2012. See *Grede II, LLC*, JD(ATL)–10–12 (April 19, 2012). Near the close of that hearing, I denied the motion of the General Counsel to amend the complaint to allege the discharge of Stacy Ewings insofar as permitting the amendment would delay my decision in that case which was consolidated with the Union’s objections to the election. The General Counsel has requested that I take administrative notice of the record in that proceeding, and I do so.

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Biscoe, North Carolina, is a small town in Montgomery County. The Company is the largest employer in Montgomery County with over 300 employees. The Union conducted an organizational campaign at the Company beginning in late November 2010 that culminated in an election held on February 2, at which the employees voted 204 to 86 against representation.

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The Company’s employee handbook states that Grede “will oppose by every proper means all attempts to unionize the plant.” In the prior proceeding I found that the Company committed multiple violations of the Act both prior to and following the February 2 election. Although not final, several of those findings are indisputable. General Manager Richard Cabadas admitted that, following the election, he told 15 or 20 employees not to wear “Steelworkers” or “Vote No” shirts in the plant. He ceased doing so when he learned that his direction was improper, but did not inform the employees with whom he had spoken that his prior direction was improper. Cabadas did not deny telling employee Thaddeus Leake, who was wearing a Steelworkers T-shirt, to “take that D [damn] T-shirt off because the Union was over with.” He did not deny telling employee Samuel Ingram, who was wearing a Steelworkers T-shirt, “[T]his is not a USW plant, and I don’t want this shit in my building.”

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### *B. Procedural Matters*

35 The Respondent requested to depose Sean Anger, the Company’s former production superintendent, citing the distance from Asheboro to Houston, Texas, where he is now located, and his current job responsibilities. The request was denied prior to the hearing. Counsel for the Respondent renewed the request at this hearing, and I again denied it. Neither the distance nor Anger’s job responsibilities precluded his presence at the prior proceeding at which he testified. He did not testify in this proceeding.

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### *C. Facts*

45 Stacy Ewings was the first shift sand technician. He was responsible for running the muller machines which are on an elevated deck reached by a flight of stairs.<sup>2</sup> A control room containing monitors is also located on the deck. The control room has a windowed door. One of the muller machines feeds the mold machines for the north end of the foundry. The other feeds the mold machines for the south end of the foundry and one mold machine on the north end.

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<sup>2</sup> A search on the internet reveals two spellings for these machines: muller or mullor. The transcript uses “muller.” I shall use that spelling except when “mullor” is used in an exhibit.

Ewings' direct supervisor was David Stutts who had initially supported the Union but whose allegiance changed during the organizational campaign. Stutts was promoted to supervisor following the election. Stutts reported to Production Superintendent Sean Anger who began working at the Company in March 2010 and became production superintendent in 2011, a position that he held until ending his employment in December 2011. Anger reported to Operations Manager Russell Bittle who was hired in April 2011. Charles (Chuck) Wolffis became manager of human resources in late April or early May. He is responsible for and makes the final decisions on all personnel matters, including discipline and discharges.

Ewings signed a union authorization card and recalls attending one union meeting during the organizational campaign. He regularly associated with Darriel Patterson and Delbert Capel, two of the most prominent and outspoken union adherents. Ewings continued to wear a Steelworkers T-shirt to work once or twice a week after the election. No supervisor or management official directed him not to do so.

In the prior proceeding, I found that the Company more closely monitored the movements and activities of prounion employees. In this proceeding, uncontradicted testimony by Patterson, Capel, and Ewings establish that, about 2 weeks before Ewings was discharged, those three employees went together to a convenience store across the street from the foundry. While there, Supervisors Deanna Kato and George Miller came into the store. Kato left shortly before the three employees. The three employees were talking with each other as they were walking back to the plant. Patterson motioned for them to slow down. Kato, who was walking ahead of the employees, also slowed down.

On direct examination Operations Manager Bittle denied having any knowledge of Ewings' union activities or association with prounion employees. He did not specifically deny observing that Ewings regularly wore a Steelworkers T-shirt. On cross-examination, Bittle gave the following testimony:

Q. Okay. Isn't it true that you saw employees still wearing union T-shirts in the plant?

A. I saw many shirts, yes.

Q. Union T-shirts?

A. No, just many shirts of various types.

Q. Some of those were union T-shirts?

A. I did see a couple of Union shirts, yes.

The foregoing evasive answers suggest that Ewings, who continued to wear union T-shirts, was wearing one of the "couple" of union T-shirts that Bittle observed, and I so find.

The metal components manufactured by the Company are produced by pouring molten metal into molds. The basic ingredient of the molds is sand. The production process reuses sand from previous molds. The mullers mix the sand, beginning with recycled sand from previous molds. Bittle explained that each muller "has a batch hopper on top" which contains a weighed amount of sand, "usually 4,000 to 5,000 pounds," that is dropped into the muller to which water, a bonding chemical, "and new sand is added and mixed." Ewings explained that the sand should not be too dry or too wet. The compound, still referred to as "sand," is sent by conveyers to the molding machines. The monitors in the control room confirm that the process is proceeding properly and that the properties of the sand are correct. The sand technician also performs various tests in the sand laboratory.

The Company operates two production shifts. There is a break between shifts, and the start times vary. When first shift follows the break between shifts, the first shift sand technician must get the mullers operating so that sand is available when production starts, a process that takes 40 minutes or more. To do so, the sand technician reports to work an hour earlier than other employees. When first shift immediately follows second shift, the mullers are already running and the sand technician reports at the same time as other employees.

Although Ewings recalled reporting to work at 2:45 a.m. on Friday, October 7, I find that he was mistaken in that regard. His timecard shows that he clocked in at 4:45 a.m. Insofar as it takes 40 minutes or more for the mullers to begin producing "good sand," a 2:45 a.m. arrival by Ewings would be consistent with production beginning at 4 a.m. Documentary evidence establishes that, on October 7, production began at 5 a.m., thus the second shift sand technician had gotten the mullers running at the beginning of second shift.

At about 5:10 a.m., Ewings was observing the monitors in the muller control room. He was seated in a chair. Although the monitors are at eye level when a person of average height is standing, there is no evidence that the monitors cannot be properly observed from a seated position. Shortly after Ewings began observing the monitors, Operations Manager Bittle entered the room. Production Superintendent Sean Anger was behind him. Bittle said, "[Y]ou've been asleep. . . . I've been here since 10 minutes after 4:00 [sic] . . . they're out of sand on the south end and the muller door is open." (The relevant time was shortly after 5 a.m.) Ewings replied, "[M]an, I ain't been asleep." There is no evidence that any monitor reflected a problem. Bittle told Ewings to leave and come back to see Human Resources Manager Chuck Wolffis at 8:30 a.m. Bittle left. Anger then told Ewings that Wolffis was not going to be there at 8:30 a.m., to "come back tomorrow morning at 8:30."

Bittle claims that, as he was walking through the foundry at the start of the shift, an employee operating a molding machine informed him that he had no sand. There is no evidence of any downtime due to a problem with sand at that time. The only downtime on production reports prior to 5:30 a.m. on October 7 related to a turntable on one mold machine. Biddle acknowledged that, as he returned from the muller machines, the mold machine was operating. Although the Company, in the investigation of the charge herein, submitted evidence of downtime from about 7 until 10 a.m. that referred to the system running "out of sand," Bittle acknowledged that the foregoing downtime was caused by a mechanical failure, "[w]hat we call a clamshell."

Bittle says that, upon receiving the report of no sand, he immediately went to the mullers and observed that the muller feeding the south end was not operating. He went to the door of the muller control room, which has a glass window, "leaned real quick to see if I could see anybody there, saw Stacy [Ewings], and that's when I turned, stepped back on the muller deck, in between the mullers, and called for Sean Anger."

Bittle claimed that Ewings' head was down, "chin on his chest." Although initially saying that Ewings' eyes were closed, Bittle, in further questioning, said that it "was visible enough to see that he was "not . . . doing anything with his eyes." A photograph taken by the Company in which Bittle sat as he said Ewings was sitting reveals that a person, looking through a windowed door into a poorly lit room at a person wearing a hardhat with his head down, would not have been able to see the person's eyes.

Bittle says that it took Anger "approximately a minute or two" to arrive after he called him. When Anger arrived, Bittle told him that they were "not making any sand" and that he needed to "see something else." He "walked him [Anger] over to the door, stepped to the

side, let him step and look in . . . [and] said, "[Y]ou've got a man asleep." Although the brief of the Respondent states that Bittle "followed Anger into the room," Bittle claims that he "stayed outside the door." An email from Anger places the time at 5:30 a.m.

5 Bittle denied having any conversation with Ewings. I do not credit that testimony. Ewings was clear that it was Bittle who accused him of sleeping and that he immediately denied the accusation saying, "[M]an, I ain't been asleep." Counsel for the Respondent asked Bittle, "As you approached the door, did you see through the window?" Bittle answered that he did and saw "Ewings asleep." I do not credit that testimony. Bittle walked  
10 Anger to the door, "stepped to the side, let him step and look in" and told him, "[Y]ou've got a man asleep." He did not claim to have looked through the window himself.

Anger prepared the discharge document, an Employee Status Change Form. It states:  
15 "Stacy [Ewings] was seen sleeping in mullor [sic] room by Sean Anger and Russell Bittle." That statement is followed by the signature of Bittle and the following notation: "5:10 AM-5:20 AM." Upon being questioned regarding the 10-minute timespan, Bittle explained that he does not wear a watch, that the times were referring to "the full event." He claimed that he observed Ewings "asleep" for from 1 to 3 minutes. That claim is inconsistent with his testimony that he  
20 "leaned real quick to see if I could see anybody there" and that, upon observing Ewings, "that's when I turned, stepped back" and called Anger. Bittle, who leaned "real quick," would have observed Ewings for no more than 10 seconds before calling Anger. Whether Ewings was looking down at the moment Bittle observed him is immaterial. Ewing's posture does not establish that he was asleep.

25 Upon being told to leave and return on Saturday at 8:30 a.m., Ewings went to clock out. As he was walking to the timeclock, he stopped briefly and spoke with the operator of the first molding machine, whose name he believes was Roberto Gonzalez. Ewings asked if everything was all right, "you all out of sand." The employee replied, "[N]o, we're just waiting on iron," the molten metal that would be poured into the molds. As he continued to the timeclock, Ewings  
30 encountered employee Sam Ingram who observed that Ewings was upset. Ingram and Ewings agree that Ingram asked what was wrong, that Ewings answered that they "had fired me, accused me of sleeping," and that Ewings stated that he "wasn't asleep."

After returning home, Ewings decided to go to the unemployment compensation office.  
35 Office Branch Manager Pamela Alsobrook, who regularly deals with Wolffis and his assistant insofar as Grede is "one of our most important [Montgomery County] employers," recalled meeting with an employee, whose name she did not remember, who told her that it was reported that he was sleeping but that he was not sleeping and that he had been told to return on Saturday. Ewings recalled explaining that Bittle had told him to see Wolffis  
40 at 8:30 that Friday morning, but Anger had told him that Wolffis would not be there and to come back on Saturday morning. Alsobrook, in order to avoid any misunderstanding regarding returning on a Saturday, called the Company to confirm when Ewings should return and learned that Wolffis was available, that Ewings could go that day. Ewings called, but Wolffis was unavailable. Wolffis thereafter called and asked him to come in at 2  
45 p.m. He did so.

At the 2 p.m. meeting only Wolffis and Ewings were present. Wolffis read a statement "saying Sean Anger and Russell Bittle . . . say they observed me sleeping . . . up in the muller room, and I . . . was terminated for sleeping." Ewings told Wolffis, "I wasn't sleeping." Wolffis asked Ewings if he knew the rule regarding sleeping, and Ewings answered that he did, "you could be fired." Wolffis said that was the "reason I would say I wasn't sleeping." Ewings repeated, "[W]ell, I wasn't sleeping." Wolffis said he "believed the

two supervisors over me because that's what they are hired to do." Ewings pointed out that Anger told him "not to come see him today because he wouldn't be here . . . to come tomorrow morning at 8:30 to see him." Wolffis said, "[N]o, that can't be true." Ewings asked why, "because he's a supervisor and he can't lie?" Wolffis attempted to make a call, which Ewings assumed was to Anger, but got no answer. Ewings asked, since he was fired, what was the "reason for coming up here." Wolffis said it was to sign the paper. Ewings told him that he "couldn't sign the paper because I wasn't asleep."

Wolffis claimed that Anger was present when he met with Ewings. He testified that the only statement Ewings made was, "I was not asleep, period. That was all he said." I credit Ewings. Wolffis did not specifically deny, that Ewings told him that Anger told him that Wolffis "wouldn't be here, . . . to come tomorrow morning at 8:30." He admitted that Ewings stated that he would not sign the termination notice, saying, "I will not sign that."

Wolffis stated that, although he has issued nothing in writing or had a meeting "en masse" with all supervisors or employees, "it has become a widely known fact by everybody that I require two witnesses for sleeping." He acknowledged that "bonds" between an employee and supervisor may result in a supervisor permitting an employee to "get away with a few instances of sleeping on the job or just dozing off."

Wolffis did not confirm that two witnesses observed Ewings. The Respondent's brief argues that Wolffis "relied on the accounts of two high-level supervisors." Although Wolffis asserted that two senior managers "indicated to me that he [Ewings] was asleep," he admitted that he did not contact Bittle before he discharged Ewings. Wolffis says he did not contact Bittle because Anger had "filled me in on all the information relative to Mr. Bittle's input." I do not credit that testimony. Wolffis testified that Anger told him that "Bittle had observed Stacy Ewings asleep in the control room on the muller deck that morning at approximately between [sic] 5:10, somewhere in that general area." Wolffis did not address the 5:30 a.m. time reported in an email from Anger. According to Wolffis, "Mr. Ewings offered nothing other than 'I was not asleep.' That was the investigation, period."

Wolffis, when asked about "discharge decisions at the Biscoe facility," answered, "I listen to the input of the supervisor, and then I make the decision on termination." I note that Wolffis did not mention considering any input from the affected employee.

As already noted, Anger prepared the Employee Change of Status Form on October 7 stating that both Anger and Bittle had seen Ewings sleeping and that Bittle, after affixing his signature, wrote "5:10 AM-5:20 AM." The form notes that the employee refused to sign. It is signed by Wolffis, but there is no signature by any supervisor, which confirms the credible testimony of Ewings that Anger was not present when he spoke with Wolffis.

Ewings applied for, but initially was denied, unemployment compensation benefits. He appealed. He was awarded benefits following a telephonic hearing. The Company submitted a statement prepared by Anger dated November 22. That typewritten statement was signed by Anger, Bittle, and Wolffis. It states, in pertinent part:

. . . On October 7, 2011, there was downtime on a piece of equipment within Mr. Ewing's [sic] scope of responsibility. . . . [Bittle] went to the equipment to understand what was affecting production . . . . At that time Mr. Bittle noticed Stacy [Ewings] sleeping in the side office near the equipment at approximately 5:10 a.m.

After approximately 10 minutes, Mr. Bittle called Sean Anger, Manufacturing Superintendent, to the equipment. Mr. Anger also observed Mr. Ewing [sic] sleeping in the side office at approximately 5:20 a.m. At this time, Mr. Ewing [sic] was awake, sent home and instructed to return to the facility at 8:00 am . . . .

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Wolffis confirmed that the foregoing statement was prepared in response to Ewings' appeal of the denial of his unemployment benefits. Notwithstanding his experience in human resources, Wolffis "figured that that would be sufficient for the hearing officer," but that, in retrospect, he should have had "Bittle in that hearing."

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Contrary to the notation by Biddle on the Employee Status Change Form and the statement prepared by Anger, there is not a shred of evidence that any supervisor observed Ewings sleeping for 10 minutes, from 5:10 until 5:20 a.m.

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When questioned regarding the statement that he observed Ewings sleeping for 10 minutes, Bittle claimed that the 10-minute period was "from the time that I was notified that there was a problem on his floor that he's responsible for." That is not what the November 22 document says. It states that, after being notified, Bittle went to the equipment and "noticed" Ewing sleeping at "approximately 5:10 a.m.," and that after "approximately 10 minutes" he called Anger. Bittle ultimately admitted that the document "is poorly written." I agree. It is also inaccurate.

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Ewings was not in a "side office near the equipment." Ewings was in the muller control room, a work location. Bittle "leaned real quick," looked through the windowed door of the control room, "turned, stepped back," and called Anger. He did not wait 10 minutes.

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The statement reports that Ewings was "awoke, sent home and instructed to return to the facility at 8:00 a.m." but it does not report whether it was Bittle or Anger who took those actions. Ewings was not awakened because he was not asleep. If Anger had "awoke" Ewings, he would certainly have reported that fact in the statement. Ewings credibly testified that Bittle accused him of sleeping, an accusation he immediately denied. Bittle told him to leave and come back at 8:30 a.m. to see Wolffis. Anger then told him to return the next day at 8:30 a.m.

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Notwithstanding that instruction, Anger sent Wolffis an email at 5:52 a.m. on October 7 stating that Ewings would "be coming to see you" at 8 a.m., that he was "caught sleeping in the mullor [sic] room by Russell Bittle and myself this morning at approximately 5:30 a.m." Anger did not report that he would also be present, further confirming my finding that he was not present. Anger had told Ewings not to come until Saturday. I question whether the email was sent as a preemptive strike against Ewings' credibility insofar as Anger knew Ewings would deny that he had been sleeping because he had not been sleeping. Ewings told Branch Manager Alsobrook that he had been told to report on a Saturday. Ewings had no need to fabricate an instruction that he had not received, and he did not do so. He reported what he had been told to do. I credit Ewings.

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#### *D. Analysis and Concluding Findings*

The General Counsel and Charging Party contend that Stacy Ewings was discharged because of his union sympathies. The Respondent contends that he was discharged for sleeping on the job. Counsel for the General Counsel, using a baseball analogy, argues that the Respondent "would not throw the ball down the middle and fire Mr. [Darriel] Patterson or Mr. [Delbert] Capel, they went after the .200 hitter."

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 Ewings engaged in union activity and that the Respondent was aware of that activity. He continued to wear a Steelworkers T-shirt after the election. The record in the prior proceeding establishes animus. His discharge on  
 5 October 7 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 him is upon the Respondent.

10 Anger prepared the discharge document and Wolffis issued it without any investigation. The discharge document states that “Stacy [Ewings] was seen sleeping in mullor [sic] room by Sean Anger and Russell Bittle.” That statement is followed by the signature of Bittle and the times, 5:10 a.m. to 5:20 a.m. Anger, in his email, had previously reported that Ewings was  
 15 “caught sleeping . . . by Russell Bittle and myself . . . at approximately 5:30 a.m.” Wolffis did not contact Bittle, but claimed that Anger “filled me in.” I have not credited that testimony. Wolffis never sought to resolve the discrepancy in the times reported to him. The times initially reported establish that two senior managers had not simultaneously observed Ewings. Wolffis spoke with Anger and Ewings, and “Mr. Ewings offered nothing other than ‘I was not asleep.’ That was the investigation, period.” There was no full and fair  
 20 investigation.

As pointed out in *Firestone Textile Co.*, 203 NLRB 89, 95 (1973):

25 The Board has consistently held that an employer's failure to conduct a full and fair investigation of an employee's alleged misconduct is evidence of discriminatory intent, especially when viewed in the light of the employer's union hostility. *Norfolk Tallow Co., Inc.*, 154 NLRB 1052, 1059; *Shell Oil Company v. N.L.R.B.*, 128 F.2d 206, 207 (C.A. 5, 1942); *J. W. Mortal Company*, 168 NLRB 435, 452, enfd. with modifications 440 F.2d 455, 458 (C.A. 7 [7<sup>th</sup> Cir.], 1971).

30 In the investigation of the charge herein, the Respondent contended that Ewings' alleged sleeping affected production. The November 22 statement prepared by Anger refers to “downtime.” The only downtime reflected on production reports prior to 5:30 a.m. on October 7 relates to a turntable on one mold machine. Production reports from October 7 reflect no  
 35 downtime due to a problem with sand prior to 5:30 a.m. Bittle admitted that the downtime that occurred later that day was because of a mechanical problem, a “clamshell.” The Respondent, in its brief at footnote 9, now claims that downtime was not a factor in the discharge decision.

40 Bittle did not check to see whether the employee who allegedly complained was actually “out of sand.” He acknowledged that, as he was returning from the muller deck, the molding machine was operating, thus it could not have been out of sand. Ewings, when leaving, spoke with a mold employee and was told that there had been no problem with the sand. I question the veracity of Bittle's claim that an unidentified employee complained to him about a nonexistent problem. Bittle did not notify Anger when the employee allegedly reported  
 45 he had no sand. He took it upon himself to investigate, which suggests a need for immediate action. Upon observing Ewings, and purportedly believing he was sleeping, he did not disturb him, thereby confirming whether he was asleep or awake, but called Anger. If immediate action was necessary, Bittle would have immediately confronted the purportedly sleeping employee.

Neither Bittle nor Anger had a “bond” with this prounion employee who continued to wear Steelworkers T-shirts. Bittle's calling Anger to the muller deck suggests that he was seeking to obtain a second witness, thereby attempting to meet the unpublished requirement of

Wolffis that there be two witnesses to a sleeping incident. Ewings was not asleep, and there is no probative evidence that Bittle and Anger simultaneously observed Ewings purportedly sleeping. Bittle claimed that he never entered the muller room.

5           The discharge document was prepared before Ewings denied being asleep. Wolffis, when asked about “discharge decisions at the Biscoe facility,” answered, “I listen to the input of the supervisor, and then I make the decision on termination.” Wolffis did not mention considering any input from the affected employee. 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).”

15           Wolffis could not have held an honest good-faith belief that Ewings had committed the offense of which he was accused absent further investigation. Upon receiving Ewings’ denial, a cursory investigation, i.e., contact with Bittle, would have revealed that Anger was present for only 1 or 2 minutes and the 10-minute timespan following Bittle’s signature on the discharge document was incorrect. The email from Anger to Wolffis gives 5:30 a.m. as the relevant time. 20 The discharge document states that Ewings was seen sleeping by Anger and Bittle and, following Bittle’s signature, gives the times, 5:10 to 5:20 a.m. I find it inconceivable that Wolffis, an experienced human resources professional, did not question the time discrepancy or question why two senior managers would observe an employee sleeping for 10 minutes before taking any action.

25           Wolffis obviously considered the discharge document insufficient insofar as, when responding to Ewings’ appeal of the denial of unemployment compensation over a month later, he sought to augment the evidence that he relied upon at the time of discharge by having Anger produce a more detailed statement that he figured “would be sufficient for the [unemployment compensation] hearing officer.” That statement repeats the untrue 10-minute timespan, does not identify who purportedly “awoke” Ewings, and does not report that Ewings denied that he was sleeping.

35           Bittle signed the statement that he observed Ewings for 10 minutes and then called Anger, but his testimony establishes that he called Anger immediately after observing Ewings and that the 1 to 3-minute interval was how long it took for Anger to arrive. Bittle “leaned real quick to see if I could see anybody there, saw Stacy [Ewings], and that’s when I turned, stepped back . . . and called for Sean Anger.” Bittle observed Ewings for perhaps 10 seconds. Even assuming that Ewings was looking down at the moment Bittle observed 40 him, that posture does not establish that he was asleep.

45           Ewings clocked in at 4:45 a.m. I find it extremely unlikely that any employee would be asleep less than half an hour after clocking in. When Bittle accused Ewings of sleeping, Ewings immediately denied that he had been sleeping. Ewings informed employee Ingram that he had been accused of sleeping, but had not been sleeping. He denied sleeping to Branch Manager Alsobrook and to Wolffis. He reported to Alsobrook and to Wolffis the conflicting instructions he had received regarding when to report to human resources. Wolffis spoke only with Anger and Ewings, and “Mr. Ewings offered nothing other than ‘I was not asleep.’ That was the investigation, period.” Conversation with Bittle would have revealed that he did not observe Ewings purportedly sleeping for 10 minutes and that he claimed that he did not enter the muller control room. With regard to the unwritten two witness rule, Wolffis had no evidence that two supervisors simultaneously observed Ewings purportedly

sleeping. Anger, in his email, gave the time as 5:30 a.m. Bittle reported the 5:10 to 5:20 a.m. time. Ewings denied that he was sleeping, and I credit that testimony.

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

10 CONCLUSION OF LAW

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

15 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.

20 The Respondent, having discriminatorily discharged Stacy Ewings, 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 October 7, 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 at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987),  
 25 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).

30 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<sup>3</sup>

35 ORDER

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

40 1. Cease and desist from

(a) Discharging employees because of their union activities.

45 (b) 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.

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<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, 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.

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

5 (a) Within 14 days from the date of this Order, offer Stacy Ewings 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.

(b) Make Stacy Ewings 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.

10 (c) Within 14 days from the date of this Order, remove from our files any reference to the discharge of Stacy Ewings, 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.

15 (d) 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.

20 (e) Within 14 days after service by the Region, post at its facilities in Biscoe, North Carolina, copies of the attached notice marked "Appendix"<sup>4</sup> 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 25 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 such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are 30 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 October 7, 2011.

35 (f) 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.

40 Dated, Washington, D.C., May 31, 2012.

45 \_\_\_\_\_  
George Carson II  
Administrative Law Judge

\_\_\_\_\_  
<sup>4</sup> 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."

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 discharge 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, within 14 days from the date of the Board's Order, offer Stacy Ewings 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 Stacy Ewings 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 discharge of Stacy Ewings, 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.

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.nlr.gov](http://www.nlr.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) 631-5220