



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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July 13, 2012

VIA E-FILING

Lester A. Heltzer,
Executive Secretary
National Labor Relations Board
Room 11602 East
1099 14th Street, N.W.
Washington, DC 20570-0001

Re: Graphic Communications
Conference/International Brotherhood of
Teamsters, Local 137C
(Offset Paperback Mfrs., Inc.)
Case 04-CB-010663

Dear Mr. Heltzer:

Attached please find Answering Brief by Counsel for the Acting General Counsel in Response to Respondent's Exceptions to the Decision of the Administrative Law Judge in the above-captioned matter. Copies of the Answering Brief have this day been served on the persons below by e-mail.

Very truly yours,

/s/ David Faye
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

GRAPHIC COMMUNICATIONS
CONFERENCE/INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
LOCAL 137C
(OFFSET PAPERBACK MFRS., INC.)

and

Case 04-CB-010663

BOBBIE JO STONIER, an Individual

TO: Lester A. Heltzer
Executive Secretary
National Labor Relations Board

**ANSWERING BRIEF BY COUNSEL FOR THE ACTING GENERAL COUNSEL
IN RESPONSE TO RESPONDENT'S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Respectfully submitted,

Dated: July 13, 2012

/s/ David Faye

DAVID FAYE
Counsel for the Acting General Counsel
National Labor Relations Board

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I. STATEMENT OF THE CASE¹

On November 18, 2011, the Regional Director of the Fourth Region of the National Labor Relations Board (herein called the Board) issued a Complaint in Case 04-CB-010663 alleging that Graphic Communications Conference/International Brotherhood of Teamsters, Local 137C (herein called Respondent or Union) violated Section 8(b)(1)(A) of the National Labor Relations Act (herein called the Act). (GCX 1(c)) The charge underlying the Complaint was filed by Bobbie Jo Stonier. (GCX 1(a)) Thereafter, Respondent filed a timely Answer to the Complaint. (GCX 1(e)) A hearing was held before Administrative Law Judge (ALJ) Michael A. Rosas on February 6 and 28, 2012, in Wilkes-Barre, Pennsylvania. At the hearing, Respondent amended its Answer to admit paragraph 4 of the Complaint.

On May 17, 2012, the ALJ issued his Decision (JD-25-12). The ALJ found that Respondent violated Section 8(b)(1)(A) by: (1) threatening an employee of Offset Paperback Mfrs., Inc. (herein called the Employer) in March 2011, that Respondent would remove the employee from a class action grievance if the employee did not stop raising complaints about temporary workers performing bargaining unit work at its Laflin, Pennsylvania facility, and (2) threatening employees on April 26, 2011, with intraunion discipline by Respondent and discharge by the Employer if they discussed Union-related matters with other employees. (ALJD, p. 12, lines 9-14)

On June 13, 2012, Respondent filed five Exceptions to the ALJ's Decision, including as to these "Conclusions of Law" (Exception 5). Also, Respondent excepted to the ALJ's Findings

¹ Throughout this Brief, references to ALJ Rosas' Decision are designated by "ALJD" followed by the page and line numbers. References to the transcript are designated by "TR." followed by the page number(s). References to the exhibits of Counsel for the Acting General Counsel and Respondent are designated by "GCX" and "RX," respectfully, followed by the exhibit number.

of Fact that (1) mixed signals were sent as to whether Stonier's grievance was part of a class action, as a result of having treated her January 31, 2010 individual grievance as if it were consolidated with the February 2010 class action (Exception 1), and that (2) Respondent's John D. Brown could have, and therefore did, credibly threaten (sic) to remove Stonier from the "class action suit" (Exception 2). Further, Respondent excepted to the ALJ's Findings of Fact that Union representatives Brown and/or Michael Timek threatened employees Stonier and/or Vanessa Burkhardt to the extent that such findings implies that "any Union action against them was said threat" (Exception 3) or that "threatened Union action against them was said threat" (Exception 4).² This Answering Brief responds to Respondent's Exceptions.

II. ISSUES

A.) Whether Respondent, by John Brown, by telephone, violated Section 8(b)(1)(A) of the Act, in late March 2011, by threatening an employee of the Employer that Respondent would remove the employee from a class action grievance if the employee did not stop raising complaints about temps working in the Employer's Laflin, Pennsylvania plant.

B.) Whether Respondent, by Michael Timek, at the Laflin plant, violated Section 8(b)(1)(A) of the Act, in late April 2011, during the day shift and during the afternoon shift, by threatening employees with intraunion discipline by Respondent, and with discharge by the Employer, if they talked with other employees about Union-related matters.

² Burkhardt's last name is misspelled in Exceptions 3 and 4.

III. FACTS

The Employer has two production facilities in Pennsylvania, the main one in Dallas and the smaller one (a Digital Print Services plant) in Laflin. (ALJD, p. 3, lines 27-28; TR. 17, 18, 60-61) The Laflin facility has three shifts – namely, the midnight shift or first shift (11:00 p.m. to 7:00 a.m.), the day shift or second shift (7:00 a.m. to 3:00 p.m., Monday through Friday), and the afternoon shift or third shift (3:00 p.m. to 11:00 p.m., Monday through Friday). (ALJD, p. 3, lines 36-38; TR. 18, 28, 61, 122, 139, 208) The Union represents the Employer's production, maintenance (including parts warehouse), quality service, and warehouse employees at its Laflin and Dallas plants. (ALJD, p. 4, lines 20-25; GCX 1(c), paragraph 5(a); GCX 1(e), paragraph 5(a)) The Employer and the Union are parties to a collective bargaining agreement. (ALJD, p. 4, lines 27-28; GCX 1(c), paragraph 5(b); GCX 1(e), paragraph 5(b)) The Union has 475 members employed by the Employer. (ALJD, p. 4, lines 20-21; TR. 222)

John D. Brown is the Union President. (ALJD, p. 4, line 32; TR. 23, 89, 123, 202, 205, 206, 218, 221, 269; GCX 1(c), paragraph 4; GCX 1(e), paragraph 4; RX 5) Scott Kevin Griffith, Sr. is Chapel Chairman for the prep department at the Dallas facility. (ALJD, p. 4, lines 39-40; TR. 89, 90, 136; see TR. 170)³ Griffith ran against Brown in the most recent Union election held in November 2011, and Brown won, pending an investigation following Griffith's protest of the election. (ALJD, p. 4, lines 41-42; TR. 94, 160, 186-87, 221) Bobbie Joe Stonier ran for Recording Secretary of the Union against Janine Daily and lost in the same election, but it is to

³ Griffith has been employed by the Employer in the prep department at the Dallas plant. (ALJD, p. 4, lines 39-40; TR. 88, 89)

be determined since she also has challenged the election results. (ALJD, p. 4, line 42 to p. 5, line 5; TR. 159, 186, 187, 221-22, 225)

Michael Timek,⁴ a printer assistant at the Laflin plant, is the Chapel Chairman for the Digital Print Services department at the Laflin plant. (ALJD, p. 4, lines 38-39; TR. 19, 51, 53, 62, 66, 72, 76, 92, 123, 126, 135, 197, 198, 207, 218, 248; GCX 1(c), paragraph 4; GCX 1(e), paragraph 4, as amended at TR. 9) A Chapel Chairman is the same as a shop steward. (ALJD, p. 4, fn. 6; TR. 32, 89, 152) Stonier ran against Timek when he sought re-election on January 2, 2012, as Chapel Chairman and lost. (ALJD, p. 5, lines 1-2; TR. 27, 72, 74, 198, 216-17)⁵ The Chapel Chairman's duties are to assist employees with any Union business or work-related issues, represent employees within that chapel, and handle any questions the employees have. (ALJD, p. 4, lines 33-35; TR. 89, 218, 248)

Stonier, a Union member who worked in the prep (or pre-press) department at the Dallas plant, was given a "temporary reassignment order" on January 27, 2010, which she grieved on January 31, 2010.⁶ (ALJD, p. 5, lines 12-14; TR. 120-21, 123, 163-64, 170; RX 4)⁷ Twenty pre-press employees at the Dallas plant who had not been transferred out of the department filed a class action grievance on February 5, 2010, concerning 6 or 7 pre-press employees, including

⁴ Timek's name is misspelled at times in the ALJD (p. 4, lines 38, in fn. 7; p. 5, fn. 8; and p. 8, fn. 20 -- the last time only)

⁵ The ALJD refers to the "January 2011 elections" on p. 5 in fn. 8 when discussing the Union divide between Brown and Timek versus the challenging slate of Griffith and Stonier. Actually, in the November 2011 election, Griffith and Stonier ran against Brown and Dailey, respectively, and then in the January 2012 election, Stonier ran against Timek.

⁶ The ALJD inadvertently states on p. 5, lines 12-14 that these events occurred in 2011.

⁷ Stonier has been employed by the Employer in several positions at both plants since she was hired in 2000. (ALJD, p. 5, lines 6-7; TR. 120, 155) At the time of the hearing, Stonier worked at the Laflin plant as a cut sheet operator in the bindery department on the afternoon shift. (ALJD, p. 5, lines 7-8; TR. 122-23, 172, 173-74, 181)

Stonier, who were transferred (or bumped) out of this department to another department. (ALJD, p. 5, lines 15-18; TR. 91, 95, 97, 110, 132, 134, 188, 224, 226-27; see TR. 227; RX 2) Stonier did not sign the class action grievance. (ALJD, p. 5, fn. 12; TR. 96, 132, 162, 188, 224; RX 2)⁸

The Union subsequently sent mixed signals as to whether Stonier's grievance would be pursued in conjunction with the class action grievance and whether she was or was not a part of the class action grievance. (ALJD, p. 5, lines 21-22 and fn. 13 and p. 10, lines 19-20) Brown has told Stonier at different times that (a) she had a separate grievance from the class action grievance and (b) she was part of the class action grievance. (ALJD, p. 5, lines 22-24; TR. 138) Ira H. Weinstock, the Union's attorney, treated Stonier's grievance as if it were consolidated with the class action grievance. (ALJD, p. 5, 24-26) Weinstock's letter dated January 21, 2011, to the American Arbitration Association advised it that a dispute exists between the Union and the Employer involving an issue regarding "the above grievance" and states in the caption, "Grievance: Class Action (#11293/Class Action, #11289/Ian Henry, #11320/Ian Henry, #11272/Joshua Dickinson, #11292/Ronald Coleman, #11291/Bobbie Jo Stonier, Pre-Press (sic – final parenthesis is missing)." (ALJD, p. 5, line 26 to p. 6, line 8; TR. 164, 165-66, 167; RX 5)

The arbitration hearing in this matter eventually started on August 10, 2011. (ALJD, p. 7, lines 1-3; TR. 95, 97, 101, 106, 187, 227, 228; RX 5) The hearing covered the class action grievance and the individual grievances filed by Stonier and the three others on the same subject matter. (ALJD, p. 7, lines 1-3; TR. 101, 105, 108, 126, 132, 134, 229-30; RX 5) The subject matter being arbitrated was the displacement of employees from the Laflin prep department. (ALJD, p. 7, lines 3-5; TR. 128) The class action grievance and all the individual grievances

⁸ Stonier was one of four employees who were part of another class action grievance dated May 10, 2011, which occurred later and is not involved in the instant case. (ALJD, p. 5, fn. 12; TR. 98, 110-11, 163, 172, 173; RX 3)

related to the same allegedly adverse action on January 27, 2010, were essentially consolidated, and were heard before the same arbitrator and on the same day. (ALJD, p. 7, fn. 17 and p. 10, lines 17-18) Stonier testified as a witness for the Union. (ALJD, p. 7, lines 3-5; TR. 101, 106, 127-28, 130) The hearing was set to continue on March 1, 2012. (ALJD, p. 7, lines 5-6; TR. 106, 229)

In March 2011, pre-arbitration, Griffith telephoned Brown to inform him that Stonier and Vanessa Sue Burkhardt, a Union member who works as an assistant in the Digital Print Services department on the day shift at the Laflin plant, complained to him that temporary employees from a temporary agency were performing bargaining unit work in the prep department at the Laflin plant. (ALJD, p. 5, lines 8-9 and p. 6, lines 12-14; TR. 18, 28, 93, 102, 103) At that time, two temps worked in the prep department at the Laflin plant – namely, Gina Owens, who worked on Stonier’s afternoon shift, and Nick Alvarez, who worked on the midnight shift. (ALJD, p. 6, line 15; TR. 139, 181, 208, 209) Brown said to Griffith, "You've got to stop listening to the chickens in the hen house." (ALJD, p. 6, line 16; TR. 93, 103, 104) Brown told Griffith that if Stonier did not stop complaining, he was going to drop her from the class action "suit" (or grievance). (ALJD, p. 6, line 16-18; TR. 92, 97, 101, 104, 105) Griffith responded that Brown cannot do that. (ALJD, p. 6, line 18; TR. 105) Brown criticized Stonier for focusing at the Laflin plant on temporary employees instead of prep department employees who were laid off or bumped to a much lower paying job. (ALJD, p. 6, lines 19-21; TR. 92) Griffith told Brown that "we" needed to get Timek on board so that "our people" get to run those machines, not the temps. (ALJD, p. 6, lines 18-19; TR. 103)

On March 31, 2011, Brown and Stonier had a telephone conversation. (ALJD, p. 6, line 22 and fn. 16; TR. 125, 169, 174) Stonier asked Brown about the class action grievance. (TR.

179; ALJD, p. 6, lines 23-24 inadvertently states the January 31 grievance, which was filed by Stonier, instead) Brown told Stonier that he was going to remove (or drop) her from the "class action suit" if she continued to complain about temps working in the prep department. (ALJD, p. 6, lines 24-25 and 30-32 and p. 10, 20-23; TR. 125, 126, 134-35, 136, 169, 174, 176, 177, 179, 180) Stonier told Brown that he could not drop her from the class action grievance. (ALJD, p. 6, lines 25-26; TR. 179) She asked Brown how he could allow a temp to be in the prep department at the Laflin facility when six employees have been displaced from their jobs. (ALJD, p. 6, lines 26-27; TR. 126, 135) Brown replied that Timek continued to deny that there were any temps in the prep department. (ALJD, p. 6, lines 28-29; TR. 126, 135, 180, 224) Stonier said that there were temps there because she saw them on a nightly basis. (ALJD, p. 6, line 30; TR. 126) Stonier hung up the telephone on Brown. (ALJD, p. 6, line 32; TR. 136, 175, 178, 179)

In April 2011, Timek had Burkhardt called to a meeting with him in foreman Al Smith's office. (ALJD, p. 7, lines 20-21 and fn. 19; TR. 39, 42, 203, 208, 210, 245, 248, 269) Later, Timek called in employee Daniel Walter Pinkowsky, Jr.⁹ (ALJD, p. 7, lines 20-21 and fn. 19; TR. 42, 205-06, 207) Like Burkhardt, Pinkowsky was a Union member who worked on the day shift as a bindery assistant at the Laflin facility. (ALJD, p. 7, line 19; TR. 76) Timek admonished Pinkowsky for discussing his wage classification issue with Burkhardt instead of going through him. (ALJD, p. 7, lines 21-22; TR. 245) He was concerned that Pinkowsky sought advice from Burkhardt instead of him as Chapel Chairman. (ALJD, p. 7, fn. 19) Pinkowsky replied that Burkhardt has been employed by the Employer for 30 years, and he simply asked her for advice. (ALJD, p. 7, lines 24-25; TR. 245) Timek chastised Burkhardt for bypassing him and complaining to Brown about specific grievances. (ALJD, p. 7, line 22; TR.

⁹ Pinkowsky's last name was misspelled once in the ALJD at p. 2 in fn. 2 and his first name is wrong in the ALJD at p. 7, line 19.

43, 246, 249) He criticized Burkhardt for talking to other employees about Union-related matters and he noted that was his job. (ALJD, p. 7, lines 23-24; TR. 42, 44, 45, 246-47, 249) Timek asked Burkhardt if she wanted his job as Chapel Chairman. (ALJD, p. 7, lines 26-27; TR. 42, 247, 249) Burkhardt replied that she did not want Timek's job, and that she just wanted to see Timek do his job. (ALJD, p. 7, lines 27-28; TR. 42-43, 247) She told Timek that she would continue helping any employee who sought her advice concerning a problem. (ALJD, p. 7, lines 28-29; TR. 247)

Timek said that everyone was to keep their mouths shut about Union-related matters if they wanted to keep their job. (ALJD, p. 7, lines 29-31; TR. 45) He added that employee Ryan Sullivan's work schedule was none of their business. (ALJD, p. 7, line 30; TR. 45) Timek was referring to Sullivan, a former supervisor who now is a Union member and an equipment operator at the Laflin plant, being permitted to work hours that were different from others on the day shift. (ALJD, p. 7, lines 12-15; TR. 36, 45, 52, 153, 251)¹⁰ He stated that nobody was to speak about it because if anybody did, somebody was going to lose his or her job and somebody was going to have charges pressed against him or her. (ALJD, p. 7, line 32; TR. 45-46)

On April 25, 2011, near the end of Pinkowsky's shift, Pinkowsky saw Timek making a box, so he asked him what the box was for. (ALJD, p.7, lines 34-35; TR. 76-77, 234, 236, 249) Timek replied that he was going to have a meeting the next day with the entire factory floor to have the employees vote on whether they want him to resign or remain as Chapel Chairman. (ALJD, p. 7, lines 35-37; TR. 77-78, 236) Pinkowsky advised Timek that he was not going to be present at the meeting the following day because he had the day off. (ALJD, p. 7, line 37; TR. 78, 219, 236, 253-54)

¹⁰ Sullivan's parents held Union positions until their terms ended in January 2012. (ALJD, p. 7, lines 12-13 and p. 11, fn. 26; TR. 153-54)

Timek informed Pinkowsky what the meeting was going to be about and filled him in on what he was going to say and present at the meeting. (ALJD, p. 7, line 37 to p. 8, line 1; TR. 78, 236, 249) He said that at the meeting, he was going to hand out to all the employees a copy of the Union oath they were sworn in by. (ALJD, p. 8, lines 1-2; TR. 255) He stated that he was going to inform the employees about a complaint from Sullivan, who other employees were talking about, and that Sullivan was threatening to press harassment charges against these employees if they continued to talk about him. (ALJD, p. 8, lines 5-7; TR. 236, 242, 244, 250-51) Timek said that he was going to tell the employees the next day that if there are any problems concerning the Union or other employees or Union-related problems, they all should go through him. (ALJD, p. 8, lines 1-3 and 7-8; TR. 243, 254) He stated that according to the oath the employees took before they were sworn into the Union, they could not talk about, or tell on, another Union employee, or try to get another Union employee in trouble, and that they could lose their jobs if they did so. (ALJD, p. 8, lines 3-5; TR. 243, 254, 255) Timek said that they also could lose their jobs if they continued talking about other employees, like Sullivan -- if he decided to file harassment charges against them. (ALJD, p. 8, lines 8-10; TR. 243)

Since Pinkowsky was not going to be at the meeting the next day, Timek told Pinkowsky that he could vote now if he wanted to vote as to whether or not the employees wanted him to continue being Chapel Chairman. (ALJD, p. 8, lines 10-11; TR. 242-43, 251, 252) Pinkowsky then voted. (ALJD, p. 8, line 11; TR. 243, 252, 253)

On April 26, 2011, Burkhardt attended a day shift meeting called by Timek. (ALJD, p. 8, lines 15-17; TR. 19, 51, 57, 198, 217) The meeting began shortly after 7:00 a.m. as soon as the employees arrived for the shift. (ALJD, p. 8, lines 15-16; TR. 20, 34, 201) The meeting was held in the lunchroom (or cafeteria) in the Laflin facility. (ALJD, p. 8, line 15; TR. 20, 35, 51, 199)

Burkhardt was forced to go to the meeting by Smith. (ALJD, p. 8, lines 16-17; TR. 35-36) The meeting was attended by approximately 20 members of the day shift crew. (ALJD, p. 8, lines 17-18; TR. 19-20, 28, 51) One of the attendees, besides Burkhardt, was Robert Lee Shupp, Jr. (ALJD, p. 8, lines 16-17; TR. 51)

As soon as the employees walked in the room, Timek handed out the Employer's Code of Conduct (or Company Rules), with certain areas highlighted. (ALJD, p. 8, lines 18-19; TR. 20, 28, 34-35, 38, 51, 55-56) Rule 15, which was highlighted, states, "Making or publishing of false, vicious or malicious statements concerning any employee..." (ALJD, p. 8, lines 18-20; TR. 31, 47, 56; GCX 4)

Timek warned that you could be disciplined, including being discharged, for making false statements about other employees. (ALJD, p. 8, lines 23-24; TR. 56) When Burkhardt realized that Timek was referring to some complaints about Sullivan's starting time, Burkhardt complained about Sullivan not having to come in to work at the same time as all other day shift employees. (ALJD, p. 8, lines 24-26; TR. 57) Sullivan attended this meeting. (ALJD, p. 8, lines 25-26; TR. 52, 210) Timek stated that if people continued to discuss Sullivan's work schedule, Sullivan could press harassment charges against them if he wanted to, and that could result in discipline. (ALJD, p. 8, lines 26-28 and p. 11, lines 16-21; TR. 52)

He said that he did not want anybody going over his head or trying to do his job for him, and that certain people were going over his head and not letting him do his job. (ALJD, p. 8, lines 28-29; TR. 33, 36-37) Timek stated that if you have a problem, you got to go through him and he would handle it, and that you could not go over his head, like complaining to the Employer's management. (ALJD, p. 8, lines 29-30; TR. 52, 53, 55; see TR. 58) He added that he

was the only employee in this facility who was allowed to discuss Union business on company time. (ALJD, p. 8, lines 30-31; TR. 21, 22, 33, 36; see TR. 51-52, 58)

At the end of the meeting, Timek said that since some members had expressed some concerns about the way he was handling business as Chapel Chairman, he wanted to know who wanted him in and who wanted him out, so they needed to take a vote on it. (ALJD, p. 8, lines 31-33 and p. 11, lines 22-24; TR. 22, 23, 37, 53) Burkhardt told Timek that this was an inappropriate procedure. (ALJD, p. 8, lines 33-35; TR. 23-24; see TR. 59) She informed Timek that she was not going to participate in the vote and that she had spoken to Union President Brown, who agreed that such a vote would be inappropriate and would not take place. (ALJD, p. 8, lines 34-36; TR. 23, 24, 25, 35, 37) But Timek still held a vote on whether or not he should remain as Chapel Chairman. (ALJD, p. 8, line 36; TR. 26, 53, 58) Timek handed out slips of paper and instructed them to write down "yes" or "no" on that paper and put it in the cardboard box in front of them. (ALJD, p. 8, line 36 to p. 9, line 2; TR. 23, 35, 37) Timek picked Shupp and employee David Kukucka to count the votes. (ALJD, p. 9, line 2; TR. 53, 54, 57-58)

Stonier and Austin Jacob Knight, another Union member, attended Timek's meeting held in the lunchroom (or cafeteria) at the Laflin plant on April 26, 2011, almost immediately after punching in at 3:00 p.m. (ALJD, p. 9, lines 4-5; TR. 61, 62, 67, 148, 149, 181, 182, 198, 199) About 10 to 14 of the afternoon shift employees attended. (ALJD, p. 9, line 4; TR. 62, 149)

Timek provided the employees with the Code of Conduct (or Company Rules) and the Union oath the members signed when they became Union members. (ALJD, p. 9, lines 5-7; TR. 64, 66-67, 150) Only Timek spoke at the meeting. (ALJD, p. 9, line 10; TR. 67-68, 73) Timek mentioned a few highlighted items, including Rule 15. (ALJD, p. 9, lines 7-8; TR. 67, 73-74) He stated that if you made false statements about another employee, it would not be tolerated and

you could, or would, be fired. (ALJD, p. 9, lines 8-9; TR. 151) Timek told the attendees that you could not harass, intimidate, coerce, or talk about people or call them names, and that you could be fired for intimidating or harassing other employees. (ALJD, p. 9, lines 10-12 and p. 11, lines 16-21; TR. 151-52, 184)

At this meeting, Timek stated that you were not to speak with temporary employees about Union business at any point in time, as they were not Union members. (ALJD, p. 9, lines 12-13; TR. 63, 68, 69) Timek highly stressed that if you spoke about Union matters of any sort to temporary employees, it could (or would) be followed up with a write-up or termination, if necessary. (ALJD, p. 9, line 14; TR. 62-63, 71, 72) He noted that if you spoke to other Union members about Union business, such as grievances and wage discrepancies, you could receive a disciplinary action since it was strictly his job, being the Chapel Chairman for that department, to handle such matters. (ALJD, p. 9, lines 14-17 and p. 11, lines 16-21; TR. 63, 72)

Then, Timek had the employees take a vote to see if they were going to keep him as Chapel Chairman or vote to have him removed since his ability to handle the job and his honesty had been questioned. (ALJD, p. 9, lines 17-20 and p. 11, lines 22-24; TR. 64, 151, 152) Timek won the vote by a wide margin. (ALJD, p. 9, line 20; TR. 58, 64, 71, 74, 253)

IV. ARGUMENT

A. Respondent Violated Section 8(b)(1)(A) by Threatening an Employee of the Employer that Respondent would Remove the Employee from a Class Action Grievance if the Employee did not Stop Raising Complaints about Temps Working in the Employer's Laflin, Pennsylvania Plant

The Union's very weak Exception 1 to the ALJ's Finding of Fact that mixed signals were sent as to whether Stonier's grievance was a part of a class action, as a result of having treated

her individual grievance as if it were consolidated with the class action grievance, must be rejected.

The Union wrongly asserts, "No testimony indicated mixed signals as having been sent as to whether the grievance was part of a class action." The ALJ correctly noted that Brown has told Stonier at different times that (a) she had a separate grievance from the class action grievance and (b) she was part of the class action grievance. (ALJD, p. 5, lines 22-24; TR. 138) Therefore, the ALJ accurately concluded that the Union sent mixed signals as to whether Stonier's grievance would be pursued in conjunction with the class action grievance, as well as whether Stonier was or was not a part of the class action grievance. (ALJD, p. 5, lines 21-22 and fn. 13 and p. 10, lines 19-20) The ALJ specifically credited Stonier's testimony that at various times, Brown sent mixed signals as to whether Stonier's grievance was connected to a "class action" of grievances, citing TR. 138, 163-67, 169-71. (ALJD, p. 5, fn. 13) Despite the Union's contentions otherwise, it would have been most understandable for Stonier to think that she was part of a class action grievance.

With the "mixed signals" testimony in mind, the ALJ correctly concluded that Union attorney Weinstock treated Stonier's grievance as if it were consolidated with the class action grievance. (ALJD, p. 5, lines 24-26) Further, contrary to the Union's position, the ALJ properly relied on Weinstock's letter dated January 21, 2011, to the American Arbitration Association advising it that a dispute exists between the Union and the Employer involving an issue regarding "the above grievance" and stating in the caption, "Grievance: Class Action," followed by the grievance numbers of the involved class action grievance and the individual grievances filed by Stonier and three other employees. (ALJD, p. 5, line 26 to p. 6, line 8; TR. 164, 165-66, 167; RX 5)

The Union's Exception 1 is largely an attack on the ALJ's credibility finding in favor of Stonier's "mixed signals" testimony. The Board's established policy is not to overrule an ALJ's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the Board that they are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, 545 (1950), *enfd.* 188 F. 2d 362 (3rd Cir. 1951). Here, there is no basis for reversing the ALJ's finding. Accordingly, for the reasons stated above, Exception 1 must be rejected.

In Exception 2, the Union oddly excepts to the ALJ's Finding of Fact that Brown could have, and therefore did, credibly threaten (sic) to remove Stonier from the "class action suit." Exception 2 also must be rejected.

The Union makes the farfetched argument that even if the grievances here were merged into a "class," the asserted "threat" to drop Stonier from the class, if it could have been implemented, cannot logically be viewed at all as a credible threat by someone of her "experience and sophistication" in filing grievances and Board charges since the result would have been her grievance being processed and arbitrated separately from the other grievances on the issue and being given "more individualized attention, treatment, and expense..." This is nonsense. The logical extension of Brown's threat being carried out is that Stonier would not have been a party to any grievance on the matter that ultimately was arbitrated by the Union, or that her grievance either never would have been pursued again by the Union or, at the very least, its adjudication would be separated from the other grievances and delayed beyond the scheduled arbitration date. (See ALJD, p. 10, lines 23-25)

The ALJ found Stonier more credible than Brown. (ALJD, p. 6, fn. 16) He found that Brown told Stonier on March 31, 2011, that he was going to remove (or drop) her from the "class action suit" if she continued to complain about temporary employees working in the prep

department. (ALJD, p. 6, lines 24-25 and 30-32 and p. 10, lines 20-23) Once again, there is no basis for reversing the ALJ's credibility finding. *Standard Dry Wall*, supra. Accordingly, for the reasons stated above, Exception 2 must be rejected, too.

The first part of Exception 5 is the Union excepting to the ALJ's Conclusion of Law that the Union engaged in an unfair labor practice by threatening an employee that it would remove the employee from a class action grievance if the employee did not stop raising complaints about temporary employees performing unit work at the Employer's Laflin facility. This portion of Exception 5 must be rejected for the following reasons.

In support of its position, the Union repeated the thrust of its merit-less arguments above in support of Exceptions 1 and 2, which remain merit-less. Further, since the Union maintains in Exception 5, "No employee was threatened to be removed from a class action grievance to which the complaining employee was not even a member of the class..." it bears repeating that (1) the ALJ correctly concluded that Union attorney Weinstock treated Stonier's grievance as if it were consolidated with the class action grievance (ALJD, p. 5, lines 24-26), and (2) the ALJ found Stonier more credible than Brown (ALJD, p. 6, fn. 16) and found that Brown told Stonier on March 31, 2011, that he was going to remove (or drop) her from the "class action suit" if she continued to complain about temporary employees working in the prep department (ALJD, p. 6, lines 24-25 and 30-32 and p. 10, lines 20-23). As noted above, there is no basis for reversing the ALJ's credibility finding. *Standard Dry Wall*, supra.

Additionally, the Union argues that even if a threat occurred, the Union effectively repudiated the conduct by pursuing Stonier's grievance through arbitration. This is not a "duty of fair representation" case where a union failed and refused to further process a grievance for arbitrary, discriminatory, or bad faith reasons, and then the union changes course to arbitrate the

matter to try to remedy a violation of the Act. Rather, this case involves an unlawful threat to remove an employee from a class action grievance, and there is no evidence that the Union has tried to remedy the matter by effectively rescinding or repudiating Brown's threat, either orally or in writing. In *Local 9431, CWA (Pacific Bell)*, 304 NLRB 446, 447 (1991), cited by the Union, the Board found that the union did not effectively repudiate or disavow the threats therein. The ALJ correctly noted that a lawful repudiation to be effective must be timely, unambiguous, specific as to the nature of the coercive conduct, adequately communicated to the employees involved, free from other illegal conduct, and accompanied by assurances that the respondent will not interfere with employees' Section 7 rights in the future, properly citing *Passavant Memorial Area Hosp.*, 237 NLRB 138, 138-39 (1978). (ALJD, p. 10, lines 28-33) As accurately stated by the ALJ, the Union did not come close to repudiating Brown's coercive threat by communicating to Stonier that she had the right to complain about temporary employees performing unit work without fear of prejudicing her individual grievance. (ALJD, p. 10, lines 34-39)

Therefore, the ALJ properly concluded that Brown's threat constituted a violation of Section 8(b)(1)(A). (ALJD, p. 10, lines 41-45 and p. 12, lines 9-12) Accordingly, the portion of Exception 5 concerning Brown's threat must be rejected.

B. Respondent Violated Section 8(b)(1)(A) by Threatening Employees of the Employer with Intraunion Discipline by Respondent, and with Discharge by the Employer, if They Talked with Other Employees about Union-related Matters

Citing the ALJD at pp. 7-8, the Union in bizarre Exception 3 excepts to the ALJ's Finding of Fact that Brown and/or Timek threatened Stonier and/or Burkhardt "to the extent that such finding implies that any Union action against them was said threat." The Union is apparently

aiming at Section VI of the ALJD, "Timek Admonishes Burkhardt and Pinkowsky." Neither Brown nor Stonier, who are among those named in Exception 3, were present. Further, Pinkowsky is not the subject of Exception 3, although the ALJD, p. 7, lines 17-32 involve Timek's threats to Burkhardt and Pinkowsky and the ALJD, p. 7, line 34 to p. 8, line 11 involve Timek's threats to Pinkowsky only.

The ALJ generally recites accurately the facts of what took place when Timek threatened Burkhardt and Pinkowsky (but these threats are not the subject of the violations at issue herein). Exception 3 is unsupported and must be rejected.

Citing the ALJD at pp. 8-9, the Union in Exception 4 excepts to the ALJ's Finding of Fact that Brown and/or Timek threatened Stonier and/or Burkhardt "to the extent that such finding implies that threatened Union action against them was said threat." The Union is aiming at Section VII of the ALJD, "The April 26 Meetings." Exception 4 must be rejected.

The Union points to the ALJD stating on p. 11 that there "was no evidence of concern" about "conflicts among employees in the prep department," and then refers only to some employees' complaints about Sullivan's starting time but does not support its assertion that "the transcript was rife with testimony about conflicts among employees..." What the ALJ actually said was that there was no evidence of concern by management, Sullivan, or any of the temporary employees, "much less a verbal or written complaint," hinting at conflict among employees in the prep department. The Union asserts that the ALJ found that the "circumstances" under which Timek's remarks to the employees at the meetings violated Section 8(b)(1)(A) were that there "was no evidence of concern" about "conflicts among employees in the prep department." Yet, the ALJ did not define the circumstances under which he found a violation but, instead, contextually referred to them being the statements Timek made at each of

the three prep department shifts prohibiting various protected concerted activities. The Union claimed that Timek's meetings arose out of his worry that employee strife could lead to discipline under potential Employer enforcement of its rules, when it was really Timek's desire to set forth these prohibitions.

The ALJ properly found Burkhardt's version (as well as Shupp's version) of what Timek said at the day shift meeting more credible than the one offered by Timek and he found Stonier's version (as well as Knight's version) of his presentation at the afternoon shift meeting more credible than his. There is no basis for reversing the ALJ's credibility findings in favor of these four witnesses for the General Counsel. *Standard Dry Wall*, supra. Indeed, Timek (but not Brown) threatened employees at these meetings.

Accordingly, for the reasons stated above, Exception 4 must be rejected.

The second part of Exception 5 is the Union excepting to the ALJ's Conclusion of Law that the Union engaged in an unfair labor practice by threatening employees at meetings with intraunion discipline by the Union and discharge by the Employer if they discussed Union-related matters with other employees. This portion of Exception 5 must be rejected.

The Union ridiculously claimed that this Conclusion of Law "is without a factual basis in the evidence." This certainly is not so. The Conclusion of Law flows from the credible facts (including threats) found by the ALJ, as detailed above and below. As noted above, the ALJ properly credited Burkhardt's and Shupp's versions of what Timek said at the day shift meeting and Stonier's and Knight's version of his presentation at the afternoon shift meeting. There simply is no basis for reversing the ALJ's credibility findings. *Standard Dry Wall*, supra. The ALJ specifically noted that at the day shift meeting, inter alia, Timek warned that employees could be disciplined, including being discharged, for making false statements about other

employees (ALJD, p. 8, lines 23-24; TR. 56), and he stated that Sullivan could press harassment charges against anyone who persisted in complaining about his work schedule, and that could result in discipline (ALJD, p. 8, lines 26-28; TR. 52). The ALJ specifically noted that at the afternoon shift meeting, inter alia, Timek stated that (1) an employee could be disciplined for making false statements about another employee (ALJD, p. 9, lines 8-9; TR. 151), (2) employees could not harass, intimidate, coerce, or talk about employees or call them names, and that they could be fired for intimidating or harassing other employees (ALJD, p. 9, lines 10-12 and p. 11, lines 16-21; TR. 151-52, 184), (3) Union members were not to speak at any time with temporary employees about Union business, as they were not Union members, and the Employer would discipline them for doing so (ALJD, p. 9, lines 12-14; TR. 62-63, 68, 69, 71, 72), and (4) if Union members spoke to other Union members about Union business, such as grievances and wage discrepancies, they would be disciplined by the Employer since he was the only one authorized to handle such matters. (ALJD, p. 9, lines 14-17 and p. 11, lines 16-21; TR. 63, 72)

In support of its position, the Union also rehashed Timek's alleged reason for holding the meetings, which is disputed above.

Therefore, the ALJ properly concluded that Timek's threats constituted a violation of Section 8(b)(1)(A). (ALJD, p. 11, lines 38-43 and p. 12, lines 9-14) Accordingly, the portion of Exception 5 concerning Timek's threats must be rejected.

V. CONCLUSION AND REMEDY

On the basis of the record as a whole and the applicable law discussed herein, it is respectfully submitted that the Board should reject Respondent's Exceptions in their entirety and affirm Judge Rosas' findings that Respondent violated Section 8(b)(1)(A) of the Act (1) by

threatening an employee of the Employer that Respondent would remove the employee from a class action grievance if the employee did not stop raising complaints about temps working in the Employer's Laflin, Pennsylvania plant, and (2) by threatening employees with intraunion discipline by Respondent, and with discharge by the Employer, if they talked with other employees about Union-related matters. Once the Board has found that Respondent has engaged in said unfair labor practices, Respondent should be ordered to cease and desist from those and any like or related conduct and to take certain affirmative actions necessary to effectuate the purposes of the Act, including the posting of a Notice to Members for sixty consecutive days.¹¹

Respectfully submitted,

Dated: July 13, 2012

/s/ David Faye
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¹¹ The ALJ's Notice inadvertently contains the Employer's name in parentheses after Respondent's name above the line for "(Labor Organization)."