

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KEYSTONE AUTOMOTIVE)
INDUSTRIES, INC.,)
)
Employer,)
)
and)
)
INTERNATIONAL BROTHERHOOD)
OF TEAMSTERS, LOCAL 853,)
)
Petitioner.)
_____)

Case 32-RC-137319

**EMPLOYER'S EXCEPTIONS TO HEARING OFFICER'S REPORT AND
RECOMMENDATIONS ON OBJECTIONS**

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ATTORNEYS FOR EMPLOYER

September 24, 2015

I. INTRODUCTION

Pursuant to Section 102.69(f) of the Board's Rules and Regulations, Keystone Automotive Industries, Inc. (Keystone or the Employer), by and through the undersigned counsel, hereby files these exceptions to the Hearing Officer's Report and Recommendations on Objections (Report) issued on September 3, 2015. The specific grounds for these exceptions and citations of authority are set forth in the Employer's supporting brief.

II. EXCEPTIONS

1. To the Hearing Officer's recommendation "that the Petitioner's objections be sustained in part because the evidence demonstrates that the Employer engaged in objectionable conduct." (Report, p. 1).
2. To the Hearing Officer's finding that "the credited evidence supports a conclusion that the Employer made promises of better pay, threatened a loss of benefits, and unlawfully interrogated employees." (Report, p. 1).
3. To the Hearing Officer's decision to generally credit the Union's witnesses' versions of the statements made at the meetings instead of the Employer's witnesses. (Report, p. 11).
4. To the Hearing Officer's decision to find the testimony of Ellis, Marable, and Stevens credible with respect to the statements made at the meetings. (Report, p. 11).
5. To the Hearing Officer's finding that "the Employer's communications to employees regarding the planned wage review crossed the line into objectionable statements . . . by implying that the wage review might not be forthcoming unless there was a 'no' vote." (Report, p. 11).
6. To the Hearing Officer's finding that "[t]he Employer did not merely inform employees that if the Union won, it had an obligation to bargain in good faith with the Union before it

implemented a wage increase, like the employer did in *Langdale Forest Products*.” (Report, p. 11).

7. To the Hearing Officer’s finding that “the Employer suggested that if the Union won, it could take ‘6 months or 18 months’ to be dealt with, that it would be a ‘long drawn-out process,’ and that there was a ‘really big chance’ that the employees would not get the raise or would end up losing money.” (Report, p. 11).
8. To the Hearing Officer’s finding that “[r]ather than suggesting that it would continue with its wage review as planned but while bargaining in good faith with the Union over the matter, the Employer’s comments suggested that it intended [to] go to battle with the Union and drag its heels over the wage review if the Union won.” (Report, p. 11).
9. To the Hearing Officer’s finding that “the Employer’s comments about its planned wage review interfered with employees’ free choice in the election because instead of simply informing employees that a wage survey was taking place, the Employer went a step further and told employees that a ‘reasonable person’ could expect to receive a 12.5 percent wage increase if the Employer won the election.” (Report, p. 12).
10. To the Hearing Officer’s finding that “[t]he Employer’s comments constituted a not-so-subtle suggestion that the employees were guaranteed to get the wage increase if they did not support of (sic) the Union.” (Report, p. 12).
11. To the Hearing Officer’s finding that this case is similar to *G & K Services, Inc.* and *California Gas Transport*. (Report, p. 12).
12. To the Hearing Officer’s finding that “the Employer’s suggestion about what a ‘reasonable person’ might expect the outcome of the wage review to be was also ‘tantamount to a wink’

that the employees could count on the 12.5 percent raise if the Union lost the election.” (Report, p. 12).

13. To the Hearing Officer’s finding that the Employer’s PowerPoint presentation’s statement that the process for granting wage increases would go forward regardless of the outcome of the election was negated by the Employer’s statements regarding what a “reasonable person/reasonable man” could assume about wage increases and “the statements that the Employer made regarding the lengthy delays that employees could expect in receiving any wage increase if the Union won the election.” (Report, p. 12).
14. To the Hearing Officer’s recommendation that the Board sustain the “Promise of Wage Increases” portion of Objection 4. (Report, p. 12).
15. To the Hearing Officer’s statement that the alleged wage increase promise “clearly affected a significant number of employees in the bargaining unit.” (Report, p. 12).
16. To the Hearing Officer’s finding that “Ellis testified that he told unit employee Alfonso (last name unknown) and other employees, whose names he could not recall, about the statement that Bellido had made to him.” (Report, p. 18).
17. To the Hearing Officer’s finding that Rolando Bellido “implied that the Employer may or may not take action solely on its own initiative for reasons unrelated to economic necessities and known only to it.” (Report, p. 19).
18. To the Hearing Officer’s finding that “there is sufficient evidence to establish that Ellis, Alfonso, and at least two other employees were aware of the threat.” (Report, p. 19).
19. To the Hearing Officer’s finding that “[g]iven the Employer’s other objectionable conduct, Bellido’s statement could have interfered with the free choice of enough employees to impact the results of the election.” (Report, p. 19).

20. To the Hearing Officer's recommendation that the Board sustain the "Threats Regarding Core Program" portion of Objections 6 and 11. (Report, p. 19).
21. To the Hearing Officer's decision to discredit Randi Graham's testimony with respect to the alleged threats regarding leniency. (Report, p. 20).
22. To the Hearing Officer's finding that "Cervantes, Ellis, and Bellido all testified that Graham met with a small group of employees and told them that if the Union were voted in, then the Employer would be less flexible regarding certain conditions of the employees' employment." (Report, p. 20).
23. To the Hearing Officer's finding that "[t]he credited testimony shows that Graham specifically told employees that if the Union were voted in, then the Employer would be less flexible regarding certain conditions of the employees' employment." (Report, p. 20).
24. To the Hearing Officer's recommendation that the Board sustain the "Threats Regarding Leniency" portion of Objections 6 and 11. (Report, p. 20).
25. To the Hearing Officer's finding that Graham's comments were not similar to the employer's comments in *Dish Network Corp.*, *International Baking Co.*, *Ben Venue Laboratories*, *FGI Fibers*, *Tri-Cast, Inc.*, or *United Artist Theatre*. (Report, p. 21).
26. To the Hearing Officer's finding that "[t]he credited testimony shows that when Graham spoke with the employees, she did not explain that the Employer would only be less lenient if a certain provision were included in a collective-bargaining agreement[]" and "[i]nstead her threats were much broader and she predicted that the Employer would eliminate all perks regardless of whether they were covered by a possible contract with the Union." (Report, p. 21).

27. To the Hearing Officer's finding that "Graham's predictions were prefaced by her admonition that she told employees she took it personally that they had contacted the Union." (Report, p. 21).
28. To the Hearing Officer's recommendation that the Board sustain Objections 6 and 11 in their entirety. (Report, p. 21).
29. To the Hearing Officer's finding that Faumuina "told bargaining unit employees Norman Panado, Marable, and Stevens about what was said to him during the ride-alongs." (Report, p. 25).
30. To the Hearing Officer's finding that "there is evidence of coercion when members of management interrogated Faumuina regarding his Union support and the Union support of others." (Report, p. 27).
31. To the Hearing Officer's decision to credit Faumuina over Prum. (Report, p. 27).
32. To the Hearing Officer's decision to draw an adverse inference from the fact that the Employer did not call Romero, Alberico, or Harrison to testify. (Report, p. 27).
33. To the Hearing Officer's findings that "the questions that Faumuina was asked during his ride-alongs were coercive" and that "Faumuina was coercively interrogated." (Report, p. 27).
34. To the Hearing Officer's finding that "Faumuina was questioned by members of management while he was constrained in an Employer vehicle." (Report, p. 27).
35. To the Hearing Officer's finding that "the coercive questioning that took place during Faumuina's ride-alongs was disseminated to bargaining unit employees Norman Panado, Brandon Marable, and Eric Stevens, at a minimum." (Report, p. 27).

36. To the Hearing Officer's finding that "the coercive questioning of Faumuina was objectionable because when other employees learned of the interrogation it would have had a reasonable tendency to interfere with their free and uncoerced choice in the election, and given the Employer's other objectionable conduct, could have impacted the results of the election." (Report, p. 27).
37. To the Hearing Officer's recommendation that the Board sustain the portion of Objection 9 regarding Faumuina's interrogation. (Report, p. 27).
38. To the Hearing Officer's findings that "the questions that Faumuina was asked are very different from the general question of 'what's up with the rumor of the union I'm hearing' that was asked in *Toma Metals, Inc.*" (Report, p. 27).
39. To the Hearing Officer's finding that "there is no evidence that the questions that the members of management repeatedly asked Faumuina did not intimidate him." (Report, p. 27).
40. To the Hearing Officer's decision to credit Crowl over Prum. (Report, pp. 28-29).
41. To the Hearing Officer's findings that "Crowl's interrogation reasonably tended to interfere with, restrain, or coerce him in the exercise of his Section 7 rights because there is no evidence that he was an open and active Union supporter, he was called into a private room by the general manager, and he was asked questions regarding his support of the Union and other employees' support of the Union" and "Crowl specifically informed Prum that he felt uncomfortable disclosing coworkers' union activities as he was being asked to do." (Report, p. 29).

42. To the Hearing Officer's finding that "[a]lthough Crowl was a temporary employee, the coercive statements that were made to him were still objectionable because they were disseminated to bargaining unit employees." (Report, p. 29).
43. To the Hearing Officer's recommendation that the Board sustain the portion of Objection 9 regarding the interrogation of Crowl. (Report, p. 29).
44. To the Hearing Officer's recommendation that the Board sustain Objection 9 in its entirety regarding the interrogations of Faumuina and Crowl. (Report, p. 29).
45. To the Hearing Officer's recommendation that the election held on February 19, 2015, be set aside and that a new election be conducted insofar as there is sufficient evidence to establish that the Employer's conduct as set forth in Objections 4, 6, 9, and 11 reasonably tended to interfere with employee free choice. (Report, p. 41).

s/ Reyburn W. Lominack, III
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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2015, I e-filed the foregoing **EMPLOYER'S EXCEPTIONS TO HEARING OFFICER'S REPORT AND RECOMMENDATIONS ON OBJECTIONS** using the Board's e-filing system and that it was served on counsel for the Union via email the same day.

/s/ Reyburn W. Lominack, III