NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Novelis Corporation *and* United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers, International Union, AFL–CIO.

Novelis Corporation, *and* United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers, International Union, AFL–CIO. Cases 03–CA–121293, 03–CA–121579, 03–CA–122766, 03–CA–123346, 03–CA–123526, 03–CA–127024, 03–CA–126738, and 03–RC–120447

August 26, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND MCFERRAN

On January 30, 2015, Administrative Law Judge Michael A. Rosas issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Intervenors filed exceptions and a memorandum of law in support.[1] The General Counsel filed separate answering briefs in response to the Respondent's and the Intervenors' exceptions, and the Charging Party filed single answering brief to both sets of exceptions. Thereafter, the Respondent filed separate reply briefs to the answering briefs. The Respondent also filed motions to reopen the record, the General Counsel filed oppositions to each of the Respondent's motions, and the Respondent filed reply briefs to the General Counsel's opposition briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[2] and briefs and has decided to affirm the judge's rulings,[3] findings,[4] and conclusions, as modified here, and to adopt the recommended Order as modified and set forth in full below.[5]

I. BACKGROUND

The complaint alleges that the Respondent committed numerous and widespread unfair labor practices during the Union's 2013–2014 campaign to organize the Respondent's employees at its aluminum products manufacturing plant in Oswego, New York. The campaign began after the Respondent announced on December 16, 2013, that it would implement changes that would effectively reduce employees' compensation. Specifically, the Respondent stated that, beginning January 1, 2014,[6] employees would no longer receive Sunday premium pay, and that holidays and vacation days would no longer be used in calculating overtime eligibility (hereinafter referred to as "unscheduled overtime pay"). In response, employee Everett Abare discussed the Respondent's announced changes with coworkers and then met with James Ridgeway, the Union local's president, to discuss seeking union representation.

---

[1] During the hearing, the judge granted four bargaining unit employees limited Intervenor status to oppose the General Counsel's request for a bargaining order.

[2] The General Counsel requests that we disregard the Respondent's exceptions because the Respondent's supporting brief did not comply with Sec. 102.46(c) of the Board's Rules and Regulations. The General Counsel's request is denied inasmuch as the exceptions and supporting brief substantially comply with the Rule's requirements. See *La Gloria Oil & Gas Co*., 337 NLRB 1120, 1120 fn. 1 (2002).

The General Counsel argues in his answering brief to the Intervenors' exceptions and supporting memorandum that those exceptions and arguments should be struck to the extent they exceed the limited grant of participation by addressing the merits of the 8(a)(1) and (3) allegations. We deny the General Counsel's request because the Intervenors' exceptions and corresponding arguments do not change the result here.

[3] The Respondent excepts to many of the judge's evidentiary and procedural rulings. Sec. 102.35 of the Board's Rules and Regulations provides, in pertinent part, that a judge should "regulate the course of the hearing" and "take any other action necessary" in furtherance of the judge's stated duties and as authorized by the Board's Rules. Thus, the Board accords judges significant discretion in controlling the hearing and directing the creation of the record. See *Parts Depot, Inc*., 348 NLRB 152, 152 fn. 6 (2006), enfd. mem. 260 Fed. Appx. 607 (4th Cir. 2008). Further, it is well established that the Board will affirm an evidentiary ruling of a judge unless that ruling constitutes an abuse of discretion. See *Aladdin Gaming, LLC*, 345 NLRB 585, 587 (2005), petition for review denied sub nom. *Local Joint Executive Board of Las Vegas v. NLRB*, 515 F.3d 942 (9th Cir. 2008). After a careful review of the record, we find no abuse of discretion in any of the challenged rulings.

[4] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In addition, some of the Respondent's exceptions allege that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contentions are without merit.

[5] We shall amend the judge's Conclusions of Law and modify his recommended Order to conform to the violations found and to the Board's standard remedial language. We shall substitute a new notice to conform to the Order as modified.

[6] All dates are in 2014, unless otherwise noted.

Between December 17, 2013, and January 5, Abare and the rest of an organizing committee of about 25 employees obtained 351 signed union authorization cards from the almost 600 coworkers who would comprise the prospective unit. On January 9, upon reaching a card majority showing of support, the Union submitted a demand for voluntary recognition to the Respondent. The Respondent declined recognition, and the Union immediately filed a petition for a Board representation election. On the same date, the Respondent announced that it was restoring Sunday premium pay and unscheduled overtime pay. The election was held on February 20 and 21, resulting in a tally of 273 votes for the Union, and 287 against it, with 10 challenged ballots The Union filed objections to the election that have been consolidated for consideration with the unfair labor practice allegations in this proceeding.

On March 29, Abare posted a comment on Facebook that was critical both of his pay and of those employees who voted against the Union. On April 4, the Respondent demoted Abare on the grounds that his posting violated its social media policy.

II. JUDGE'S FINDINGS

The judge found that the Respondent engaged in numerous and pervasive violations of Section 8(a)(1) of the Act during the preelection period. Specifically, he found that the Respondent restored Sunday premium pay and unscheduled overtime pay to discourage employees from supporting the Union,[7] threatened employees with plant closure if they voted for union representation,[8] threatened that it would lose business if they selected the Union as their bargaining representative, threatened employees with job loss, a reduction in wages, and more onerous working conditions, disparaged the Union,[9] maintained an overly broad work rule that interfered with employees' use of the Respondent's email system for Section 7 purposes, selectively and disparately enforced the Respondent's posting and distribution rules,[10] prohibited employees from wearing union insignia on their uniforms while permitting employees to wear antiunion and other insignia, interrogated employees about union activities,[11] solicited employees' complaints and grievances and promised employees improved terms and conditions of employment if they did not select the Union, and maintained and gave effect to an overly broad unlawful social media policy. He also found that the Respondent violated Section 8(a)(3) by its postelection demotion of Abare.[12]

---

[7] We adopt the judge's findings that the Respondent violated Sec. 8(a)(1) by restoring Sunday premium pay and unscheduled overtime pay to discourage employees from supporting the Union. However, we do not rely on his finding that the solicitation of crew leaders to sign authorization cards provided circumstantial evidence of the Respondent's prior knowledge of the union campaign, nor do we rely on any suggestion that the Union's January 9 demand letter provided such evidence of employer knowledge.

[8] We find that the statements at issue are more accurately described as threats of job loss, and we will modify the Order and notice language for this violation accordingly.

[9] The judge found that the Respondent unlawfully disparaged the Union by posting a redacted letter from the Board's Regional Office to the Respondent and, using this redaction, falsely representing to the employees that the Union had filed charges seeking the rescission of their Sunday premium pay and unscheduled overtime, and that the Respondent would have to rescind these benefits retroactive to January 1 as a result. We agree with the judge that the Respondent's conduct violated the Act, because its statements and misuse of the Region's letter were clearly calculated to mislead employees as to the Union's conduct with regard to restoration of the benefits. Under these circumstances, the Respondent's conduct violated Sec. 8(a)(1) as it constitutes interference, restraint, and coercion that unlawfully tended to undermine the Union. See *Faro Screen Process, Inc.*, 362 NLRB No. 84, slip op. at 1–2 (2015), and cases cited therein.

[10] The judge found that, on four occasions in January, the Respondent's supervisors unlawfully removed union literature from break areas and either replaced it with company literature of a similar nature or permitted company literature to remain in those break areas. He reasoned that the supervisors' conduct was unlawfully discriminatory. Although we agree with the judge that the Respondent violated Sec. 8(a)(1) on all four occasions, we affirm these violations because each of these supervisors removed union literature from a mixed use area. See *Superior Emerald Park Landfill, LLC,* 340 NLRB 449, 456-457 (2003) (confiscation of union literature from mixed use employee break area found unlawful). Chairman Pearce agrees with the judge's rationale for all of these findings.

[11] We adopt the judge's findings that the Respondent's supervisor Bro violated Sec. 8(a)(1) by interrogating employees on January 23 and 30. We find it unnecessary to pass on whether supervisor Formoza unlawfully interrogated employees on January 28, as any such finding would be cumulative and would not affect the remedy. For the same reason, Chairman Pearce finds it unnecessary to pass on whether Bro unlawfully interrogated employees on January 23.

We also find that, as alleged in the complaint, Bro violated Sec. 8(a)(1) by threatening employees on January 23 that they did not have to work for the Respondent if they were unhappy with their terms and conditions of employment. Although the judge did not make a specific finding on this complaint allegation, he addressed the issue in his analysis and included the violation in his conclusions of law.

Finally, we agree with the judge that on January 28 supervisor Formoza violated Sec. 8(a)(1) by impliedly threatening an employee with layoff if employees selected the Union as their bargaining representative. We shall modify the Conclusions of Law, Order, and notice to include this violation.

[12] We affirm the judge's finding that the Respondent violated Sec. 8(a)(1) and (3) by demoting Abare because of his protected concerted and union activities. However, we do not rely on the judge's analysis under *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir.1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). The *Wright Line* analysis is appropriately used in cases that turn on the employer's motive. *Phoenix Transit System*, 337 NLRB 510, 510 (2002), enfd. 63 Fed. Appx. 524 (D.C. Cir. 2003). But where the conduct for which the employee is disciplined is protected activity, the

Based on these unfair labor practices and the parallel election objections, the judge concluded that the results of the election must be set aside. The judge further concluded that the Board's traditional remedies could not alone erase the coercive effects of the Respondent's unlawful conduct, and that a *Gissel*[13] remedial bargaining order was therefore necessary. The Respondent and the Intervenors except to the issuance of a bargaining order. In addition to disputing the judge's unfair labor practice findings, they contend that whatever violations occurred can adequately be remedied through traditional means. They also dispute the judge's finding that the Union had majority support on January 9 and assert that the General Counsel failed to show that any unfair labor practices actually caused a decline in employee support for the Union. Finally, the Respondent contends that employee and management turnover and the passage of time have substantially dissipated the adverse effects of any unlawful conduct.

III. ANALYSIS

For reasons previously stated here and in the judge's decision, we affirm his numerous unfair labor practice findings. As discussed below, we find no merit in the Respondent's and the Intervenors' arguments that a *Gissel* bargaining order is not necessary to remedy the lingering effects of that unlawful conduct.

As a preliminary matter, we briefly address the argument that the judge erred in finding that the General Counsel properly authenticated, and entered into the record, signed authorization cards from 351 of 599 unit employees. The Respondent contends that many cards were improperly procured on the basis of misrepresentations. It argues that dozens of employees testified that they were told that signing an authorization card would entitle the signer to receive information about the Union, would be used only to get an election, or would not count as a vote for the Union. We find no merit in the Respondent's contention.

It is well-settled Board law that a card that unambiguously states on its face that it is for the purpose of authorizing the union to represent employees in collective bargaining is presumed valid.[14] Here, the language on the Union's card explicitly and unambiguously indicated that its purpose was to authorize "representation" in "collective bargaining" and to be "used to secure union recognition and collective bargaining rights."

In order to invalidate an unambiguous card, it must be clear that the signers were told to disregard completely the clear language on the card, which, as found by the judge, did not occur in this case. Although a few solicitors indicated that the card would be used to get more information or get an election, they did not direct the signer to disregard the language on the card. To the contrary, the evidence shows that card solicitors consistently directed employees to read the cards. They asked employees to provide the detailed information requested by the card and to sign it, and told employees that they could have their card returned if they changed their minds.

Further, we find that the Respondent's assertion that the judge erred in finding unwitnessed cards authenticated is unavailing. It is well settled that the Board "will … accept as authentic any authorization cards which were returned by the signatory to the person soliciting them even though the solicitor did not witness the actual act of signing." *McEwen Mfg. Co*., 172 NLRB 990, 992 (1968). In addition, we find without merit the Respondent's contention that several of the union authorization cards were not authenticated at trial because the signatures were verified by the judge rather than the actual signer. As the judge found, the Board has long held, consistent with Section 901(b)(3) of the Federal Rules of Evidence, that a judge or a handwriting expert may determine the genuineness of signatures on authorization cards by comparing them to W-4 forms in the employer's records. See *Traction Wholesale Center Co*., 328 NLRB 1058, 1059 (1999), enfd. 216 F.3d 92 (D.C. Cir. 2000);

Wright Line analysis is not appropriate. Id.; see also *St. Joseph's Hospital*, 337 NLRB 94, 95 (2001). Here, it is undisputed that the Respondent demoted Abare because of his social media posting. The judge found, and we agree, that Abare's Facebook posting constituted protected, concerted activity and union activity. Further, we agree with the judge that, under *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 4-6 (2014), affd. 629 Fed. Appx. 33 (2d Cir. 2015), Abare's Facebook posting did not lose its protected status under the Act. See also *NC-DSH, LLP d/b/a Desert Springs Hospital Medical Center,* 363 NLRB No. 185, slip op. at 1, fn. 4 (2016) (clarifying that *Triple Play* and not *Wright Line* is applicable where discipline is for protected concerted activity). However, in finding that Abare's conduct did not forfeit the Act's protection, we do not rely on the judge's invocation of *NLRB v. Electrical Workers IBEW Local 1229 (Jefferson Standard)*, 346 U.S. 464 (1953), and *Linn v. United Plant Guard Workers Local 114*, 383 U.S. 53 (1966), because this case does not present any issues regarding disparagement or disloyalty. We note that the Respondent specifically stated that it was not relying on *Jefferson Standard* and *Linn;* rather, it contended that Abare's conduct lost any protection under the Act because it was "discriminatory" and "threatening to co-employees." We do not agree with these characterizations.

[13] See *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 610 (1969).

[14] See *Cumberland Shoe Corp.*, 144 NLRB. 1268 (1963), and *Gissel*, supra, 395 U.S. at 606 ("In resolving the conflict among the circuits in favor of approving the Board's Cumberland rule, we think it sufficient to point out that employees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature.")

Justak Bros. and Co., 253 NLRB 1054, 1079 (1981), enfd. 664 F.2d 1074 (7th Cir. 1981). Here the judge properly authenticated cards by comparing the signatures on them to those in the Respondent's records.

We find, therefore, in agreement with the judge, that the General Counsel proved the Union had achieved majority status by January 9, when it demanded recognition. With this prerequisite to recognition having been established, we next consider the propriety of a bargaining order.

In *Gissel,* the Supreme Court identified two categories of employer misconduct that warrant imposition of a bargaining order. Category I cases are "exceptional" and "marked by 'outrageous' and 'pervasive' unfair labor practices." 395 U.S. at 613. Category II cases are "less extraordinary" and "marked by less pervasive practices which nonetheless still have a tendency to undermine majority strength and impede the election processes." Id. at 614. In category II cases, the "possibility of erasing the effects of past practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight and . . . employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order." Id. at 614–615; see also *California Gas Transport*, 347 NLRB 1314, 1323 (2006), enfd. 507 F.3d 847 (5th Cir. 2007).

Although the judge did not address which *Gissel* category is implicated here, his analysis shows that he considered it a category II case. We agree that the Respondent's violations warrant a bargaining order under category II based on the "'seriousness of the violations and the pervasive nature of the conduct, considering such factors as the number of employees directly affected by the violations, the size of the unit, the extent of the dissemination among employees, and the identity and position of the individuals committing the unfair labor practices.'" *Hogan Transports, Inc*., 363 NLRB No. 196, slip op. at 6 (2016) (quoting *Cast-Matic Corp. d/b/a Intermet Stevensville*, 350 NLRB 1349, 1359 (2007)).

In the short preelection period from January 9 to February 20, the Respondent committed numerous unfair labor practices, including three particularly serious violations that are likely to remain in the employees' minds and make it extremely unlikely that a fair re-run election could ever be held.

First, on the same day that it received the Union's recognition demand, the Respondent granted a substantial benefit to employees by restoring Sunday premium pay and unscheduled overtime pay to forestall the momentum of the organizing campaign. The restoration of Sunday premium pay and unscheduled overtime pay were tantamount to a pay raise.[15] Grants of wage increases have long been held to be a substantial indication that a bargaining order is warranted because they have "'a particularly long lasting effect on employees and are difficult to remedy by traditional means not only because of their significance to the employees, but also because the Board's traditional remedies do not require a respondent to withdraw the benefits from the employees."' *Evergreen America Corp.*, 348 NLRB 178, 180 (2006), enfd. 531 F.3d 312 (4th Cir. 2008) (quoting *Gerig's Dump Trucking*, 320 NLRB 1017, 1018 (1996)); see also *Pembrook Management*, 296 NLRB 1226, 1228 (1989) (discussing cases in which bargaining orders were issued based solely on the grant of wage increases). Because the restoration of these benefits will regularly appear in the employees' paychecks, it is a continuing reminder that "'the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.'" *Holly Farms Corp*., 311 NLRB 273, 282 (1993), enfd. 48 F.3d 1360 (4th Cir. 1995) (quoting *NLRB v. Exchange Parts Co*., 375 U.S. 405, 409 (1964)). As the Board noted in *Pembrook Management,* where an employer unilaterally grants a wage increase after a union campaign has started, "'[i]t is difficult to conceive of conduct more likely to convince employees that with an important part of what they were seeking in hand, union representation might no longer be needed.'" 296 NLRB at 1228 (quoting *Tower Records*, 182 NLRB 382, 387 (1970), enfd. 1972 WL 3016 (9th Cir. 1972)). This is particularly so in the instant case, where the Respondent's announced elimination of Sunday premium pay and reduction in unscheduled overtime was the flashpoint for employees seeking collective-bargaining representation. Thus, once the Respondent restored these benefits, it is likely that many employees no longer saw a need for such representation.

The Respondent compounded the lasting coercive effects of this violation during captive audience employee meetings held a few days before the election. At those meetings, President and Chief Executive Officer Phil Martens displayed to employees a redacted letter from the NLRB Regional office that he and Plant Manager Chris Smith claimed contained unfair labor practice charges filed by the Union relating to the restoration of Sunday premium and unscheduled overtime pay. Smith stated that the Respondent would have to rescind the newly restored benefit if the Board found it "guilty" as charged. By this unlawfully false and misleading allegation, the Respondent sought to undermine the employees'

[15] This is so regardless of whether the unit employees had yet experienced any actual adverse effects from the announced January 1 elimination of these benefits, as the Respondent contends.

support for the Union by blaming it for the potential loss of the very benefits that they had looked to the Union to restore and protect. See *Hogan Transports, Inc*., 363 NLRB No. 196, slip op. at 2-3 (coercive effects of other serious violations accentuated by blaming the union for attempting to take away an unlawful wage increase).

Second, during these same captive audience meetings, Martens and Smith also threatened employees with job loss. Martens made statements emphasizing that his prior personal commitment to preserving and expanding job opportunities at Oswego would cease if the Union won the election; thereafter, it would become a "business decision." Martens stated, "I had made a commitment to this plant, I had made a commitment to you, and I decided to close Saguenay. When I closed Saguenay, 140 people lost their jobs. …We kept the employment levels here at a sustained level. We added product into this plant, and we closed the Saguenay facility." Characterizing his past commitment to the Oswego employees as "unparalleled" and pointedly reminding them that "I've maintained your jobs," Martens then sharply contrasted how perilous it would be to undermine that commitment by voting for the Union. Plant Manager Smith added that he "didn't envision . . . having a potential third party [the Union] to work with" and he suggestively questioned the Respondent's ability "to be successful" with the Union representing employees.

Martens' implicit threat of job loss, coupled with Smith's threat, lacking any objective basis, that unionization would impair the Respondent's ability to perform its contractual obligations and would cause the Respondent to lose current and future contracts at the Oswego plant, sent the clear message to employees that their job security would be jeopardized if they selected the Union. The Board has long held that because threats of plant closure and other types of job loss are among the most flagrant of unfair labor practices, they are likely to persist in the employees' minds for longer periods of time than other unlawful conduct, and are particularly likely to destroy the chances of a fair re-run election. See *Cardinal Home Products*, 338 NLRB 1004, 1011 (2003); *Evergreen America Corp*., 348 NLRB at 180.

Finally, the Respondent committed another violation that is particularly likely to destroy the chances of a fair re-run election when it demoted Abare, the leader of the organizing effort and a well-known union adherent to the Respondent, shortly after the election because of his protected social media posting reflecting continuing support of the Union and discontent with existing conditions of employment. See *NLRB v. Jamaica Towing*, 632 F.2d 208 (2d Cir. 1980). Despite the large size of the unit, the judge found that Abare's demotion was widely known among the employees. Thus, it is likely to have a lasting effect on a large percentage of the Respondent's work force and to remain in employees' memories for a long period. Furthermore, it is notable that the Respondent took unlawful action against a prominent union adherent after the Union lost the election; an employer's continuing hostility toward the employees' exercise of their Section 7 rights even after the election is strong evidence that its unlawful conduct will persist in the event of another organizing campaign. See *M. J. Metal Products*, 328 NLRB 1184, 1185 (1999) (quoting *Garney Morris, Inc*., 313 NLRB 101, 103 (1993), enfd. 47 F.3d 1161 (3d. Cir. 1995)).

In addition to the particularly likely serious effect of the above violations, we rely upon the cumulative coercive impact of the Respondent's other unfair labor practices, which were both numerous and serious. Most notably, these include the maintenance of unlawfully overbroad rules restricting employees' protected concerted activities and the other unlawful statements made by Martens and Smith to the employees attending the preelection captive audience meeting, including threats of loss of business, reduced pay, and more onerous working conditions.[16] Martens and Smith were the Respondent's highest-ranking company executive and the highest-ranking plant official, respectively. The Board has repeatedly emphasized that "[w]hen the highest level of management conveys the employer's antiunion stance by its direct involvement in unfair labor practices, it is especially coercive of Section 7 rights and the employees witnessing these events are unlikely to forget them." *Michael's Painting, Inc*., 337 NLRB 860, 861 (2002), enfd. 85 Fed. Appx. 614 (9th Cir. 2004); see also *Aldworth Co*., 338 NLRB 137, 149 (2002), enfd. sub nom. *Dunkin' Donuts Mid-Atlantic Distribution Center, Inc. v. NLRB*, 363 F.3d 437 (D.C. Cir. 2004) (captive audience meetings convey a particularly significant impact when conducted by high-level officials).

In evaluating the appropriateness of a *Gissel* order, we have given appropriate consideration to the inadequacy of the Board's traditional remedies to remedy the Respondent's conduct in this case. See *Hogan Transports, Inc*., 363 NLRB No. 196, slip op. at 7. Given the severity and long lasting effect of the violations, the possibility of erasing the effects of the Respondent's unfair labor

[16] The Respondent has excepted to the judge's findings that these preelection meetings were mandatory and attended by all employees. However, even based on the testimony upon which the Respondent relies, the meetings were attended by at least 250–300 employees. We have no difficulty finding that unlawful threats made to this number of employees are pervasive, even in an overall unit of nearly 600 employees.

practices and of ensuring a fair election by the use of traditional remedies is slight.

In reaching that conclusion, we observe that this is a case where the sum of the Respondent's misconduct is far greater than its individual parts with respect to its impact on employees' ability to freely exercise their choice whether to select union representation. The Respondent's misconduct coalesced into a potent theme of contrasting its current personal commitment to the employees with the prospect of a "third-party" union that would lead only to dire economic consequences for them. As found by the judge, and as referenced above, in several captive-audience meetings CEO Martens made a particularly dramatic reference to his sparing the Oswego facility from closure out of loyalty to its employees, while shutting down another facility and laying off its employees instead. Plant Manager Smith followed up with a similar message.

Further reinforcing the union-as-interfering-outsider theme, the speeches culminated in Martens' false and purposely misleading claim that the Union was trying to rescind the Sunday and overtime benefits that the Respondent had reinstituted for its employees during the Union's campaign—a claim that he communicated in part by holding up a misleadingly redacted letter from a Board investigator. These benefits were clearly of great importance to the employees; the Respondent's original announcement of their proposed elimination was met by 50-60 employees walking off the job to "demand answers." The meeting at which the Respondent confirmed their elimination was immediately followed by Abare's discussion of the issue with his coworkers, after which he contacted the Union's local president to arrange for a meeting the next day. Given this persistent painting of the Union as a threat to employees' job security and economic well-being—accomplished via tactics such as vivid characterizations of its large cutbacks at other plants and outright misrepresentation of the Union's actions—we find that merely requiring the Respondent to refrain from unlawful conduct in the future, to reinstate Abare to his former position with backpay, to rescind unlawful rules, and to post a notice would not be sufficient to dispel the coercive atmosphere that this Respondent has created.

Moreover, we have duly considered the Section 7 rights of all employees involved, including those of the Intervenors. See id. The *Gissel* opinion itself "reflects a careful balancing of the employees' Section 7 rights to bargain collectively and to refrain from such activity." *Mercedes Benz of Orlando Park*, 333 NLRB 1017, 1019 (2001), enfd. 309 F.3d 452 (7th Cir. 2002) (internal quotations omitted). The rights of the employees favoring unionization, the majority of whom expressed their views by signing authorization cards, are protected by the bargaining order. At the same time, the rights of the employees opposing the Union are safeguarded by their access to the Board's decertification procedure under Section 9(c)(1) of the Act, following a reasonable period of time. Id.

For all of the foregoing reasons, we agree with the judge that a *Gissel* order is warranted.[17]

AMENDED CONCLUSIONS OF LAW

1. The Respondent, Novelis Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers,

[17] On June 5, 2015, the Respondent filed a motion to reopen the record to introduce evidence of alleged significant employee and management turnover and the passage of time since the judge imposed the bargaining order, arguing that such evidence makes that order inappropriate. On January 27, 2016, and on August 16, 2016, the Respondent filed motions to supplement this request in which it proffered additional evidence regarding employee and management turnover. We deny the Respondent's motions to reopen the record. The Board does not consider turnover among bargaining unit employees or management officials and the passage of time in determining whether a *Gissel* order is appropriate. See *Garvey Marine, Inc.*, 328 NLRB 991, 995 (1999), enfd. 245 F.3d 819 (D.C. Cir. 2001); *Be-Lo Stores*, 318 NLRB 1, 15 (1995), affd. in part and revd. in part 126 F.3d 268 (4th Cir. 1997). Rather, the Board's established practice is to evaluate the appropriateness of a bargaining order as of the time the unfair labor practices were committed. See *State Materials, Inc.*, 328 NLRB 1317, 1317–1318 (1999).

Even if we were to consider the Respondent's evidence, it would not require a different result. While some of the employees who were employed at the time of the unlawful conduct may no longer work for the Respondent, a substantial number of unit employees who *would* recall the Respondent's serious and widespread unlawful labor practices remain in the Respondent's employ. Those employees are likely to have informed any new employees of what transpired during the Union's organizing campaign. See *State Materials*, 328 NLRB at 1317–1318. As the United States Court of Appeals for the Fifth Circuit stated, "Practices may live on in the lore of the shop and continue to repress employee sentiment long after most, or even all, original participants have departed." *Bandag, Inc. v. NLRB*, 583 F.2d 765, 772 (1978). Furthermore, the Respondent's ownership remains the same and some of the management personnel who engaged in the unfair labor practices remain employed by the Respondent.

As for the passage of time, almost two and one-half years have elapsed since the election, and approximately one and one-half years since the date of the judge's decision. Given the number of employees exposed to the Respondent's unlawful conduct and the nature and severity of that conduct, we do not consider the passage of time since the Respondent's violations to be unacceptable for *Gissel* purposes.

In adopting the bargaining order, we find it unnecessary to rely on the judge's discussion of the Respondent's postelection pay raises. Therefore, we find it unnecessary to pass on the Respondent's "Conditional Motion To Reopen The Record For The Limited Purpose Of Presenting Evidence Rebutting Uncharged Conduct Occurring After The Election."

International Union, AFL–CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct:

(a) Threatening employees with job loss if they select the Union as their bargaining representative.

(b) Threatening employees with a reduction in wages if they select the Union as their bargaining representative.

(c) Threatening employees with more onerous working conditions if they select the Union as their bargaining representative.

(d) Threatening employees by telling them that they did not have to work for the Respondent if they are unhappy with their terms and conditions of employment.

(e) Threatening an employee with layoff if employees selected the Union as their bargaining representative.

(f) Threatening employees that the Respondent would lose business if they select the Union as their bargaining representative.

(g) Misrepresenting that the Union is seeking to have the Respondent rescind employees' pay and/or benefits and blaming the Union by telling employees that they would have to pay back wages retroactively as a result of unfair labor practice charges filed by the Union.

(h) Interrogating employees about their union membership, activities, and sympathies.

(i) Prohibiting employees from wearing union insignia on their uniforms while permitting employees to wear antiunion and other insignia.

(j) Maintaining an overly broad work rule that unlawfully interferes with employees' use of the Respondent's email system for Section 7 purposes.

(k) Selectively and disparately enforcing the Respondent's posting and distribution rules by prohibiting union postings and distributions while permitting nonunion and antiunion postings and distributions.

(l) Removing union literature from mixed use areas.

(m) Granting wage increases and benefits in order to discourage employees from selecting union representation.

(n) Soliciting grievances and promising to remedy them in order to discourage employees from selecting union representation.

(o) Maintaining and giving effect to its overly broad unlawful social media policy.

4. The Respondent violated Section 8(a)(3) and (1) of the Act by demoting Everett Abare because of his support for the Union or engaging in other protected concerted activities.

5. The following employees constitute a union appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees employed by the Employer at its Oswego, New York facility, including the classifications of Cold Mill Operator, Finishing Operator, Recycling Operator, Remelt Operator, Crane Technician, Mechanical Technician, Welding Technician, Remelt Operations Assistant, Hot Mill Operator, Electrical Technician, Process Technician, Mobile Equipment Technician, Roll Shop Technician, Production Process & Quality Technician, Production Process & Quality Specialist, EHS Facilitator, Planner, Shipping Receiving & Packing Specialist, Stores Technician, Maintenance Technician, Machinist, Facility Technician, and Storeroom Agent, excluding Office clerical employees and guards, professional employees, and supervisors as defined in the Act, and all other employees.

6. Since January 9, 2014, and continuing to date the Union has requested and continues to request that the Respondent recognize and bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive representative of all employees of the Respondent in the above-described unit.

7. Since January 9, 2014, a majority of the employees in the above Unit signed union authorization cards designating and selecting the Union as their exclusive collective-bargaining representative for the purposes of collective bargaining with the Respondent.

8. Since January 9, 2014, and continuing to date, the Union has been the representative for the purpose of collective bargaining of employees in the above-described unit and by virtue of 9(a) of the Act has been and is now the exclusive representative of the employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

9. Since about January 9, 2014, and at all times thereafter the Respondent has failed and refused to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

10. The Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of all employees in the above-described unit.

11. The aforesaid violations affect commerce within the meaning of Section 2(6) and (7) of the Act.

AMENDED REMEDY

In addition to the remedies recommended by the judge, we shall order the Respondent to take the following affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully demoted Everett Abare, it must, to the extent it has not already done so,[18] offer him reinstatement to the position from which he was unlawfully demoted, without prejudice to his seniority or other rights and privileges previously enjoyed and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *Ogle Protection Service,* 183 NLRB 602 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Further, in accordance with *AdvoServ of New Jersey, Inc*., 363 NLRB No. 143 (2016), the Respondent shall compensate Abare for the adverse tax consequences, if any, of receiving a lump-sum backpay award and file a report with the Regional Director of Region 3 allocating the backpay award to the appropriate calendar years.[19]

In addition, to remedy the Respondent's maintenance of an unlawful social media policy and a work rule restricting employees use of its email system for protected Section 7 activity, we shall order the Respondent to rescind or modify the policy and rule and to notify employees of these actions in accordance with *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007).

ORDER

The National Labor Relations Board orders that the Respondent, Novelis Corporation, Oswego, New York, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Threatening employees with job loss if they select the Union as their bargaining representative.

(b) Threatening employees with a reduction in wages if they select the Union as their bargaining representative.

(c) Threatening employees with more onerous working conditions if they select the Union as their bargaining representative.

(d) Threatening employees that the Respondent would lose business if they select the Union as their bargaining representative.

(e) Threatening employees by telling them that they did not have to work for the Respondent if they are unhappy with their terms and conditions of employment.

(f) Threatening employees with layoffs if they select the Union as their bargaining representative.

(g) Misrepresenting that the Union is seeking to have the Respondent rescind employees' pay and/or benefits and blaming the Union by telling employees that they would have to pay back wages retroactively as a result of charges filed by the Union.

(h) Interrogating employees about their union membership, activities, and sympathies.

(i) Prohibiting employees from wearing union insignia on their uniforms while permitting employees to wear antiunion and other insignia.

(j) Maintaining an overly broad work rule that unlawfully interferes with employees' use of the Respondent's email system for Section 7 purposes.

(k) Selectively and disparately enforcing Respondent's posting and distribution rules by prohibiting union postings and distributions while permitting nonunion and antiunion postings and distributions.

(l) Removing union literature from break rooms.

(m) Granting wage increases or other benefits in order to discourage employees from selecting union representation.

(n) Soliciting grievances and promising to remedy them in order to discourage employees from selecting union representation.

(o) Maintaining and giving effect to its overly broad unlawful social media policy.

(p) Demoting or otherwise discriminating against employees for supporting the Union or any other labor organization or for engaging in protected concerted activities.

(q) Refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time employees employed by the Employer at its Oswego, New York facility, including the classifications of Cold Mill Operator, Finishing Operator, Recycling Operator, Remelt Operator, Crane Technician, Mechanical Technician,

[18] The United States District Court for the Northern District of New York granted interim injunctive relief under which, among other things, it was ordered that Abare be restored to the position he previously held. It is undisputed that the Respondent has complied with the injunction.

[19] Chairman Pearce would also add the remedial requirement of a public reading of the notice to employees assembled on company time, either by the Respondent's representative or by a Board agent in the Respondent's representative's presence. In his view, the Respondent's violations of the Act are sufficiently serious and widespread that the reading of the notice is necessary to enable employees to exercise their Sec. 7 rights free of coercion. See *Homer D. Bronson Co*., 349 NLRB 512, 515–516 (2007), enfd. mem. 273 Fed. Appx. 32 (2d Cir. 2008).

Welding Technician, Remelt Operations Assistant, Hot Mill Operator, Electrical Technician, Process Technician, Mobile Equipment Technician, Roll Shop Technician, Production Process & Quality Technician, Production Process & Quality Specialist, EHS Facilitator, Planner, Shipping Receiving & Packing Specialist, Stores Technician, Maintenance Technician, Machinist, Facility Technician, and Storeroom Agent, excluding Office clerical employees and guards, professional employees, and supervisors as defined in the Act, and all other employees.

(r) 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.

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

(a) On request by the Union, rescind the changes to Sunday premium pay and unscheduled overtime for its unit employees that were implemented on January 9, 2014.

(b) Rescind the unlawful provisions of the social media policy.

(c) Rescind the overly broad work rule that unlawfully interferes with employees' use of the Respondent's email system for Section 7 purposes.

(d) Furnish employees with an insert for the current employee handbook that (1) advises that the unlawful provision has been rescinded, or (2) provides a lawfully worded provision on adhesive backing that will cover the unlawful provision; or publish and distribute to employees revised employee handbooks that (1) do not contain the unlawful provision, or (2) provide a lawfully worded provision.

(e) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative, retroactive to January 9, 2014, of the employees in the above-described unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(f) Within 14 days from the date of this Order, offer Everett Abare 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.

(g) Make Everett Abare whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the amended remedy section of this decision.

(h) Compensate Everett Abare for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(i) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful demotion of Everett Abare, and within 3 days thereafter notify him in writing that this has been done and that the demotion will not be used against him in any way.

(j) 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 analyze the amount of backpay due under the terms of this Order.

(k) Within 14 days after service by the Region, post at its facility in Oswego, New York, copies of the attached Notice marked "Appendix."[20] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or 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 not altered, defaced, or covered by any other material. If 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 January 9, 2014.

(l) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the election conducted in Case 03–RC–120447 on February 20 and 21, 2014, shall be set aside, and the petition shall be dismissed.

Dated, Washington, D.C. August 26, 2016

[20] 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."

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) 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 GIVE 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 threaten you with job loss if you select the Union as your bargaining representative.

WE WILL NOT threaten you with a reduction in wages if you select the Union as your bargaining representative.

WE WILL NOT threaten you with more onerous working conditions if you select the Union as your bargaining representative.

WE WILL NOT threaten you with the loss of business if you select the Union as your bargaining representative.

WE WILL NOT threaten you by telling you that you can quit if you are unhappy with your terms and conditions of employment.

WE WILL NOT threaten you with layoffs if you select the Union as your bargaining representative.

WE WILL NOT misrepresent that the Union is seeking to have your pay and/or benefits rescinded and blame the Union by telling you that you will have to pay back wages retroactively as a result of charges filed by the Union.

WE WILL NOT interrogate you about your union membership, activities and sympathies.

WE WILL NOT prohibit you from wearing union insignia on your uniforms while permitting you to wear anti-union and other insignia.

WE WILL NOT maintain an overly broad work rule that unlawfully interferes with your use of our email system for Section 7 purposes.

WE WILL NOT selectively and disparately enforce our posting and distribution rules by prohibiting union postings and distributions while permitting nonunion and anti-union postings and distributions.

WE WILL NOT remove union literature from mixed use areas.

WE WILL NOT grant wage increases or other benefits in order to discourage you from selecting union representation.

WE WILL NOT solicit grievances from you and promise to remedy them in order to discourage you from selecting union representation.

WE WILL NOT maintain an overly broad unlawful social media policy.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the Union or any other labor organization or for engaging in protected concerted activities.

WE WILL NOT refuse to bargain in good faith with the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers, International Union, AFL–CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer at its Oswego, New York facility, including the classifications of Cold Mill Operator, Finishing Operator, Recycling Operator, Remelt Operator, Crane Technician, Mechanical Technician, Welding Technician, Remelt Operations Assistant, Hot Mill Operator, Electrical Technician, Process Technician, Mobile Equipment Technician, Roll Shop Technician, Production Process & Quality Technician, Production Process & Quality Specialist, EHS Facilitator, Planner, Shipping Receiving & Packing Specialist, Stores Technician, Maintenance Technician, Machinist, Facility Technician, and Storeroom Agent, excluding Office clerical employees and guards, professional em-

ployees, and supervisors as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request by the Union, rescind the changes to Sunday premium pay and unscheduled overtime for our unit employees that were implemented on January 9, 2014.

WE WILL rescind the unlawful provisions in our social media policy.

WE WILL rescind our unlawful solicitation/distribution rules.

WE WILL furnish you with inserts for the current employee handbook that (1) advise you that the unlawful provisions have been rescinded, or (2) provide lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or WE WILL publish and distribute revised employee handbooks that (1) do not contain the unlawful provisions, or (2) provide lawfully worded provision.

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative, retroactive to January 9, 2014, of employees in the above-described appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, within 14 days from the date of the Board's Order, offer Everett Abare 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 Everett Abare whole for any loss of earnings and other benefits suffered as a result of his unlawful demotion, plus interest.

WE WILL compensate Everett Abare for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful demotion of Everett Abare, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the demotion will not be used against him in any way.

NOVELIS CORP.

The Board's decision can be found at www.nlrb.gov/case/03-CA-121293 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Nicole Roberts and *Linda Leslie, Esqs*., for the General Counsel.

Kurt A. Powell, Robert Dumbacher, and *Kurt Larkin, Esqs. (Hunton & Williams, LLP),* of Atlanta, Georgia, for the Respondent.

Kenneth L. Dobkin, Esq., of Atlanta, Georgia, for the Respondent.

Brad Manzolillo, Esq., of Pittsburgh, Pennsylvania, for the Charging Party.

Brian J. LaClair, Esq. (Blitman & King, LLP), of Syracuse, New York, for the Charging Party.

Thomas G. Eron, Esq. (Bond Schoeneck & King), of Syracuse, New York, for the Interveners.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. These consolidated cases were tried in Syracuse, New York, over the course of 17 days between July 16 and October 21, 2014.[1] The United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers, International Union, AFL–CIO (the Union) alleges that the Novelis Corporation (the Company) committed numerous unfair labor practices prior to the 2014 labor representation election at the Company's Oswego, New York facility causing the Union to narrowly lose the election by 14 votes out of 570 cast. The Union objected to the results of the election, seeking to have the election set aside and also filed unfair labor practice charges mirroring those objections.

The General Counsel subsequently filed complaints alleging numerous violations by the Company of Section 8(a)(1) of the National Labor Relations Act (the Act)[2] by: (1) restoring Sunday premium pay and the bridge to overtime (unscheduled overtime pay); (2) removing union literature; (3) discriminatorily prohibiting employees from wearing union stickers; (4) soliciting employees' grievances and promising to improve conditions; (5) coercively interrogating employees about their union

[1] All dates are in 2014 unless otherwise indicated.

[2] 29 U.S.C. §§ 151–169.

sympathies and the sympathies of others; (6) threatening employees in small and large group meetings and individually with job loss, plant closure, reduction in wages, and more onerous working conditions including mandatory overtime, loss of business and loss of jobs if they selected the Union as their bargaining representative; (7) communicating to employees that the Union lied to them about the charges that it filed with the National Labor Relations Board (the Board) regarding Sunday premium pay and the overtime pay, and (8) warning employees that, as a result of those charges, they would lose Sunday premium pay and overtime benefits, and have repay them retroactively. The Union further alleges that such unfair labor practices diminished the majority support it enjoyed from employees and, consequently, caused it to lose the representation election.

In addition to the aforementioned allegations, the General Counsel contends that the unlawful conduct continued after the election when it violated Section 8(a)(3) and (1) of the Act by demoting Everett Abare, a leading union organizer, because he posted postelection comments on social media criticizing employees who voted against the Union. Based on the foregoing preelection and postelection conduct, the General Counsel contends that the egregious nature of the violations warrants not only traditional remedies, but also the extraordinary remedy of a bargaining order under *Gissel Packing Co.*, 395 U.S. 575 (1969).[3] In furtherance of the General Counsel's quest for such a remedy, on May 12, the Regional Director consolidated the above-captioned representation case with the six unfair labor practice cases.

On the entire record,[4] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party, the Company and Interveners, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, operates an aluminum facility in Oswego, New York, where it annually purchases and receives goods valued in excess of $50,000 directly from points outside the State of New York. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Company's Operations

The Company is headquartered in Atlanta, Georgia. Its management hierarchy begins with Phil Martens, the president and chief executive officer. Marco Palmiero serves as senior vice president. The Company employs over 800 employees at its Oswego plant,[5] which manufactures rolled aluminum products for the can and automotive industries; the plant measures 1.6 million square feet and sits on approximately 500 acres.[6]

In addition to the Oswego facility, the Company operates facilities in Terre Haute, Indiana, Fairmont, West Virginia, and Kingston, Ontario. Unlike Oswego, each of those three facilities has a collective-bargaining agreement with the Union.[7]

The top company employees at the Oswego plant are the plant manager, Chris Smith, and the human resources manager, Peter Sheftic. The management structure beneath them consists of several section or department managers, followed by leaders and associate leaders. They oversee the hourly employee work force, which is further broken down into crews led by crew leaders.

Employee access into and exiting the facility at its two major points of entry is regulated and recorded through code entry or electronic cards entered at turnstiles, vehicle barrier systems, and a staffed security station.[8] The employees at issue in this case are defined in the following unit as stipulated by the parties prior to the February 20–21 representation election:

> Included: All full-time and regular part-time employees employed by the employer at its Oswego, New York facility, including the classifications of Cold Mill Operator, Finishing Operator, Recycling Operator, Remelt Operator, Crane Technician, Mechanical Technician, Welding Technician, Remelt Operations Assistant, Hot Mill Operator, Electrician Technician, Process Technician, Mobile Equipment Technician, Roll Shop Technician, Production Process & Quality Technician, Production Process & Quality Specialist, EHS Facilitator, Planner, Shipping, Receiving & Packing Specialist, Stores Technician, Maintenance Technician, Machinist, Facility Technician, and Storeroom Agent.
>
> Excluded: Office clerical employees and guards, professional employees, and supervisors as defined in the Act, and all other employees.[9]

1. The Oswego plant's expansion

In 2010, the Company began expanding the Oswego facility due to increased demand for its products from customers in the automotive industry. In order to meet that demand, the Company began construction in 2011 on two Continuous Annealed Solution Heat-Treat production lines (CASH lines). The construction lasted into 2013 and additional employees were hired to operate the new production lines. Around the same time as it

[3] At the outset of the hearing, I granted the General Counsel's motion in limine prohibiting the Company from introducing subjective evidence of the impact that the Union's campaign conduct had on employees. *Lee Lumber & Building Material Corp.*, 322 NLRB 175 (1996).

[4] The Company's unopposed motion to correct the record and supplemental motion to correct the record, dated December 3 and 4, 2014, respectively, are granted. In addition, I granted a protective order with respect to the production of documents designated by the Company as confidential. (ALJ Exh. 1.)

[5] The undisputed testimony of Human Resources Leader Andrew Quinn established that the Company has hired approximately 50 new employees since the election. (Tr. 2874–2875.)

[6] GC Exh. 201 at 4.

[7] The Terre Haute and Fairmont agreements were received in evidence. (R. Exhs. 37, 40.)

[8] Company security manager Daniel Delaney provided credible testimony as to the accuracy of the system's access records. (Tr. 2583–2592.)

[9] GC Exh. 10.

began construction on the CASH lines in 2011, the Company closed its plant in Saguenay, Quebec, and shifted its production operations to the Oswego facility.[10]

In December 2013, the Company undertook additional expansion and began construction of a third CASH line just as the other two neared completion in order to meet additional product demand from the automobile industry. Additionally, the Company started construction on a large scrap metal recycling facility that would last until September 2014. Employees were made aware of these Company investments in plant expansion, and the additional hiring that would result, by Martens and Smith prior to and during the 2014 organizing campaign.[11]

2. Employee work schedules

Most employees are assigned to one of two schedules based on a 40-hour workweek. The S-21 schedule consists of 7 straight shifts from 8 a.m. to 4 p.m., followed by a day off, then 7 straight night shifts from 4 p.m. to 12 a.m., followed by 2 days off, then 7 straight night shifts from 12 a.m. to 8 p.m., followed by 4 days off. The J-12 schedule is more intense, but essentially doubles the amount of time off. It is a 28-day rotation consisting of 12-hour shifts for 4 nights in a row, followed by 3 days off, then 3 straight day shifts, switching from nights to days, followed by a day off. Employees then work 3 straight night shifts, followed by 3 days off, then 4 straight day shifts, followed by 7 days off. [12]

3. The Company's wage and benefits practices

With one exception, it has been the Company's customary practice since 2005 to announce changes to employee wages and benefits during annual meetings between October and December.[13] In addition, prior to January 1, any work performed during unscheduled worktime, Sundays and holidays was considered overtime.[14]

4. Company distribution and solicitation rules

Since March 1, 2013**,** the Company has promulgated and maintained the following rule prohibiting "solicitation and distribution in working areas of its premises and during working time (including company email or any other company distribution lists):"[15]

[10] The Company's operational changes and $450 million in expansion activities since 2010 are not disputed. However, there was no testimony by any of the aforementioned high level company managers explaining the reasons for closing the Quebec plant and moving that work to Oswego. (R. Exh. 47, 282–312, 285; Tr. 277, 285, 2015, 2249–2250, 2260–2262, 2346–2349.)

[11] Again, no high level managers testified and the only explanations for the Company's $120 million expansion of the CASH lines and $150 million construction of a scrap recycling facility were contained in campaign fodder distributed by the Company in its attempts to sway employees prior to the February representation election. (R. Exh. 47, 49, 252, 274; Tr. 1262–1264, 1373–1374, 1621–1623, 1668–1683, 1974–1977, 2000–2004, 2014–2015, 2021–2023, 2038–2040, 2078, 2081, 2112–2115, 2140–2142, 2192, 2235–2236, 2274, 2310–2312, 2346–2349, 2442–2444, 2460–2461, 2476–2478, 2486–2487, 2501–2502.)

[12] It was not disputed that most employees preferred the J-12 schedule. (Tr. 836, 843–845.)

[13] The Company established this past practice through the cross-examination of former employee Christopher Spencer. (Tr. 921–923.)

[14] The Company's premium pay practices prior to January 1 are not disputed. (Tr. 894–896.)

[15] Since the solicitation at issue did not occur until 2014, I rely on the policy's most recent revision on March 1, 2013. (GC Exh. 2.)

STANDARD

The Company maintains bulletin boards to communicate Company information to employees and to post required notices. Any unauthorized posting of notices, photographs or other printed or written materials on bulletin boards or in other working areas and during working time is prohibited.

Employees are prohibited from soliciting funds or signatures, conducting membership drives, posting, distributing literature or gifts, offering to sell or to purchase merchandise or services (except as approved for Novelis business purposes) or engaging in any other solicitation, distribution or similar activity on Company premises or via Company resources during working times and in working areas.

ROLES AND RESPONSIBILITIES

All managers and supervisors are responsible for administering this standard and for enforcing its provisions. It is the responsibility of each employee to comply with this standard and consider it a condition of employment.

Contrary to its written policy, however, the Company has permitted employees to use facility bulletin boards, tables, and desks in the facility to post fliers offering items for sale, services for hire, and promoting civic and charity events.

5. The Company's social media policy

Since August 1, 2012, the Company has maintained a Social Media Standard.[16] Pertinent excerpts of the standard include:

STATEMENT

The Company recognizes the benefits of participating in social media such as blogs, social networks, videos, wikis, or other kinds of social media. This standard has been developed to empower employees to participate in social media, and at the same time represent our Company and our Company values. The Company adheres to its core values in the online social media community, and expects the same commitment from all Company representatives, including employees. The same rules that apply to our messaging and communications in traditional media still apply in the online social media space. Any deviation from these commitments may be subject to disciplinary action, up to and including termination.

AUDIENCE

This standard applies to the extent permitted by applicable law to all employees of Novelis Inc. and each business unit, department function or group thereof and, to the extent permitted by applicable law, each of its subsidiaries and affiliates ("Company"), unless otherwise covered by a collective bargaining agreement or otherwise subject to possible participation rights of Works Council or other national employee representatives.

This standard is an extension of the Company's standard related to Media Contact.

STANDARD

This standard on Social Media is intended to outline how Company values should be demonstrated in the online social media space and to guide employee participation in this area, both when participating personally, as well as when acting on behalf of the Company.

The Company respects employees' use of blogs and other social media tools. It is important that all employees are aware of the implications of engaging in forms of social media and online conversations that reference the Company and/or the employee's relationship with the Company. Employees should recognize when the Company might be held responsible for or otherwise be impacted by their behavior.

In social media, there often is no line between public and private, personal or professional. The following social media guidelines are important to consider:

Personal Behavior in Online Social Media

There is a material difference between speaking "on behalf of the Company" and speaking "about" the Company. Only designated online spokespeople can speak "on behalf of the Company." The following set of principles refers to **personal or unofficial online activities** if referring to Novelis.

1. Adhere to the Code of Conduct and other applicable standards. All Company employees are subject to the Company's Code of Conduct in every public setting, and employees should adhere to all Company principles, standards and/or policies in this regard including, as applicable, policies related to Internet and email use, the Network Privacy Policy and the Media Contact Standard.

2. You are responsible for your words and actions. Anything that an employee posts online that potentially can tarnish the Company's image ultimately will be the employee's responsibility. If an employee chooses to participate in the online social media space, he/she must do so properly, exercising sound judgment and common sense.

3. Be a "scout" for compliments and criticism. Even if an employee is not an official online spokesperson for the Company, employees can be vital assets for monitoring the social media landscape. Employees who identify positive or negative remarks about the Company online that may be important are urged to consider forwarding such to the corporate or regional communications department.

4. Let authorized Company spokespeople respond to posts. Unless an employee is authorized, employees are discouraged to involve themselves in speaking on behalf of or about Novelis in any social media community that involves Novelis, the aluminum industry or related topics. If an employee discovers negative or disparaging posts about the Company or see third parties trying to spark negative conversations, avoid the temptation to react. Pass the post(s) along to our official spokespersons, who are trained to address such comments.

5. Be conscious when mixing business and personal lives.

[16] Bold text is as indicated in original. (GC Exh. 26.)

Online, personal and business persons are likely to intersect. Customers, colleagues and supervisors often have access to posted online content. Keep this in mind when publishing information online that can be seen by more than friends and family, and know that information originally intended just for friends and family can be forwarded. Remember NEVER to disclose non-public information about the Company (including confidential information), and be aware that taking public positions online that are counter to the Company's interest might cause conflict and may be subject to disciplinary action.

Online Spokespeople

Just as with traditional media, the Company has an opportunity and a responsibility to effectively manage its reputation online and to selectively engage and participate in online conversations. Official Company spokespeople are authorized to do so. Employees desiring to engage in online activity on behalf of the Company should do so with express approval and with the assistance of regional or corporate communications.

EXCEPTIONS and/or APPROVALS

Any requirement of this standard may be waived conditionally on a case-by-case basis in exceptional circumstances with written approval from the Vice President of Corporate Communications and Government Affairs.

ROLES AND RESPONSIBILITIES

Corporate Communications is responsible for administering this standard and for enforcing its provisions. It is the responsibility of each employee to comply with this standard and consider it a condition of employment.

6. The Company's Disciplinary Policy

The Company's has had a 4-step progressive disciplinary procedure relating to unsatisfactory work performance in effect since February 22, 2006. The steps range from a "casual and friendly reminder," followed by a warning for recurrences within a 3-month period. If the infraction happens again within the next 6 months, the employee should be sent home for the rest of his shift. Finally, the employee faces suspension or termination for yet another infraction within the next 6 months. The policy, in pertinent part, also provides guidance on how to address unsatisfactory behavior:[17]

General

It is the belief of the Oswego Works that each individual should be given every possible and reasonable chance to play a positive and satisfactory role in the Company's operation. It is also believed, however, that it is only possible for an individual to play such a role if he has adequate self-respect.

By this, we do not mean that an individual will never lapse from good workmanship and satisfactory behavior. We do mean, rather, that such lapses will rarely occur with a person who has adequate-self respect and will stop promptly, without the need for punishment, if the lapse(s) is brought to his attention in a friendly, positive manner, which is not only fair, but consistent.

Repeated demonstrations, within relatively short intervals, that friendly and constructive methods do not produce the desired results are taken as indications of a lack of self-respect. When such a regrettable conclusion has been reached about an individual, we do not wish to keep them in our employment and shall use orderly methods to terminate their services.

Policy on Disciplinary Action

Therefore, in accord with the general policy regarding discipline, there shall be no disciplinary demotions, suspensions or other forms of punishment – as a normal means of disciplining employees.

This is not to say that employees guilty of flagrant violations of good behavior standards may not be terminated, sent home from work, or temporarily suspended.

B. The Company's Announced Changes to Wages and Benefits

In May 2013, the Company sent employees an email announcing proposed changes to wages and benefits. Crew leaders criticized the proposed changes, however, and their implementation was delayed indefinitely. The Company revisited the issue in November when it announced that, effective January 1, work in excess of 40 hours would be considered overtime and Sunday work would no longer apply toward overtime calculations. The Company also announced changes to medical coverage benefits.[18]

On the same day as employees received the November email, approximately 50 to 60 employees from the Cold Mill section of the plant left their work areas and walked into the cafeteria to demand answers. Human Resources Manager Sheftic and Jason Bro, the Cold Mill operations leader, arrived shortly thereafter.[19] Abare asked if it was true that certain benefits, including Sunday premium pay and unscheduled overtime pay, were being eliminated. Apparently not interested in discussing the issue, Sheftic asked if the gathering was an organized meeting and who organized it. Abare responded that Sheftic could "call this a work stoppage or you can call it whatever you may want to call it, a safety shutdown, a safety timeout, whatever it might be that you feel comfortable calling this but there are a lot of employees out there that their minds are not on the job." He further explained that employees were concerned about losing benefits. Bro and Sheftic confirmed that Sunday premium pay and unscheduled overtime pay were being eliminated, but would contact company headquarters in Atlanta to get additional information. Sheftic then asked "if anybody in the room was not willing to go back to work." That prompted the employees to return to work.[20]

[17] GC Exh. 27.

[18] Although the May 2013 email was not entered into the record, these announced changes, as well as their delay in implementation, are not disputed. (Tr. 513-519, 917–921.)

[19] Sheftic was no longer employed by the Company at the time of the hearing. Bro, however, is still employed by the Company, but in a "different role." (Tr. 2878–2879.)

[20] The November email was also not entered into the record, but Abare's credible testimony about its dissemination, employees' con-

The changes became a reality at the mandatory employee annual wage and benefit meetings on December 16 when Sheftic and Smith formally announced the new pay scale, effective January 1. It included a $1500 lump-sum bonus and a 5 percent-pay increase, coupled with the elimination of Sunday premium pay and unscheduled overtime pay. Not surprisingly, employees expressed concern about the changes, particularly with respect to the elimination of Sunday premium and overtime pay. Sheftic again responded that the Company would consider their concerns. In response to one employee's suggestion that employees might look to affiliate with a labor organization, however, Sheftic responded, "we certain[ly] hope that we don't have to have a union here at this point, that we will—we're better off doing our own negotiating."[21]

C. The Union's Organizing Campaign

1. Union organizing meetings

After the meeting, Abare, a crew leader, discussed the Company's announced wage changes with coworkers and then contacted James Ridgeway, the Union local's president, by telephone. They arranged to meet the following day. On December 17, Abare and a coworker, Brian Wyman, met with Ridgeway in a restaurant in nearby Mexico, New York. After agreeing to seek labor representation for company employees, Abare and Spencer kicked off the organizing campaign by signing union authorization cards. They agreed to lead the organizing campaign and took additional cards to solicit and distribute to coworkers.[22]

Subsequently, Ridgeway and Jacobus Vaderbaan, a union representative, with the support of Abare, Spencer, and others on the organizing committee, held six offsite meetings for employees between December 27 and January 12. Each of these meetings lasted about an hour. Ridgeway, Abare and others criticized the Company's changes to employees' terms and conditions of employment, including wages and benefits, extolled the advantages of union membership, and urged employees to sign union authorization cards. The organizing process was explained to employees and questions were asked and answered. There was a significant presence by antiunion employees, who voiced their opposition, and there were contentious exchanges between the opposing factions.[23]

In addition to his active participation at organizing meetings, Abare played a prominent role in other aspects of the organizing campaign. From December 17 until the election on February 20, he and others on the organizing committee advocated for union representation, solicited cards, distributed union pamphlets, flyers and stickers, and posted union meeting notices on employee bulletin boards, break area tables, and in cafeterias and locker rooms.[24]

2. Solicitation of union authorization cards

Subsequently, Abare, Spencer, and the rest of an organizing committee of about 25 employees proceeded to obtain 351 signed union authorization cards from employees between December 17 and January 5. These included 38 cards that the solicitor neglected to initial or sign as a witness, but the employees' signatures are comparable to signatures or other handwriting in the Company's personnel files for the following employees: Mark Barbagallo, Shawn Barlow, Scott Bean, Martin Beeman, Mike Blum, Dustin Cook, Daniel Cotter, Jason Cotter, Stephen Demong, Michael Deno, Joseph Drews, George Geroux, Scott Grimshaw, Christopher Hansel, Kevin Hatter, Greg Hein, Kevin Holliday, Arnold King, James Kray, David Kuhl, Robert Kunelius, Andrew Lazzaro, James Love, Rick McDermott, Jamie Moltrup, Brandon Natoli, Kevin Parkhurst, Bernard Race, Brian Rookey, Andres Ruiz, Aaron Sheldon, Jon Spier, Nicholas Spier, Rob Stancliffe, Joe Stock, Robert Syrell, Brian Vanella, Arthur Webb, Charles Yabonski, David Zappala, and David Zukovsky.[25]

Card solicitation by union supporters took place outside the presence of company managers and supervisors. In one instance during December, however, an employee, Dennis Parker, told his supervisor, Bryan Gigon, the associate leader in the Remelt department, that announced changes to wages and benefits had caused employees to consider union affiliation. Parker shared the information during his performance review meeting after Gigon asked if Parker had any concerns.[26]

---

verging on the plant floor and his interaction with Sheftic and Bro, was not disputed. (Tr. 284–285, 288–293, 522, 527–528.)

[21] The details of this meeting are based on the credible and unrefuted testimony of Abare, Spencer, and Burton. (Tr. 257–266, 528–529, 532, 714–719, 895–897, 923–927.)

[22] Ridgeway's credibility as to which employees, in addition to Abare and Spencer, he spoke with at the outset was undermined by his revised affidavit. There is, however, no dispute as to the birth of the organizing campaign on December 16, when Abare discussed his wage concerns with coworkers after the company meeting and then contacted Ridgeway. (Tr. 125–126, 256–257, 260–262, 294, 894, 530–534, 536, 1071.)

[23] The widespread awareness among the employees who attended, whether they were in favor or opposed to union representation, as to the leading roles of Ridgeway and Abare at these contentious meetings, was not disputed. (Tr. 187–188, 732–733.) The Company elicited testimony on cross-examination by Dennis Parker estimating that 30 to 35 antiunion employees were present at the meeting he attended. (Tr. 774.)

[24] It is undisputed that Abare and other members of the organizing committee were able to distribute Union materials to other employees during the campaign. (Tr. 436–440, 590–594, 1598–1612, 1923, 1955–1956, 2312, 2315, 2317–2318; GC Exh. 29 at 2–4; R. Exh. 107–109, 111, 115, 120.)

[25] The cards were authenticated through the solicitors, signers or signature comparison. Thirty-nine cards were offered for authentication solely by comparison. However, after reviewing them, I find that the signatures and other handwriting on cards purportedly signed by the following five employees did not appear similar to the handwriting on the company records: James Ashby, George Dale, Mark Haynes, Mike Stiles, and William Sweeting. The signatures of four others—John Barbur, William Mitchell, Brian Rookey, and Kevin Tice—did not appear sufficiently comparable to the signatures in the personnel records but were very similar to other handwriting in those records (ALJ Exh. 2; GC Exh. 47–48, 69, 71–72, 84, 111–113, 115–116, 118–122, 124–125, 127–130, 200.)

[26] Aside from Parker's testimony that he told his admitted Sec. 2(11) supervisor about potential union activity sometime in December (Tr. 768–770.), there was no testimony or direct evidence that managers or

The front of each card contained an emphatic statement at the outset as to its purpose, including a critical portion in bold print:

YES! I WANT UNITED STEELWORKERS REPRESENTATION!
I HEREBY AUTHORIZE THE
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied
Industrial and Service Workers International Union, AFL-CIO-CLC
(also known in short as United Steelworkers or USW)
TO REPRESENT ME IN COLLECTIVE BARGAINING.

Below the heading, the cards asked for the following personal information: name; phone; home address; city; state; date; signature; employed by; department; job title; name of witness; email address; and whether interested in joining the organizing committee. The back of each card provided additional information as to its purpose:

> This card will be used to secure union recognition and collective bargaining rights. Initiation fees are waived for all current employees and no dues will be paid until your first contract has been accepted.
> You have the absolute democratic right, protected by Federal Law, to organize and join the United Steelworkers.
> By signing this card, you are taking an important step toward achieving a genuine voice in workplace decisions that affect you and your family.[27]

a. James Ridgeway

Ridgeway, along with Vanderbaan, instructed about 25 members of the organizing committee on how to solicit authorization cards from employees. They were given a booklet entitled, "35 Things That Your Employer Cannot Do," as well as a "handbook/guidebook" for answering questions that might be asked during the card solicitation process.[28]

Ridgeway signed 16 cards as a witness at the organizing meetings and other times.[29] In soliciting employees, he made assorted statements advising them to read the cards, as well as the purpose of signing them. In explaining the purpose, he outlined the process of requesting union representation through a signed authorization card, as well as a representation election that would ensue if the Company declined voluntary recognition of the Union as labor representative.[30]

b. Abare

Abare and approximately 22 other employees distributed and collected signed union authorization cards. After signing a card, he witnessed and initialed 24 other authorization cards.[31] He witnessed the signing of 57 cards; these included cards signed by openly prounion witnesses Crystal Sheffield, Ann Smith, Michelle Johnson, Robert Sawyer, Leo Rookey, and Ron Merz. In response to employees' questions, Abare instructed them to sign a card if they wanted representation from the Steel Workers and that in order to achieve that they had to gain 50 percent plus one. Regarding the representation election, he told some employees that 50 percent plus one card was needed to get an election for union representation. He also explained that the card itself was for representation.[32] Merz actually approached

supervisors observed or otherwise knew about cards being solicited prior to January 9. (Tr. 222–237, 534–563, 658–660, 690–691, 781–783, 800–802, 811–824, 845–855, 861–867, 877–883, 1225–1241, 1251–1254, 1282–1324, 1683–1685, 1742–1745, 1802–1806.)

[27] GC Exh. 3.

[28] GC Exh. 29.

[29] Ridgeway was impeached on other matters, was not certain as to the dates when the cards were signed and, in the case of Mike Niver's card, I credit the latter's testimony that the card was witnessed by a coworker, John Gray. However, the 16 signed authorization cards were separately authenticated through comparison or witness testimony. (Tr. 126–129, 187–189, 1630–1639: GC Exh. 14.)

[30] There was an overabundance of rehearsed testimony that tested the selective memories of witnesses on both sides. However, the notion that Ridgeway, at these contentious meetings attended by informed anti-union employees, told attendees that the only purpose of signing the card was to get more information about the Union and the process, is ludicrous. Moreover, the testimony of company witnesses actually confirmed Ridgeway's discussion about the union representation process. Timothy Southworth signed a card during a 2-hour long union meeting on January 2, but conceded that the meeting lasted 2 hours and the process of union representation was discussed. (GC Exh. 69 at 7; Tr. 2960–2963.) David Bouchard also signed a card at that meeting, but was not credible in asserting that he did not read it. Moreover, he testified that Ridgeway stated that the cards were for informational purposes only, but conceded that Ridgeway also expressed the Union's desire to serve as their labor representative. (Tr. 1683–1685, 1704–1707, 1709; GC Exh. 110.) Niver's recollection was that John Gray told him that the Union sought to obtain cards from 60% of the employees before a vote, but conceded being told that the Union was not going "to show up because ten people wanted a union," which obviously meant that the Union sought more than a majority of employees who "wanted" it to represent them. (Tr. 1637–1638; GC Exh. 14.) Zack Welling testified that he attended a union meeting in February where Ridgeway said that the card was to just get more information. However, all of the cards had already been submitted to the Region about a month earlier. (GC Exh. 8, Tr. 2786–2787, 2823.) Accordingly, the weight of the credible evidence supports the credible testimony of the General Counsel's witnesses—Raymond Watts, Brian Wyman, Crystal Sheffield, Michelle Johnson, Gregory Griffin, Sheri Broadway and Mike Clark—that Ridgeway's presentations included references to the authorization cards as requests for union representation. (Tr. 1102—1103, 1287, 1449, 1459, 3096, 3130-3131, 3159—3160, 3167—3168.)

[31] The Company did not object to admission of 53 cards witnessed by Abare, including his own. (GC Exh. 746-84, 87–111, 113–114, 116–128, 130, 200.) The card of Richard Lagoe was initialed by someone else but received over objection because Abare was present when Lago signed the card. (Tr. 378—379; GC Exh. 85.)

[32] Abare was partially credible regarding his custom and practice in soliciting authorization cards and his instructions to card solicitors. (Tr. 305–314, 316–329, 348–367, 372–385, 423–426,431–435, 536–539, 542–563.) Furthermore, Crystal Sheffield, Ann Smith, Michelle Johnson, Robert Sawyer, Leo Rookey and Stephen Wheeler credibly corroborated Abare's testimony that his remarks to coworkers included statements that the purpose of the cards were for Union representation, explained the election process and advised them to read the cards before signing. (Tr. 706–707, 814, 869, 1107, 1225, 1238, 1252–1253,

Abare for a card and stated at the time that employees needed to bring in a Union to counteract changes being implemented by the Company.[33]

Several other employees, including Jon Storms, Justin Pitchard, Michael Brassard and Darrell Hunter reluctantly signed authorization cards witnessed by Abare. Before these employees completed their cards, however, Abare engaged them in conversations where he discussed the significance of each card as a request for representation and the merits of Union representation. He also advised them to read the cards before filling them out.[34]

c. Christopher Spencer

Spencer, a leading member of the organizing committee, signed an authorization card and collected 66 more cards prior to January 13, including 3 that were misdated. His initials, "CS" were also written on most of the cards that he collected and he gave the completed cards to Vanderbann, Ridgeway, or Bill Fears, a union organizer.[35] Spencer obtained the cards in several locations, both in and outside the facility. Employees whom he solicited and obtained signatures from outside the facility included: Billy Carter, Cathy Czirr, Jamie Geroux, Nicholas Gray, Pat McCarey, Charles Oleyourryk, Dave Patty, Jimm Priest, Greg Turner, Steven Watts, Joseph Bell, William Brown, Doug Hall, Jeff Knopp, and Ellis Singleton, [36]

In soliciting authorization cards, Spencer engaged coworkers in conversation about having the Union represent them.[37] His presentation usually included a request to read the card, make sure the employee understood it and ask any questions one might have about the card. Some employees, such as Gregory Griffin and Sheri Broadway, read the card, signed it and had no questions.[38] As a leader on the organizing committee, Spencer also instructed other card solicitors, such as Lori Sawyer, to mention the significance of union representation when they approached coworkers about signing a card.[39]

In several instances, employees whom he solicited declined to sign cards. Some of the conversations lasted longer than others, but Spencer discussed the significance of the cards in designating the Union as their labor representative, as well as their significance in entitling employees to a representation election if the Company denied their request for recognition.[40]

d. Melanie Burton

Burton signed an authorization card and witnessed the signing of 13 cards. She solicited some of the employees and was approached by others. Seven of those employees—Robert Co-

1283, 1305, 1436–1437, 3097, 3119, 3122, 3146–3147; GC Exh. 38, 52, 117.) However, it was evident that Abare did not say the same thing to every employee he solicited, since some were already union supporters and/or approached him for a card, while others had questions and some had none. He also conceded that some just read the back of the card. (Tr. 306–308, 542–562, 603–607, 638–541.) In at least 6 instances, however, Abare signed as witness to 6 completed cards that were solicited by others and delivered to him. (Tr. 802, 814–818, 2634–2635; GC Exh. 54–55, 127; R. Exh. 284–291.) He was also mistaken about Scott Grimshaw signing a card in the facility on the date indicated. (Tr. 549-550.) With respect to witnessing Darling's card, the latter testified that Bob Kunelius, not Abare, asked him to sign a card and that he (Kunelius) told him "it was for informational purposes only; and if we would like to go to the meeting and hear what they had to say, they had to sign it." Incredibly, however, Darling testified that he did not read the card. (Tr. 1743–1746; GC Exh. 108.)

[33] The testimony of Merz, called as a Company witness, was undermined by the credible rebuttal testimony of Michelle Johnson and Ann Smith, as well as his inconsistencies that culminated in a concession that he did not recall where he signed the card. (Tr. 2498–2499, 2507–2508, 3128, 3150.)

[34] I do not credit the testimony of these witnesses since all, but Storms, conceded that Abare advised them to read the cards and then proceeded to fill them out. (Tr. 1931–1932, 2184–2188, 2205–2208, 2229–2232, 2239, 2498–2500, 2507–2508, 2734–2736; GC Exh. 76, 79, 96, 105.) In Storms case, I do not credit his testimony that he failed to read a card that he completely filled out. (Tr. 1917–1919; GC Exh. 93.)

[35] Spencer's prior affidavit testimony that some signed in order "to stir the pot and send a message to management" did not detract from his overall credibility. In addition, cards obtained from Speeding and Bucher were mistakenly dated as January 2013, while Joe Griffin signed his card on December 26. (GC Exh. 44 at 22; GC Exh. 49; Tr. 897–901, 916, 959–984, 1118, 1280.) I did not credit the brief testimony of Company witness Brian Richardson, who signed a card but vaguely recalled that Spencer said the card "was basically for information to stay in the loop of what was going on." (Tr. 2954; GC Exh. 44.)

[36] Spencer was not entirely credible, however, as to where he obtained some of the authorization cards. (Tr. 959-984). The Company's security records, which I find to have been reliable and mostly accurate in depicting the history of employees entering and exiting the facility, revealed that 15 cards were signed by these employees outside the facility, not inside the facility, on the dates indicated. (R. 284; GC Exhs. 251–252, 254–262, 264–268, 270, 2638–2646.) Nevertheless, the cards were still independently authenticated through signature comparison.

[37] Mathew Blunt testified briefly during the General Counsel's case that he was approached by Spencer to sign the card and asked if he was interested in union representation. At that point in the case, however, most of the General Counsel's witnesses had not yet provided much detail about their conversations with card solicitors. (Tr. 1060.)

[38] Griffin had a general recollection of that conversation ("he basically said"), but I found him credible based on his spontaneity and candor on cross-examination. (Tr. 3158.) Broadway testified similarly and was credible, but had already made up her mind about the Union. (Tr. 3166–3167.)

[39] Sawyer's testimony about Spencer's instructions was credible and unrefuted. (Tr. 1007.)

[40] I did not credit the testimony of company witnesses that Spencer told them that the cards were only for information, to attend union meetings or to get a yes or no vote. There was an overabundance of information being disseminated and employees never needed to sign anything to attend meetings or be exposed to the information war that ensued. Lewis LaClair clearly had time to contemplate the consequences of signing the card. He refused to sign at first, then signed a card and changed his mind again and had it returned. (Tr. 1804–1805, 1816.). The testimony of Scott Baum (Tr.1826–1828), Brian Thomas (Tr. 1993-–1996.), Scott Allen (Tr. 2859.) and Rodney Buskey (Tr. 2861.) as to what Spencer told them were selectively brief. Stephen Duschen signed a card for someone else during a conversation that lasted around 10 minutes and conceded reading it before signing it. (Tr. 2701–2703, 2705–2707; GC Exh. 71 at 4.) Robert Reed was allegedly approached by Spencer and other unidentified persons *after* the cards were filed along with the representation. (Tr. 2946–2953.)

rey, Benjamin Clarke, Noah Personius, James Smith, David Van Dyke, Jimmy Walker and Andrew Wallace—signed the cards outside of the facility. Burton asked each of them to read the card before signing. She received questions as to what the union authorization card was and she would explain. As part of this process, Burton witnessed employees' sign the cards, they were signed on the date stated on the card and she signed the cards as a witness.[41]

e. Jacobus Vanderbaan

Vanderbaan participated in six organizing meetings on January 2, 9, 16, 17, and 26, and February 16. He witnessed two employees, Elmer Coney and Chris Pashtif, sign cards. They were among the employees who approached union officials at these meetings and asked to complete authorization cards.[42]

f. Nicholas LaVere

LaVere, a casting department employee, was on the organizing committee and solicited authorization cards. He solicited and witnessed 20 cards signed within the facility, including his own. The cards were completed and signed on the dates indicated, except in the case of Mike Chwalek, who signed his card in the middle of December 2013 (not 1979) and William Hayden, who signed his card in January 2014 (not 2013). In accordance with instructions from Union organizers, LaVere asked coworkers whether they supported the Union. If so and he/she desired union representation, he gave them a card, told them to read the front and back, then fill it out and sign it. If an employee was unsure about signing a card, he suggested that he/she attend a union meeting.[43]

g. Thomas Rollin

Tom Rollin signed an authorization card and witnessed nine coworkers fill out and sign cards. In accordance with instructions he received from Spencer, Rollin asked coworkers if they wanted representation. If so, he would ask them to fill out the cards. If anyone asked a question about the cards, he referred them to the bold print on the card, which asked, "Do you want representation." After employees filled out and gave him the cards, he gave them to Spencer.[44]

h. Mario Martinez

Martinez signed a card and witnessed employees sign two other cards. In soliciting the cards, Martinez told both employees to read the front and back of the card. Additionally, he told them anybody could go to a union meeting, anybody can hear about the procedures, but if they signed a card, the Union would represent them during collective bargaining.[45]

i. Raymond Watts

Watts signed a card and witnessed the signing of 16 others. All of those cards were signed and dated properly, except for Ryan Buskey and Christopher Caroccio, who erroneously dated them in 2013 instead of 2014. In soliciting cards, Watts was instructed by Ridgeway to make sure everyone read the card fully before they signed it and that they understood it. In response to questions about the meaning of the cards, Watts told employees to read the card. He also told them it was part of the process in getting recognition. After obtaining the cards, Watts gave them to Spencer.[46]

j. Shaun Burton

Burton witnessed seven cards being signed, including his own. In soliciting the cards, he witnessed employees sign the cards, which were signed on the dates stated on the cards, except for Andres Ruiz who signed his card at the same time as Jamie Moltrup on December 22, 2013. Burton told employees to read the front and back of the card. He also told employees that they would get more information about the organizing campaign after signing a card. After obtaining the cards, Burton gave them to Abare.[47]

k. Ann Fitzgerald

Fitzgerald solicited union cards based on Stephen Wheeler's instructions to have employees read the front and back of the

[41] Burton's testimony was generally credible as to cards she witnessed (Tr. GC Exh. 31; Tr. 712-713, 747–748.) and was corroborated by Brandon Delaney, Arthur Ball, Nate Gingerich, Caleb Smith and Justin Stevens. Each one also authenticated his card. (GC Exh. 33–35, 56, 67; Tr. 690, 1012–1013, 1068–1069, 1359.) Company witness Mark Raymond testified that Burton asked him to sign a card, but he could not recall what she said. (Tr. 2274–2275.) The Company attempted to impeach Burton with security records indicating that several witnesses were not in the facility on the days that they signed cards. However, Burton credibly explained that she obtained their cards outside of the facility. (Tr.734–747). In the case of Jeremy Wallace's card, there was no indication that he was in the facility on the date that he signed the card, but his signature was authenticated through comparison. (GC Exh. 269, Tr. 3174–3175.)

[42] Vanderbaan was credible and remained in the hearing room after testifying. (Tr. 196, 201, 208.)

[43] LaVere credibly authenticated the cards and recalled what he told coworkers about the purpose of the authorization cards. (Tr. 213–219, 223, 226, 235, 237–239; GC Exh. 11, 68.)

[44] This finding is based on Rollin's mostly credible testimony. (GC Exh. 58; Tr. 836–837, 845–847, 852–-853.) The Company's security records indicated that George Axtell was not in the facility when he signed his card on January 4. Nevertheless, Axtel testified that he dated and signed the card at work in Rollin's presence. Moreover, I do not credit brief testimony by Axtell, a Company witness, that Rollin told him that the card was "just for information." (R. Exh. 284 at 13; Tr. 2956–2957, 2959–2960.)

[45] This finding is based on the credible testimony of Martinez. (GC Exh. 45; Tr. 1206–1207, 1210–1213-1216, 1218-1219).

[46] Watts provided mostly credible testimony as to what he told witnesses about the purpose of the cards. (Tr. 1297–1299). While the Company's security records contradict Watts' testimony that he obtained signatures from Mark Barbagallo and Kristen Moody in the plant, their signatures were authenticated through comparison evidence. (R. Exh. 284; GC Exh. 47, 250, 263; Tr. 1237–1239, 1273–1280, 1282–1287, 1297–1299, 1301–1324.) The mistake in the year by Buskey and Caroccio was a common mistake made by many people at the beginning of a new year. (Tr.1275, 1289–-1293.)

[47] Burton was partially credible to the extent that he told coworkers to read the card, but failed to impress with his lack of recollection as to whether he also told people that the purpose of the card was to get information about the Union. (GC Exh. 48; Tr. 1222–1225, 1231-1232, 1234–1244.)

card. She proceeded to sign a card and obtained the signatures of nine coworkers. She witnessed the employees complete and sign the cards. All had the correct dates, except for those completed by Guilleromo Quintuana and Kim Clary, who signed their cards on January 2 and 9, respectively.[48] Of the 10 persons whom she solicited, only Fred Zych asked a question about the card and that was an inquiry as to who would see the card. She did not answer the question.[49]

l. Michael Granger

Granger filled out and signed an authorization card. He also witnessed a card signed and dated by Peter Losurdo.[50]

m. Brandon Delaney

Delaney signed an authorization card and witnessed the signing of nine others.[51] Based on instructions he received from Spencer and Melanie Burton, Delaney responded to questions about the purpose of the card by suggesting that employees read the writing on back of the card. In response to followup questions about the language, he also explained that the purpose of the card was to seek union representation and to pursue a union election.[52]

n. Michael Jadus

Jadus signed an authorization card and witnessed the signing of another card by coworker James Watson.[53]

o. Charles Gurney

Gurney signed a card and witnessed the signing of four cards. Prior to soliciting cards, Mike Deno explained to Gurney that they served a dual purpose of counting as a vote for the Union and as a way to get more information. Depending on the particular conversation, Gurney made similar comments about the purpose of the cards to coworkers whom he solicited, including union representation and getting more information. In some instances, like his conversation with Allen Cowan, the solicited employee was a union supporter who actually reached out to Gurney to sign a card. In other instances, there were coworkers whom Gurney solicited, but turned him down. In his conversation with one such employee, Gurney updated Michael Malone about the status of the campaign and urged him to sign an authorization card because the Union would provide employees with protection from the Company.[54]

p. Gregory Griffin

Griffin testified that he witnessed four cards being signed, including his own. In soliciting the cards, Griffin asked his coworkers if they wanted to be represented by the Union. He gave the signed cards to Spencer.[55]

q. Ryan O'Gorman

O'Gorman signed an authorization card and witnessed the signing of four more cards.[56]

r. Mike Clark

Clark signed an authorization card and witnessed the signing of five more cards in the roll shop breakroom around the same time on December 28, 2013. In accordance with instructions he received, Clark instructed the card signers to read the front and back of their cards, fill in the information and sign them. He informed his colleagues that the purpose of signing a card was to get union representation, as well as more information about the process.[57]

---

[48] Fitzgerald credibly testified as to her practice in soliciting the cards and the locations where they were signed. (GC Exh. 54; Tr. 805–807, 811–821.) Fitzgerald also testified that Wise signed his card between January 6 and the 9, but asked for it back a few days later when she returned to work on or about January 15. (Tr. 807-809, 827-828.) Wise confirmed that the card was returned and provided a vague recollection that Fitzgerald told him that the purpose of the card was to get union representation to speak to the employees. (Tr. 2470–2473).

[49] Fitzgerald credibly testified on cross-examination that Fred Zych was the only witness to ask a question and it concerned who would see his card (Tr. 821.). Zych, on the other hand, testified that Fitzgerald, after asking him to fill out the card, explained that it would not count as a vote and would be destroyed after being collected. He conceded, however, that he read the card and filled it out completely. (Tr. 2031–2033; GC Exh. 54.) Company witness Richard Lagoe, who did not sign a card, vaguely testified that Fitzgerald said the purpose of the card was to get a general idea as to how many people would be interested in the Union. (Tr. 2847–2848.) The Company notes that the cards also contained Abare's initials on the back, but it appears that he initialed them upon collecting the cards from solicitors.

[50] Granger's testimony was credible and candid as to what he recalled. (GC Exh. 55; Tr. 797–802.)

[51] Delaney credibly testified that Tony Alelunas, Bernie Finnegan and Maurice Kellison mistakenly filled in 2013 instead of 2014. (GC Exh. 56; Tr. 1360–1362.)

[52] Delaney credibly testified as to the location where the cards were signed and his instructions to coworkers who asked questions about the card. (Tr. 1362–1376, 1378–1381, 1384.) Testimony to the contrary by Theodore Reifke, on the other hand, was not credible. Reifke, who testified that Delaney said the card was only to get more information, had a selective and extremely limited recollection of the conversation. (Tr. 2863–2864, 2866–2867; GC Exh. 56.)

[53] Jadus credibly testified as to signing of a card by Watson. (GC Exh. 57; Tr. 830–834.)

[54] I did not credit Cowan's selective corroborating testimony as to what Gurney told him about the purpose of the card since Cowan was already a Union supporter who reached out to Gurney. (Tr. 660.) However, Gurney's credible testimony that he did not mention the informational purpose to the cards was corroborated by Michael Malone, a Company witness. (Tr. GC Exh. 59; Tr. 858–861, 863–868.) Malone, who declined Gurney's solicitation, testified that Gurney told him that employees needed protection from the Company, spoke with him about the negotiations and "stuff like that." (Tr. 2134–2135). I did not, however, credit the exceedingly brief and selective testimony by Zackary Welling that Gurney, as well as Cowan and Delaney, told him that the purpose of the card was just to get information. (Tr. 2783–2785.)

[55] I based this finding on Griffin's credible testimony. (GC Exh. 60; Tr. 1121–1123, 1125–1128.)

[56] O'Gorman appeared to have solicited union supporters. (GC Exh. 61, Tr. 616–618, 620–623.)

[57] Clark provided credible testimony, conceding on cross-examination that he mentioned the dual purposes of union representation and getting more information as a result of the cards. (GC Exh. 62; Tr. 1449–1450, 1445–1446, 1460, 1462–1463.) All five employees appeared to have signed the cards at the same time. (Tr. 1446). I do not credit selective testimony to the contrary by Todd Scruton, who signed a card and had a limited recollection about the conversation. (Tr. 2970–2971; GC Exh. 62.)

s. Joseph Seinoski

Seinoski signed an authorization card and authenticated four other cards on January 3. Two of the card signers actually approached him for the cards. As to the other two employees, Seinoski approached them and asked if they were interested in union representation. He handed them the cards and they asked him several questions about the purpose of the cards. Seinoski responded that the purpose of the cards was to obtain union representation.[58]

t. Amy Watts

Watts signed an authorization card and solicited other employees. She managed to get coworkers to complete and sign five more cards.[59]

u. Brandon France

France signed an authorization card. He also witnessed Grant Wendt fill out and sign another card.[60]

v. Stephen Wheeler

Wheeler, a union supporter, instructed Ann Fitzgerald, another solicitor, to have employees read the front and back of the authorizations cards. Wheeler also signed an authorization card and witnessed the signing of two more cards around the same time on December 27, 2013. One of those employees, John Gray, actually approached Wheeler about a card. Another employee, Troy Hess, was present and Wheeler solicited him as well. Hess accepted a card, filled it out and signed it. Wheeler gave the completed cards to Abare.[61]

w. Justin Stevens

Stevens signed an authorization card and witnessed the signing of four more cards. In soliciting the cards, he told coworkers that the purpose of the cards was to get information and that the cards would be returned to them upon request. The employees then proceeded to read the cards, filled in the requested information and signed them.[62]

x. Lori Sawyer

After being instructed by Spencer, Sawyer approached employees interested in union representation about signing authorization cards. In addition to signing an authorization card, Sawyer witnessed the signing of seven more cards.[63]

y. Brian Wyman

Wyman signed an authorization card and witnessed the signing of 23 more cards. In soliciting coworkers, he asked if they were interested in being represented by the Union and offered the cards. In response to questions after coworkers read the cards, Wyman explained that, by signing the cards, they were asking the Union to be their labor representative. He also mentioned that the cards would be used to get a Union election.[64]

z. Chrystal Sheffield

Sheffield, a crew leader in the Cold Mill, signed an authorization card and approached another employee, Antonio Vasquez, about signing a card. She told him to read the card and sign it if he wanted union representation. Vasquez proceeded to fill out the card and signed it.[65]

aa. Bob Kunelius

Kunelius solicited several coworkers to sign authorization cards. He approached John Tesoriero and said that he heard that Tesoriero was interested in attending a union meeting. Tesoriero asked if signing a card would gain him entrance into a union meeting. After Kunelius assured Tesoriero several times that his name would be place on a list for the meetings, Tesoriero proceeded to read, fill out and sign an authorization card. He did not, however, check off the box indicating that he wanted to be a member of the organizing committee.[66]

---

[58] I credit Seinoski's unrefuted testimony. (GC Exh. 63; Tr. 874–885.)

[59] This finding is based on Watts' credible and unrefuted testimony. (GC Exh. 64; Tr. 1130–1137.)

[60] This finding is based on France's credible testimony. (GC Exh. 65; Tr. 1138–1141.)

[61] Wheeler's credible testimony was consistent with Fitzgerald's testimony as to their discussion about the cards. (GC Exh. 66; Tr. 820, 1249–1253.)

[62] Stevens conceded that he told coworkers that the cards were only for the purpose of getting more information about the union. (GC Exh. 67; Tr. 1485–1487, 1498, 1502.) His testimony on this point was consistent with that of two employees who declined his offer to sign cards, Anthony and Mark Caltabiano, the latter who also mentioned Kathy Demarest as having made a similar pitch. (Tr. 2159–2161, 2177, 2713–2714.) It was also consistent with the testimony of a card signer, Company witness John Whitcomb, who he assured the card would be returned upon request. Whitcomb, however, appeared calculating, provided inconsistent testimony—he said he read the card before stopping himself and backtracked to say he did not —and testified incredibly that he did not read the card before signing it for Pete Malone. (Tr. 1875–1878, 1890.)

[63] Sawyer was generally credible regarding her practice in soliciting authorization cards. (GC Exh. 70; Tr. 1001–1004, 1007–1010.) The security records indicate that her testimony about getting Daniel Buskey to sign the card in the plant was incorrect. (Tr. 2646; R. Exh. 284–261.) However, there was no credible testimony challenging her solicitation and authentication of the cards and the card signature was separately authenticated through signature comparison. (GC Exh. 253.)

[64] Wyman testified that he informed coworkers that signing a card meant that the employee supported union representation. (GC Exh. 69; Tr. 1072–1089, 1098–1105, 1110.) However, his version was partially undercut by Dennis Parker's testimony that the cards would also be used to obtain an election. (Tr. 782–783.) I do not, however, place much stock in the alleged inconsistencies brought out regarding Lazzaro's misdated card, signed on December 21, 2013, since the organizing campaign had not begun as of October 2013. (Tr. 125–126, 256–257, 294, 1076, 1110.) Moreover, I do not credit the very brief and selective testimony of Company witnesses, Kevin Shortslef, who did not sign a card, and Robert Abel that Wyman told them that the cards were merely for the purpose of getting information or hear what the Union had to offer them. (Tr. 2850–2851, 2855–2857; GC Exh. 69 at 1.).

[65] Sheffield's detailed rebuttal testimony was more credible than Vasquez' extremely brief description of the encounter. Moreover, since Vasquez completed and signed a card, it is obvious that he read it before completing its various sections. (Tr. 3083–3084, 3097–3098; GC Exh. 71.)

[66] I credit that part of Tesoriero's unrefuted testimony regarding his conversation with Kunelius and the fact that he did not check the box to

Kunelius also approached Mark Sharkey and several coworkers on December 31 about signing authorization cards. After some unrelated discussion, they asked him about the purpose of the cards. Kunelius explained that they were for the purpose of getting the Union to meet with them and needed about 60 to 70 percent of employees to sign them in order to reach that point. He also added that the cards were "nonbinding."[67]

bb. Mark Denny

Jason Roy was solicited to sign an authorization card by Mark Denny, who approached him about the benefits of union representation. Denny also told him, however, that the purpose of the card was to get the Union to come in and provide employees with more information. Roy then proceeded to fill out and sign an authorization card.[68]

cc. Jim Craig

Wayne Webber was approached several times by union supporters, including Jim Craig, about signing an authorization card. He declined to sign each time.[69]

dd. Unidentified card solicitors

Several other employees were approached to sign authorization cards by employees whom they did not know, but still signed the cards. David Van Fleet and several coworkers were approached by someone who was passing out authorization cards. The individual advocated for the Union and the merits of labor representation and mentioned that employees could get more information if they signed the cards.[70] Johnathon Kemp was also approached by an unknown employee. They discussed the purpose of the card, and he wrote the requested information on the card and signed it.[71] Gary Gabrielle was solicited to sign a union authorization card by an unknown individual. He provided the information requested on the front of the card and signed it.[72] David Kuhl was also approached by an unknown individual and asked to sign an authorization card, but declined.[73]

3. Union demand for voluntary recognition

On January 9, Ridgeway submitted a demand for voluntary recognition to the Company based on the Union having obtained a majority of signed cards from employees. His detailed letter, however, referred to Smith's awareness of the campaign and reflected an expectation that the request would be declined. As such, the letter mainly addressed the representation election process that would ensue as a result. The letter stated, in pertinent part:[74]

> As you are aware, the United Steelworkers have been asked by a majority of your employees to represent them for the purposes of collective bargaining. We would [at] this time respectfully request card-check recognition to prove we represent the majority. The USW is hopeful that the organizing campaign at Novelis Corporation will be conducted in a fair, professional and lawful manner. We are also hopeful that the management of Novelis supports its employees' legal right to self-organization, to form, to join, or assist labor organizations, to bargain collectively through representatives of their choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.
>
> The National Labor Relations Board polices Union representation campaigns to make sure they are free of unlawful threats or promises. The election rules are strict, as they should be, to assure the employees a fair election. The Union is committed to the goal of a fair election, one which enables the employees to make an informed decision as to their legal representational rights. I am confident that you share in our concern that your employees are guaranteed a fair election.
>
> Several of your employees have raised concerned as to what their legal rights are relative to their conduct during this organizing campaign. Of equal concern is what management can and cannot do during the organizing campaign and what would be considered unlawful conduct under the National Labor Relations Act. I have instructed the in-plant organizing committee to disseminate the following information to the employees relative to their later concerns.

The letter went on to list 27 forms of prohibited activities under the Act, asked that the Company refrain from such activities and concluded with an assurance that organizing staff would conduct themselves in a professional manner while providing information to the employees.

The Company's plant manager, Christopher Smith, acknowledged receipt of Ridgeway's letter, specifically placing its re-

---

be on the organizing committee. However, I also find that he clearly read the card in order to fill out the various sections. (Tr. 2455, 2457-2458).

[67] Sharkey's testimony was credible and unrefuted. However, I also find that, in completing and signing the authorization card, he read the information on it. (Tr. 2724-2725, 2729; GC Exh. 71 at 12.)

[68] Roy's testimony was credible and undisputed. However, there is no evidence to suggest that he failed to read the card while filling it out and before signing. (Tr. 2743–2746; GC Exh. 71.)

[69] I do not credit Webber's overly brief and selective testimony. He recalled only that Craig told him about the informational purpose of the card, but could not recall any of the coworkers who were present at the time. (Tr. 2976–2978.)

[70] Van Fleet's testimony was credible and unrefuted, but it also indicates that he read the card and filled it out completely before signing it. (Tr. 2328, 2338; GC Exh. 70 at 11.)

[71] Kemp's obviously rehearsed and incomprehensible testimony was not credible: "meaning was to have a vote, have the plant not to become their vote." In any event, there is no indication that he failed to read the information on the card, which is not in the record. (Tr. 2678–2679; GC Exh. 71.)

[72] I did not credit Gabrielle's testimony that the solicitor stated that it was "for informational purposes only," since he denied reading a card, but still entered the detailed information requested before signing it. (Tr. 2964–2968; GC Exh. 71 at 5.)

[73] I did not credit Kuhl's hearsay testimony about what he was told by an unidentified individual. (Tr. 2853–2854.)

[74] GC Exh. 7.

ceipt "on the afternoon of January 9, 2014."[75] He went on to decline the Union's demand, stating in pertinent part:

> Novelis does not believe that a majority of our employees desire union representation and we decline your request for recognition.
>
> While your letter refers to a "fair election," we note that you request Novelis to recognize the union without giving our employees the opportunity to vote in the properly conducted election. We do not believe your approach is appropriate for such an important decision. If the union believes that a majority of our employees desire representation, the union should file a properly supported petition for a secret ballot election to be conducted by the National Labor Relations Board. We respect our employees and we respect their rights to choose or decline union representation on a fully informed basis through a properly conducted election. We would hope that the United Steelworkers will do so as well.[76]

As a result of the Company's refusal to recognize it, the Union immediately filed a petition for a representation election and continued holding organizing meetings until the election.[77] During the organizing campaign leading up to the election, Abare and others on the organizing committee handed out packets and posted information to coworkers about when meetings were going to be held. He also hung up flyers and placed them on tables in different parts of the facility.[78]

D. The Company's Response to the Union Campaign

In response to the union organizing campaign, the Company issued several announcements and held numerous small and large employee group meetings to provide information and attempt to convince employees to vote against union representation at the upcoming representation election. At these meetings, company managers and supervisors made PowerPoint presentations and distributed handouts to employees relating to the representation election and collective-bargaining process. The handouts explained employees' legal rights during the election process, the collective-bargaining process and the impact it might have on their terms and condition in the event the Union was elected to represent them. A common refrain was that bargaining is a "give and take" process which could result in more, the same or less for employees. The Company also provided employees with comparisons of wages and benefits from its unionized facilities, including the Fairmont and Terre Haute locations already represented by the Union. Additionally, the Company launched an internet site containing information about the representation election.[79]

1. The Company restores Sunday premium pay

Prior to making any statements, however, the Company effectively started its opposition campaign by unleashing a powerful volley in the form of a give-back to employees. Sometime between 7:30 and 9 a.m. on January 9, the same day that the Company received the Union's demand for voluntary recognition, Smith and Sheftic made several significant announcements during crew leader training. The announcements included one that the Company was restoring Sunday premium pay and the use of holidays and vacation days for overtime. Smith also distributed a flier at each of those meetings confirming implementation of the changes:

A few short weeks ago we announced in our Business Update & Wage meetings:

- 5% wage increase
- $2,500 lump sum payouts
- J-12 schedule for CY 2014

Subsequently we confirmed:

- J-12 schedule for CASH
- Extension of former holiday pay and overtime pay practices until 1/6/2014
- Lump sum payouts can be redirected to HAS tax-free

> We've never stopped listening and having dialogue. We value your input about the impact of changes. Since the changes in May we have continued to listen and engage in dialogue, share information and answer your questions. During our December Business Update & Wage meetings we committed to respond to your questions in mid-January.
>
> We have represented your concerns and interests with our corporate partners in Atlanta and as a result I am pleased to announce that we have agreed . . .
>
> - No planned major impacts to employee compensation and benefits
> - There will be a cadence and method of communication that provides sufficient time for everyone to be personally informed, digest any impact and plan accordingly
> - Vacation and Holiday WILL be considered "hours worked" and WILL be included in the calculation of overtime

[75] Given the lack of company testimony as to when it actually received Ridgeway's letter on January 9, I found it suspicious that Smith would pinpoint its receipt in the afternoon, and construe it as a further attempt by the Company to establish a paper trail justifying its restoration of benefits earlier in the day.

[76] Significantly, Smith did not dispute Ridgeway's assertion that he (Smith) was "aware" of the organizing campaign prior to receipt of the January 7 letter. (GC Exh. 9.)

[77] GC Exh. 8.

[78] Abare's credibility regarding the posting of Union literature in the plant prior to January 9 was undermined by the Company's security records indicating that he was not in the facility on January 7. (Tr. 438, 2635–2636; R. Exh. 284–1.) Nevertheless, there was a substantial amount of credible and unrefuted evidence that the Union flyers were posted on the dates and locations indicated in these findings. (GC Exh. 29.)

[79] There is little dispute as to what the Company gave or told its employees during these communications. (R. Exh. 37, 40, 70, 77, 243–244; Tr. 1640, 1642, 1746–1755, 1853–1861, 1864–1866, 1985, 2004, 2017–2019, 2035–2036, 2045, 2076, 2101, 2107–2108, 2112, 2137–2139, 2167–2170, 2221, 2276–2281, 2333, 2402–2405, 2440, 2427, 2438–2439, 2473, 2500, 2530, 2559–2561, 2703–2704, 2751, 2787, 2795, 2927, 2982–2983. Moreover, there was a deluge of subjective testimony by employees that they never heard any statements that they considered to be threats by the Company during the campaign. (Tr. 1650, 1832–1833, 1864-1865, 2005-2006, 2018-2019, 2037-2038, 2076, 2171-2172, 2280–2281, 2308, 2335-2336, 2428-2428, 2440–2441, 2461–2462, 2473–2474, 2491–2492, 2503–2504, 2531, 2562–2563, 2577–2578, 2694–2695, 2704, 2727–2728, 2788.)

("bridge to overtime")

- 1 ½ premium pay for Sunday will be restored[80]

Together, we have a lot to deliver in 2014 if we are to be successful – we need to continue to stay safe, commission both CASH lines and build relationships with the new customer base. I need you to continue to do your part, as you have in the past, to help to ensure that we maintain our competitive advantage.

Thank you for your patience through this entire process.[81]

The Company's restoration of wages and benefits was also reflected in a manual distributed to employees on January 23 entitled "My Employment At-a-Glance 2014."[82] The announcement clearly had an impact on employees, with some requesting that their Union authorization cards be returned to them.[83]

2. The Company's opening satement about the union campaign

On January 16, Smith formally presented the Company's opposition to the union campaign after informing employees about the presence of the Board-mandated postings about employees' legal rights and notice of election:

> Please let me remind you that the Company's, and my, position is and always has been that we remain better off without a union or other third party here in Oswego. The law protects your choice whether you decide to have a union represent you or not, the Company cannot interfere with that right and there will be no repercussions. It is important that you also know that you have the right not to have a union.[84]

Smith also encouraged employees to consider both sides and get involved by stating, "This is your decision so, get the facts. Make sure you are getting both sides of the story by continuing to ask questions. Most importantly, be involved."

3. Interrogation, threats and enforcement of no-solicitation Rule

During the organizing campaign, the Company continued a past custom and practice of permitting employees to post a variety of personal items on bulletin boards. Employees were also permitted to wear stickers such as Company-issued safety stickers and nonwork related sports and other types of stickers on their uniforms. The wearing of prounion and antiunion paraphernalia, however, was addressed in a haphazard manner. At certain points during the campaign, employees' sentiments about the Union were reflected on stickers placed on hardhats, uniforms, and equipment and machinery. The stickers contained slogans urging employees to vote for or against the Union and were worn in the presence of supervisors. One sticker, which was actively promoted by the Company, stated "one more year, one more chance."[85]

At certain times after the Union requested recognition on January 9, Union supporters began posting and distributing pro-union materials.[86] As explained below, however, there were instances in which supervisors removed or instructed employees to remove campaign-related materials from work areas, break areas or bulletin boards.[87]

a. January 12

On January 12, 2014, in the pulpit, Cold MillOperations Leader Jason Bro entered the pulpit area in a control room that also serves as an employee break area. In utilizing the room, the employees bring in items such as newspapers and magazines, and they post flyers for fund raising benefits for little league baseball that involves chicken and spaghetti dinners. Two crew members, Leo Rookey III and Chad Phelps, were present. Bro, looked at two pieces of literature, one a comparison of benefits and the other union literature that listed things that were taken away from employees and included the words, "United we stand, divided we beg." Bro explained that the comparison literature was allowed to stay, but not the one for the Union. Bro asked Rookey who placed the literature there. He then mentioned the names of two employees, but Rookey did not know who they were. Bro then asked, "Did Everett [sic] bring this down?" Rookey replied that the literature was there when he got to the pulpit and that he did not know who placed it there. Bro then took the Union literature and left the pulpit.[88]

---

[80] The Company's assertion that Sunday premium pay was never actually taken away because paychecks continued to reflect them into January is undermined by the very language in Smith's letter—that premium Sunday pay would be "restored." (GC Exh. 16; Tr. 517, 718.)

[81] There is no dispute as to the timing of the announcement and receipt of the Union's demand for recognition. However, there was a palpable absence of testimony by a Company manger about the process and rationale that led the Company to reverse rits decision between December 20 and January 9. (GC Exh. 7, 9; Tr. 129–130, 257-261, 714–719, 729–730, 894–897.) As such, I draw the plausible inference that the decision to restore Sunday premium pay was not in response to employee concerns but, rather, in response to concerns about a Union organizing campaign.

[82] GC Exh. 17.

[83] No evidence as to the total number of authorization cards requested and returned, but Robert Weiss was an example of one of several employees who requested and got their cards back. (Tr. 808.)

[84] R. Exh. 49.

[85] There were numerous references to the distribution of pro-union literature in employee break areas during the organizing campaign. (Tr. 596—598, 1923, 1955—1958, 2118—2120, 2139, 2190, 2304, 2312, 2314—2319, 2474, 2490, 2504, 2531—2532, 2560—2561; R. Exh. 107, 111, 113—115, 123.)

[86] Abare testified that he distributed and posted the pamphlet in the facility on January 7. (Tr. 437-440; GC Exh. 29.) However, his credibility on this point was undermined by company security records indicating that he was not in the facility between January 2 and 10. (R. Exh. 284.) Moreover, there is no evidence that the Company knew prior to January 9 that he solicited cards at the facility. (Tr. 586.)

[87] I credited the testimony of several Company witnesses that they were told on certain occasions to remove antiunion stickers from their uniforms and hardhats. (GC Exh. 131; Tr. 2019–2020, 2025–2026, 2275). It is also undisputed that certain supervisors also prohibited employees from wearing or distributing ant-union materials, or using Company resources for that purpose. (Tr. 2073–2075.) However, given the lack of testimony by high level supervisors, coupled with evidence that Smith promoted use of "one more year, one more chance" stickers, it is evident that the Company did not always enforce the policy in an evenhanded manner. (Tr. 1012, 1019–1022, 1259, 1261; GC Exhs. 5 and 6, p. 22, LL. 12–14).

[88] Dean White testified credibly about a conversation in which Bro told him that the display of pro-union literature was permitted in break areas. However, in a clear demonstration that actions really do speak

b. January 21

Bro's efforts to sanitize his areas of prounion literature continued. Sometime in mid-January, he removed a union meeting notice posted on the public bulletin. On January 21, Bro removed a prounion flyer from the Cold Mill bulletin board.[89]

On the same day, Remelt department operations leader Duane Gordon entered the cabana office, which is used as an office and break room. The room usually contains newspapers, magazines, and other personal items placed there by employees. Gordon told Mathew Blunt and other employees that they could not have prounion fliers in there and removed prounion literature from the window and countertop, and replaced it with a company antiunion publication entitled, "Know the Facts."[90]

c. January 23

Around midday on January 23, Bro asked Melanie Burton to gather operators for a meeting in the Cold Mill furnace office. The furnace operator and a crew leader work in the furnace office, which contains a computer that is utilized by crew members to print their work schedules. The space also includes an employee work and lunchbreak area containing a chair, refrigerator, microwave, coffee machine, as well as newspapers, magazines, and personal flyers placed there by crew members with the acquiescence of supervisors.[91]

The operators present included Burton, Justin Waters, Arthur Ball, Caleb Smith, Nate Gingerich, and Randy Durvol. Bro initially removed a union fact sheet, explaining that no pro or antiunion literature would be permitted on bulletin boards or clipboards, and handed out a company pamphlet entitled, "My Employment At-a-Glance 2014."[92] Using a blackboard, he proceeded to explain how employees were not losing money as a result of the Company's announced wage and benefits changes. When an employee disagreed with Bro's analysis by referring to his paystub, Bro responded that anyone who did not like working for the Company could find a new job.[93]

At the January 23 meeting, Bro also directed employees wearing prounion stickers to remove or cover them up beneath their uniforms. They reluctantly complied, but Burton noted that employees at the 72-inch mill were wearing antiunion stickers or placed them on their scooters. Bro replied that he was not aware of that but would look into it.[94] In fact, the Company has long permitted employees to wear nonwork related stickers.[95] Bro then approached each employee, except for Burton, and bombarded each one with an antiunion rant framed as a question and answer: "You know what you need to do to keep the Union out of here. You need to vote no." Some employees remained silent while others repeated his statement. Durvol, however, said he would vote in favor of the Union.[96]

At some point before the meeting concluded, Dan Taylor, a shipping supervisor, entered and removed Union materials from the employees' clipboards and others that had been placed on the desk by Burton prior to the meeting.[97]

Bro and Taylor were not alone in ridding the plant of prounion literature on January 23. On the same day, Christopher Spencer hung a Union meeting notice on the Remelt cafeteria bulletin board. Shortly thereafter, Joseph Griffin was reading the flyer, when supervisor Thomas Granbois removed it from the bulletin board.[98]

d. January 28

On January 28, Craig Formoza, a CASH line operations

louder than words, I also credit the unrefuted testimony of Arthur Ball and Rookey regarding the January 12 incident. (Tr. 1023, 1417–1424.)

[89] Raymond Watts credibly testified as to the date he observed Bro remove the literature. (Tr. 1270–-1271, 1323–1324, 1352–1359.) Leo Rookey was also credible on this point but could only recall that Bro removed the meeting notice in mid-January. (Tr. 1480–1481.)

[90] The Company did not dispute Blunt's version, but got him to concede that the Company did not remove any prounion literature from the cabana after January 21. (Tr. 1051–1059, 1117.)

[91] The Company attempted, unsuccessfully, to undercut credible testimony by Caleb Smith, Burton, and Ball as to the work or lunchbreak functions in the furnace office by establishing that the Cold Mill also has a cafeteria and designated break space elsewhere. (Tr. 666, 677, 720, 726–728, 749, 1022–1024.)

[92] This finding is based on Caleb Smith's credible and unrefuted testimony. (Tr. 675; GC Exh. 17.) I did not credit the uncorroborated hearsay testimony of Company witness, Robert Esweting that supervisor Ernie Tresidder, who did not testify, informed him that ant-union flyers could only be placed in break rooms on non-work time. (Tr. 2526–2527.)

[93] The Company contends that this exchange simply revealed an open and interactive atmosphere. (Tr. 668-669, 678–679, 1015–1016, 1040.)

[94] The Company does not dispute this directive by Bro. (Tr. 670–671, 684–685, 750, 757, 1018, 1044.) Moreover, there is no evidence that Bro followed up on his representation that look into employees wearing anti-Union stickers. To the contrary, Ball observed him in the 72-inch mill area while anti-Union stickers were being worn there prior to the election. (Tr. 1022.)

[95] Alan Cowan credibly testified that some employees wore antiunion stickers in the Cash 1 section prior to the election and in the presence of at least one manager, Warren Smith. (Tr. 655–657.)

[96] The findings as to what Bro told employees and their responses on January 21 are based on the credible, mostly consistent and unrefuted testimony of Burton, Rookey, Ball, Smith and Robert Sawyer. (Tr. 664-671, 674-680, 683–686, 694, 703–705, 720–728, 749–753, 1013–1018, 1020–1022, 1027–1028, 1030, 1040–1042.) Smith's failure to mention Bro's suggestion that he find work elsewhere in his Board affidavit was considered, but outweighed by the testimony of the other witnesses. (Tr. 690–692.)

[97] Evaluating Burton's testimony in conjunction with Ball's version, it appeared that she placed Union materials in the furnace room prior to the Bro meeting, left before it concluded and returned to find Taylor outside the furnace office holding her materials. (Tr. 726–728, 1017.) In any event, the Company did not produce Taylor to dispute the fairly credible testimony provided by Burton and Ball on this point.

[98] Griffin's cross-examination and redirect examination clarified that he referred to supervisors Granbois and Fred Smith on direct examination as the "maintenance boys" who were present when Granbois removed the flyer. (Tr. 1401.) As confusing as his reference to the "maintenance boys" may have been, his testimony was spontaneous and the context is clear. Moreover, the fact that Griffin's written statement of the incident was given to him by Spencer and based on information reported to Spencer by Griffin's coworkers, did not detract from his credibility. Griffin told coworkers what he observed and they passed it along to Spencer. Spencer documented the incident, met with Griffin, who adopted the written statement as an accurate description of the incident. (Tr. 1405–1407, 1411–1416.)

leader, approached Allen Cowan, an operator on the J-12 schedule.[99] At the time, Cowan had been employed by the Company for just over a year. Formoza said he wanted to discuss the Union, but Cowan said he did not feel comfortable speaking about that subject. Cowan diverted the discussion to the weather, but Formoza did not forget the point that he came to make. As the conversation was concluding, Formoza returned to the issue of the Union election and warned of the impact that a Union victory might have on J-12 shift employees: "Say the Union comes in . . . I could always go to another schedule. And if things aren't very busy we could lay off one of the shifts . . . Of course it would be in order of seniority. . . Where are you in the order of seniority?"[100]

e. January 30

On January 30, Bro did a replay of his January 23 meeting with a different Cold Mill crew. He initially met with Sawyer, Rookey and Phelps in the Stamco 2 pulpit area, which also contains a break area. Jim Wheeler came in a few minutes later. Bro asked the group how they would vote if they did not want a union and then proceeded to ask each one individually. Phelps did not answer, but Rookey said, if we didn't get a union in here we were going to take it in the ass." Bro did not respond and Rookey added, "if I want a Union in here how do I vote" . . . you heard him boys, vote yes." Bro responded, "vote yes, of course." One employee answered, "if I don't want a union I'll vote no and if I do want a union I'll vote yes."[101]

4. The Union files charges

On January 27, Brad Manzolillo, Esq., the Union's counsel, filed charges in Case 3–CA–121293 alleging the commission of at least 12 specific unfair labor practices occurring between January 12 and 23. The charges included allegedly maintaining and enforcing overly broad solicitation and distribution policies, engaging in and creating the impression of surveillance, and engaging in interrogation, intimidating, coercing, polling and harassing employees during captive audience meetings. The document concluded with the standard conclusion: "By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act."[102]

On February 10, Board agent Patricia Petock sent a letter to Kenneth Dobkin, Esq., the Company's counsel, relating to Case 03–CA–121293, stating in pertinent part:[103]

> I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits on or before February 26, 2014, with regard to certain allegations in this case.

The letter went on to list 8 occasions in January when Company managers or supervisors allegedly removed or prohibited the distribution or wearing of Union literature or buttons, threatened reprisals if the Union prevailed, interrogated employees as to how they would vote at the representation election, and the following allegation relating to the restoration of benefits:

> Plant Manager Chris Smith and Human Resource Manager Peter Sheftic announced to employees that it was restoring 1 ½ premium pay for Sunday and vacation and holiday time would be considered "hours worked" in the calculation of overtime in response to learning that there was an ongoing union organizing campaign.[104]

In a significant strategic maneuver after receiving the letter, company officials distributed to employees a redacted version that omitted most of the text, except for the aforementioned section referring to the restoration of Sunday premium pay. The impact of the Company's action, conveying the notion that the Union complained to the Board about the Company's restoration of Sunday premium pay, became evident almost immediately.[105]

At the Union's last general meeting before the election on February 16, an employee told Ridgeway that the Company showed employees a Board document relating to a grievance or charge about the restoration of Sunday premium pay and bridge to overtime. Others followed with questions as to why they did not know about such a charge being filed. Ridgeway denied that the Union ever filed such a charge relating to the restoration of Sunday premium pay. Spencer subsequently provided Ridgeway with a copy of the redacted Petock letter a few days later.[106]

5. Quinn's promises

Around the same time as Company supervisors sought to

[99] Formoza was promoted to CASH department manufacturing manager three months later. (Tr. 2342–2344.)

[100] I found Cowan spontaneous and credible on both direct and cross-examination. (Tr. 649-655.) Formoza, on the other hand, provided inconsistent testimony and had a selective memory. He denied asking Cowan how he felt about the Union or "understand what [an S-21 schedule] means." (Tr. 2377–2378.) On cross-examination, however, Formoza conceded speaking with Cowan about the Union on "numerous" occasions. (Tr. 2412–2414.) Moreover, he attended meetings in which employees were informed about S-21 schedules at the Terre Haute facility. (Tr. 2406–2410; R. Exh. 243.)

[101] Rookey's credible testimony was corroborated by Sawyer. (Tr. 702–706, 1422–1426.).

[102] GC Exh. 1(c).

[103] The parties disagree over the significance of the term "allegations." The General Counsel and Charging Party contend that it cannot be equated with a charge; the Company asserts that the reference in the charge's conclusion to "and other acts" should be deemed to cover the restoration of premium Sunday pay charge.

[104] Subsequent to the admission of the letter into evidence, I sustained objections to the Company's questions about conversations with Petock, ruling that court statements of a NLRB Board agent are inadmissible. (GC Exh. 40; Tr. 912, 929–933, 1178–1181; ALJ Exh. 3.)

[105] While no one testified as to how they got a copy of the redacted letter prior to the February 18 Union meeting, it is obvious that they got it from Company supervisors or managers. (Tr. 145, 157–158, 160–162.)

[106] The testimony by Ridgeway and Spencer that no such charge was filed is corroborated by the charge itself. (Tr. 136–141, 144–147, 157–162, 165–167, 172, 178–179, 947–951; R. Exh. 65–66.)

chill protected activity by threatening, interrogating and prohibiting the dissemination of prounion materials, Human Resources Leader Andrew Quinn took a warmer approach.[107] On February 15, Quinn ventured into the Remelt control room and encountered Dennis Parker, Timothy Boyzuck and Gordon Barkley. He initiated discussion by asking about employee morale and how the work was going. Boyszuck explained that he was not pleased with the acrimony between management and employees, the lack of communication, and the changes in benefits and overtime calculations. After some discussion as to whether those areas of concern could be fixed, Quinn responded that "he personally felt that things could be fixed" if the Company was "given another chance." Quinn then qualified his statement somewhat, saying that "it would never be as good as it was, but it would be better than it is now" and added that "they couldn't start making things better until a 'No' vote was in."[108]

6. Captive Audience Meetings Conducted By Company Managers

(a) The First Meeting

Just before the election, the Company held three mandatory employee meetings (captive audience meetings) attended by all employees.[109] The first meeting was held on February 17 at 5:30 p.m.[110] At each meeting, Martens, senior vice president Marco Palmieri and Smith addressed employees. There were also numerous supervisors present. Each meeting lasted between 45 minutes and an hour.[111]

As detailed below, Martens made statements during the three meetings stressing that it was his personal decision and commitment to Oswego that led to the closing of the Saguenay plant when Oswego lost the Ball Corporation account rather than laying-off employees at Oswego and that if the Union was voted in, it would become a business decision and things would change. At the first meeting, Martens and Palmieri implored employees to vote "No" and justified their advice with likely changes to employee wages, work schedules and overtime if the Union prevailed:

> You know, the decision you're going to make is a very important one. And for me, for many reasons, it's a very personal one.
>
> A lot of you don't understand what kind of decisions have been made to support the Owego Plant over the past four years. And I want to take you through how we've made commitments and how I've made decisions to secure your future, your family's future, the employment levels as this plant, and to keep it in its unique way an integrated part of our company.
>
> You know, in 2010 I made a decision to locate the CASH lines here that we're standing in. And I made that decision after we evaluated many different options of where we could put the facility. That investment was made to a large degree on the backbone of the people here in the plant.
>
> We felt we had a workforce that could adapt, and learn, and adjust to the demands of a higher profitability line, a higher speed engagement with the customer, and ultimately the growth aspects of the North American market place. That was a very, very important decision, and it was one that now has led towards the leadership position that we have in the automotive space going forward.
>
> But on that, we also made a decision to all of you, and I personally made the commitment to myself to sustain the employment levels here at Oswego and make them grow.
>
> About a year later, we had to make probably for me in my career one of the most difficult decisions and that involved the loss of jobs for over 140 people. In this plant, we lost the Ball business. That Ball business was about 100 kilotons a year. It was reallocated to another automotive—I mean rolling supplier.
>
> If we had just taken that business out, we were looking at a layoff here in the plant of about two to three hundred people. I made the decision not to lay people off here. I had made a commitment to this plant, I had made a commitment to you, and I decided to close Saguenay. When I closed Saguenay, 140 people lost their jobs. What we did though is we allocated that product into this plant. We kept the employment levels here - - We kept the employment levels here at a sustained level. We added product into this plant, and we closed the Saguenay facility.
>
> What I saw out of all of you in that transition was a tremendous compassion for what we were doing; an incredible effort to make that work seamlessly, and ultimately, I saw great collaboration. But that was a very difficult decision for me to make, and I made that based on the commitment I had made to you that you didn't know about; that we were going to maintain and grow the employment levels here at this plant.
>
> After that, we made another large investment decision, now to expand even further in the automotive space; we're going to add a third heat treatment line here. We're spending $50 million on the infrastructure. We are growing the employment

---

[107] Quinn, as a leader in the Human Resources Department under that unit's manager, Sheftic, was the highest level management official to testify for the Company. (Tr. 2868–2872; 2925.)

[108] Quinn maintained that it was not unusual for him to speak with employees on the shop floor. (Tr. 2925–2927.) However, he failed to refute the credible testimony of Parker and Boyzuck that it was unusual for Quinn to engage *them* in their work area. The obvious purpose of his visit was to appease these employees prior to the election. While I credit his rendition of the standard disclaimer that things could improve, remain the same or get worse, it was evident from the credible testimony of Parker and Boyzuck that he eventually expanded on those remarks to forecast a better future for employees if the Union lost. Accordingly, I credit their testimony over the denial by Quinn, who was present when they testified, that things may not be as good as they were, but would get better if the Union was voted down. (Tr. 766–768, 780–782, 1504–1510, 2925.)

[109] The parties agreed to receipt of the recordings and transcripts of the meetings. The transcripts were mostly accurate, but were incorrect in several instances. Any corrections are reflected in the findings. (GC Exh. 5–6, 19–20, 42–43.)

[110] The General Counsel's letter, dated November 11, 2014, identifying, without objection, the speakers in GC Exh. 43, is received in evidence as GC Exh. 43(a).

[111] The tone at these meetings was rather ominous, not positive, as the Company contends. Explanations about the performance and financial success of the plant were peppered repeatedly with cautionary remarks as to the duration of its standing with its automotive customers.

> here by well over 100 new jobs. And for all of you, when you think about your future, and you think about what we've done together, we have secured your future, your family's future, and we've done that in a collaborate sense.[112]
>
> . . . [O]ur North America leadership team remains confident in the plant management in Oswego. For that given reason I would not invite the Union to speak on your behalf. I would vote "NO."[113]
>
> Think about it. This year you get a 5 percent merit, a $2500 payout; the folks at the other plants get less than 2 percent, and they have to pay the union fees. That's a fact. . .
>
> You have more flexibility in your scheduling. And Marco just commented that we're not going to make any changes there. We would certainly endorse the changes that could come with a union, but we don't want that for you.
>
> There's a lot of other constraints and restrictions that go along with that, but make no mistake, if you vote "YES'' it becomes a business decision. The base line for the start is not where you're at today. The base line for the start is at where the Warren or the excuse me, the Fairmont or the Terre Haute agreements are, and they are much different, and must less supportive of the lifestyles that you want.
>
> I don't want you to vote ''YES." I don't think that's the right decision for all of you. I have a personal interest in this company. I have a personal interest in the livelihoods of the people here. And I know for a fact that the manners in which we work together to get where we're at from a wage, from a shift flexibility, from a benefit package are what you need. . . It's not the best business decision for the company, for you, and for your families. And I think you need to really look at that and step back and say the lifestyle, the flexibility, the security of everything that we've brought here, the commitment I've made to this plant; all of that put together is unique. There's no other labor agreement in the United States that's as engaging as this one is. I can guarantee you that. . .[114]
>
> The commitment I've made to you guys is unparalleled. I've maintained your jobs. We've maintained wages above market. We've maintained shift patterns. We're maintaining your pension. We're here to secure your future forever. Nobody else can do that. I encourage you to vote "NO."[115]

One listening to Smith's remarks at the three meetings would never have imagined that he was the plant manager. He frequently alluded to his international business experience and past dealings with Unions, and injected similar platitudes of personal commitment to the employees instead of specific examples of how a labor relationship with the Union would result in changes to wages and benefits:

> "Let the chips fall where they may," really? Do you really want to leave it to someone else to define your future? To define your work relationships with each other? Look at the people sat next to you. If a union comes in here we're going to lose people. We're going to lose those people in the same row, the same shifts that you work with, the same crews; they're going to go elsewhere because their career is going to be stunted. They won't like the atmosphere and the rigor in which we have to abide by with the rule books, the things we've taken for granted".[116]

After echoing Martens' remarks about the Company's expansion plans, Smith also spoke about the loss of business, specifically the contract with Ford, and consequently less job security, if employees selected the Union. He linked the Company's ability to remain competitive and to meet the obligations of the contract with remaining nonunion, and referred to the organizing campaign as a distraction from meeting its contractual obligations. He stated, in pertinent part:

> We stub our toe, we fail on delivery, we don't sustain supply or the quality that we need, then we're back amongst the also rans. It's ours to lose, guys. We got to make sure we don't fall into that category.
>
> The other thing that I didn't envision was having a potential third party to work with. A third party that knows very little, if anything, about our business. A third party that knows nothing about the supply of materials to the automotive industry. A third party that doesn't understand our strategy on a worldwide basis, and the role that Oswego's going to be playing in that to be successful for the company if we do it right for decades to come. That's a concern.
>
> Let's be honest, the last point, that's exactly where we sit today. We have a distracted and divided workforce. That's not something that we can afford to live with long-term if we're going to be successful as far as the automotive initiative is planned going forward.[117]
>
> And we've got to get past the vote. Simple as that. And I'm hoping that by the time you leave here today, you'll have enough information to be able to make an informed decision based on fact. Not promises, fact.
>
> The next 12 months are critical. We've got new facilities, we've got a
>
> new product portfolio, we've got an extremely demanding customer as we all will become to appreciate in that same period of time. That same customer will have options as we go forward. The last thing we want to do is give them any reason to look elsewhere outside of Novelis, or specifically Oswego, New York for any future aluminum intensive programs that they bring to the table.
>
> Bringing in a union is a distraction that will take us away from achieving our business goals. You can't tell me that the last three or four months everybody in this room has been concentrating on their job 100 percent of the time. It comes with the territory when you introduce the "union" word in the conversation. We cannot afford to have any distractions as we go forward in the next 12 months and beyond. And I honestly believe that without a union is the only way we're going to realize that success.[118]

Martens concluded his remarks by holding up a letter and re-

[112] GC Exh. 5 at 00:19-3:59; GC Exh. 6 at 2:6-4:19.
[113] GC Exh. 5 at 7:42–7:58; GC Exh. 6 at 6:22-7:1.
[114] GC Exh. 5 at 8:52-10:54; GC Exh. 6 at 7:15–9:22.
[115] GC Exh. 5 at 11:41–12:00; GC Exh. 6 at 9:17–22.
[116] GC Exh. 5 at 34:44-35:20; GC Exh. 6 at 21:1–11.
[117] GC Exh. 5 at 19:15-20:22; GC Exh. 6 at 14:21–15:13.
[118] GC Exh. 5 at 32:21-33:52; GC Exh. 6 at 19:18–20:15.

ferred to it as a copy of charges filed by the Union regarding the restoration of premium pay:

> I want to talk for a minute about the USW. I've dealt with unions around the world, and I think what you have to understand is, sometimes you have to understand that customer that you want to dance with a little bit better. Apparently, last night in their discussions with you they said that they filed no grievances. And today as I was coming up I said, That's strange because right here is a letter from the NRLB of filed grievances. That's who you're dealing with. That's not who I am. That's not what this company, Novelis, is about. And it's not the kind of commitment that I would say I'm going to do and then do something different.[119]

After Martens' asserted that the Union filed a "grievance" over the Company's restoration of premium pay, Smith raised the Union's alleged legal response to the level of a "charge":

> I want to refer to the last six months in support of the Union. "At least I have a voice," really? The unfair labor practice charge that Phil mentioned, how many of you actually knew that that was actually being filed? Not many I would guess.
> Did you also know that that charge was filed against the fact that we brought those concessions to the table four weeks ago? So in other words, if we plead quality, those concessions come off the table. Do you want to take a vote now? That's fact. [120]
> So please, think about it. Make a decision. Make an informed decision. Vote. And vote "NO."[121]

(b) The Second Meeting

The second meeting was held with the morning shift on February 18 at 5:30 a.m. At the second shift meeting, Martens stated, in pertinent part:[122]

> I want to first tell you why I decided to come down here, because to a certain degree, as we talked about this last week, I made a decision to come down and actually talk to you about my personal commitment and the decisions that I've made to get this company and this plant in the position it's in, and there's a lot of things that have gone on over the past few years that you aren't privy to that has absolutely secured employment levels here at Oswego at a level that no other plant . . . has and a level of commitment that myself and the top management team that really no other plant . . .
> Let me take you back a few years. In 2010, we made a very strategic decision for this plant, and it wasn't one that was naturally decided on. It took a number of different iterations, but I made the decision to convert this plant into the automotive center for North America, and I did that because the can market was declining. I did that because of a lot of other factors, but the primary factor that we focused on was the capability if the . . . and we felt that it was second to none and it trumped all of the other issues that we had to look at… but when we made that decision, I made the personal commitment to all of you to maintain the employment levels here in . . . and we did that as we looked at the community, we thought the resources here were great, we thought the people were tremendously committed to the company, and we felt we had a unique competitive advantage.
> I want to tell you how deep that commitment has been for me personally. About a year later, we lost a hundred AT of business that was resourced from Novelis to another company and the Ball Corporation took that from us. That material is produced here. When that material is resourced, we were faced - - I was faced with a decision to either lay off two to 300 hundred people here in this plant, the . . . couldn't support all of you or to make another decision and support all of you and I made that decision.
> I made the decision to close Saguenay and relocate all of that product material here to support you….
> The result of that was 140 jobs were lost in Saguenay we closed the plant, people had no decision on that, and I did that because we had made and I had made a commitment to all of you that we were going to grow this plant and we were going to keep the employment levels steady, and, in fact as Chris will say a little bit later, we added 200 new jobs….[123]
> So when we talk about this decision that you're going to make, I just want you to know that over the last couple of years, although you may not have realized it, the level of decision-making in my office to support this plant has been second to none, and the decisions I have made that benefit of you to continue that have lost - - some of the people have lost jobs because of that. So this is personal for me. I have made a tremendous effort to support you and we will continue to do that to go forward. . .[124]
> If I were you I would vote no hands down. I wouldn't even think about it, and to Marco's point, you have to go vote. I don't want to this to become a business decision. I won't want to go down that path. I know how to do that. What I want you to do is preserve what you have. From a personal point of view, it's extremely important for me that you know how big decisions I've made to support all of you, and when the wage issue came up, I said just give it to them, we need these people.[125]

At the second meeting, Martens also addressed changes to work schedules and wages that would result from a Union victory:

> The compensation is at levels that no other plant in North America has. The level of investment that I talked about is at no other plant . . . That was a business decision, that was purely what this was about. If this was purely just about something where we were trying to save money, we'd unionize.

[119] GC Exh. 5 at 10:56–11:40; GC Exh. 6 at 9:4–16; R. Exh. 66.
[120] GC Exh. 5 at 33:56-34:39; GC Exh. 6 at 20:21–25.
[121] GC Exh. 5 at 36:39-36:50; GC Exh. 6 at 22:4–5.
[122] The parties stipulated to the admission of an audio recording and transcript of the meeting. (GC Exh. 42-43; Tr. 913–915.) Also, by letter, dated November 7, 2014, designated and received as ALJ Exh. 43(a), the General Counsel provided the supplemental information regarding the page and line references for the speakers reflected in GC Exh. 43.
[123] GC Exh. 42 at 15:45-18:35; GC Exh. 43 at 3:4–5:18.
[124] GC Exh. 42 at 19:35-20:04; GC Exh. 43 at 6:15-7:1.
[125] GC Exh. 42 at 29:45-30:13; GC Exh. 43 at 14:4-14.

> It's cheaper. It's more constructive in terms of what we have to do. There's a lot of things that go away and there's a lot of things that come into play. You get forced overtime. You get lower money, lower annual compensation.[126]
>
> Just look at the start point that we would do. We'd pull out the … Fairmount and the Terre Haute packages. You're getting less than two percent . . . They don't have the same benefits structure as you do. They don't have the same flexibility in the work schedules that you do, but that's when we would start.
>
> It's a lower overall cost for the company, and if I was looking at this purely from the aspect of how can I save money and how can I run this business more lean, I'd say yeah, do that.[127]

At the second meeting, Smith supplemented Marten's remarks regarding the changes that would come to employees' work schedules and wages:

> A union's not going to bring us that success, guys. Look who's sitting here around you at the moment. If the union was brought in here, I bet my 401(k) you won't be looking at the same faces a year from now. People are going to leave. People are going to get frustrated. People are going to feel as though they're restricted by a rule book. People are going to get fed up at being treated in a group with no individual, one-on-one relationships with the management, with the process, with the strategy to be represented by someone who knows very little about our business.
> Do we really want to put all that on the table and risk losing it? Just think about it.[128]

Smith also repeated his remarks about the potential loss of business if the Union prevailed:

> It's about growth, $400 million, 200 new jobs. Now we've got to deliver. The contracts are in place. It's ours to lose. Just think about that. When else in your careers have you ever had this given to you on a plate by way of being able to secure your job and know what we can do in terms of contribution as far as the Novelis portfolio and contributing to the bottom line. Think about that opportunity.[129]
> It's not a God-given right that all our investments are going to keep coming here if we don't deliver. Simple as that. I didn't anticipate the possibility of dealing through a third-party. There's no way we can be successful being represented by someone who has limited to no knowledge of our business, has no understanding of the commitments that we have from a contractual point of view with our customers. There's no understanding of strategically where Novelis is going as far as automotive is concerned worldwide. How is that going to be anything other than a distraction from what we do on a day-to-day basis?[130]

Once again, Martens concluded his presentation by holding up the February 10th Board letter and referred to it as a copy of a letter containing Union charges:[131]

> We work with unions all over the world. I've worked with them for over thirty years. I can tell you what you have today in Oswego is completely unique and you should preserve it, and I want to talk to you a little bit about who you're dealing with because there's been a lot of noise back and forth and there always is in the (incomprehensible) but the only thing that struck me is I guess some feedback was given to me that at the USW meeting you had two or three days ago . . . they said that they filed no grievances against Novelis.
> If you go on the website, you can look this up, that the NLRB, those are grievances that they have filed, the allegations that they have raised. Why would one company say that and do something else? You go look for yourself. For me, that's what your're dealing with. The truth of this at the end of the day is you have something here that we've invested in that I've personally committed to make happen for all of you that will pave the way for you and your families and this community in a way that has never been done before and that's what we want.[132]

In addition to Martens' comments about the charges, Smith spoke about the adverse repercussions that would befall employees as a result of the alleged charges:

> Bringing in a union is a distraction that will take us away from achieving our business goals . . . but I believe every word of that. Some of the things I've heard over the last six months, at least I have a voice should I go for a union. The charges that Phil mentioned earlier, give you a little bit of detail behind that. First of all, overnight there was a lot of rumors spread about the fact that we actually filed those charges on ourselves so that we could . . . That didn't happen, guys. I promise you. What the charges actually say in the unfair working practice was all around the concessions we put on the table in January for the time and half and Sunday and the bridge to overtime. So here's one scenario. If we decided to say, yep, we're guilty as charged, the result would be those concessions would come off the table and they'd be retroactive to the 1st of January. That's the process. So when people say I've got a voice with the unions, did any of you know that those charges have been filed and they could be the consequences if we're found guilty? I've got the document. There's documents, copies all over the place. Speak to Mike Anthony. Got plenty of them. Educate yourselves. Take that five minutes and read that charge. So if having a voice is having a charge filed like that on your behalf by the union, I don't think that's anybody's idea of representation. Let the chips fall where they may. Really? You really want to trust somebody else to be in charge of your destiny with everything we just spoke about for the last half an hour.You're willing to put

[126] GC Exh. 42 at 26:33-27:24; GC Exh. 43 at 11:9-12:3.
[127] GC Exh. 42 at 27:01-27:56, GC Exh. 43 at 11:20-12:16.
[128] GC Exh. 42 at 59:30-1:00:19, GC Exh. 43 at 34:21-35:10.
[129] GC Exh. 42 at 31:41-32:14; GC Exh. 43 at 15:22-16:5.
[130] GC Exh.42 at 37:07-37:47; GC Exh. 43 at 20:7-20.

[131] Spencer's testimony as to what he observed at this meeting was corroborated by a videotape of the event. (Tr. 901, 903-904; R. Exh. 66.)
[132] GC Exh. 42 at 28:29-29:41; GC Exh. 43 at 13:4-14:3.

all that on the table and let someone represent you.[133]

Spencer, who was in attendance at the second meeting, confronted his supervisor, Granbois, immediately after the meeting and insisted that Martens lied about alleged charges filed by the Union over the restoration of Sunday premium pay and the bridge to overtime. He asked Granbois for a copy of the letter. About two hours later, Quinn brought Spencer a copy of the mostly redacted Board letter.[134] Spencer then went to a computer with Quinn, accessed the Board's public website and showed him the charges filed by the Union. He explained to Quinn that the Petock letter reflected statements, not charges, by witnesses and suggested that the redactions were unlawful. Quinn provided him the next day with another copy of the original Petock letter, but this time only the names were redacted. That letter and the original Petock letter, were then posted in the Cold Mill prior to the election.[135]

(c) The Third Meeting

The remaining employees were addressed at a third meeting, which was held on February 18 at 5:30 p.m.[136] At that meeting, Martens repeated his remarks about the potential of plant closing, and the loss of work flexibility, pay and benefits if the Union prevailed:

> That decision put us in a position; put me in a position where we had to balance out a number of different, very difficult things, and if you read the letter that was posted last night that I penned to communicate this to you, you'll understand that we actually had to close another plant, and that was the Saguenay Works facility, to ensure that we retained and maintained employment levels here at this plant.
>
> That level of decision-making rarely happens, and with the speed at which we did it, we actually had to sit down with the Saguenay people and let over 140 people go to maintain the employment levels here versus looking at two to 300 . . . here. We lost . . . business, and through that decision, I said we made a commitment to this plant we have to maintain the employment levels and we have to keep the base production . . .[137]
>
> You are going to get five percent merit this year, you are going to get a $2500 payment. USW Novelis plants is at less than two percent. You're going to get the shift pattern that you wanted which is truly unique for an operation of this size, very, very unique. The other plants don't have that.
>
> You have flexibility in terms of how you can actually schedule your work. You have good crews that you work on. You don't have strict rules and regulations. I can go . . . but if you vote yes, I move from owning this as a personal decision and a personal passion for this plant to one where it becomes a business decision for me and I look at it as a start point for your discussions with the Fairmont and Terre Haute plants are the lower wages. Pensions are funded at a lower level. They get lower benefits in terms of compensation. They have stricter rules in terms of how you can do your job. Career laddering is different.
>
> I can go on and on, but as a business decision [it is a lower cost solution] if I look at what this plant is about and I look at why we made the investments and I look at what we want to accomplish here and what we want you and your families to thrive with over the next decades, that's the wrong decision. We're willing to pay you more. We're willing to offer you the flexibility because we know you will do the work at a level that is world-class, and that's worth a hell of a lot. That's very unique in any operating system that you can find in this country . . . That flexibility is something you should cherish.[138]
>
> We have to do things better. That's why we're here. We have better wages. We have better benefits. You have incredible working conditions, and you and your families have a future that is more secure today than it ever has been at any time that this plant has been in existence, and I personally have made the difficult decisions to make that a reality. When you have a chance to vote, do yourself and your families a favor and vote no.[139]

At the third meeting Smith again followed up on Martens' remarks regarding the potential impact on employee schedules and wages.

> I've worked in union environments for sixteen years before I came to Oswego. You look around you now. You will not see the same faces here a year from now should the union be voted in. People will leave. People will get frustrated by the rigors and the rules that we have to follow. People will not be happy with the culture that we've gotten used to and a lot of us cherish, and the reasons that we've been successful for the last forty-nine years will be slowly eroded away.[140]

Smith also shared his thoughts on the likelihood that the Company would lose business if the Union was involved in the business relationship:

> I also didn't anticipate the possibility of dealing through a third-party.[141]
>
> Let's be honest. What we have here today is a distracted and divided workforce. It is. Let's call a spade a spade, not something that I expected I would ever have to talk about when I came back here twelve months ago. It's disappointing. I understand why we are where we are. I'm not standing here to give excuses. We've had enough communication over the last two or three months to air the reasons why and the things that we should have done differently, would do differently if we had the chance again, but the fact of the matter is here today we have a distracted and divided workforce.
>
> We can't afford for that to continue. That is not going to breed the success that we need if we're going to make sure

[133] GC Exh. 42 at 55:00-57:07; GC Exh. 43 at 31:20-33:8.
[134] R. Exh. 66.
[135] Quinn did not refute Spencer's credible testimony regarding their exchange. (Tr. 904–06, 909–912; GC Exh. 41.)
[136] GC Exh. 18.
[137] GC Exh. 19 at 3:04-3:59, GC Exh. 20 at 3:1-21.
[138] GC Exh. 19 at 12:50-14:40, GC Exh. 20 at 10:1-11:10.
[139] GC Exh. 19 at 15:46-16:15; GC Exh. 20 at 12:10-20.
[140] GC Exh. 19 at 39:44-40:06; GC Exh. 20 at 28:16-29:1.
[141] GC Exh. 19 at 23:13-18; GC Exh. 20 at 18:8-9.

> that those cash lines are not going to be the biggest white elephant in [Alcan] Novelis history. Simple as that.[142]
>
> So who's to say when we hit this out of the ball park, make a success and give that credibility to this operation, that there will be more investment? But we've got to deliver. It's not a God-given right that every time Novelis has the opportunity to invest in a cash lane when to comes to Novelis [Oswego]. It isn't.
>
> We've been extremely fortunate. We've been given a great opportunity. There has been a lot of faith put in this workforce and in this location. It's up to us to lose. As simple as that. It's ours to lose.[143]

Martens' and Smith's comments at the third meeting also included a reference to the alleged Union charges over the restoration of Sunday premium pay. Martens stated, in pertinent part:

> United States Steelworkers do not know this plant. They do not know this industry. Chris will cover that in a minute. But what they do know is they do know how to say one thing in a forum and then turn around and press charges against this company.
>
> There have been two grievances filed. This has raised a lot of noise when I brought this to your attention yesterday, and the reason I bring it to your attention is, apparently, when they had their [all hands] meeting, they said they would not file a grievance, allegiances or grievances. This is a public domain document. You can look it up. I'm sure there's been copies passed around.[144]

Smith followed up with similar remarks:

> Some of the things that I've heard leading up to the vote which caused me heartburn, if you will, at least I have a voice with the union. I think Phil's already touched on how well that voice is being heard . . .[145]

Spencer, who attended the second meeting, immediately confronted his crew leader, Tom Granbois, after that meeting about the document that Martens displayed to employees and described as Board Union charges relating to the restoration of premium Sunday pay and the bridge to overtime. Spencer insisted that the Union did not file such a charge and asked to see the document. About two hours later, after being notified by Granbois, Quinn provided Spencer with a blurry copy of the document that Martens displayed earlier that day with the body of the letter redacted except for a section pertaining to the allegations about restoration of Sunday premium pay. Spencer told Quinn that charges had not been filed over those allegations and proceeded to display the charges filed on the Board's website. Spencer also objected to the Company's redaction of the Board letter. The next day, Quinn presented him with a new letter where only the names of the individuals were redacted. Both letters were posted at the facility prior to the election.[146] At some point prior to the election, both versions of the letter, redacted and unredacted, were posted on the employee bulletin board.[147]

E. The Election

On January 27, the parties entered into a stipulated election agreement to hold a representation election on February 20 and 21.[148] The parties also stipulated to an *Excelsior* List of 599 employees eligible to vote in the election.[149] Notably, the *Excelsior* List included all crew leaders, including Abare, who also served as a Union observer at the polling station. During the election Abare served as the Union's observer.[150]

Emotions ran high with palpable tension on the voting line. As Michelle Johnson waited on line to vote, another employee, Brian Thomas, called her a "fucking bitch" after she expressed her intention to vote in favor of the Union. Johnson reported the incident to the Company and listed Mario Martinez as a witness. However, the Company failed to contact Martinez or take any other action to investigate the incident.[151]

The tumultuous campaign came to a close and was decided by a razor thin margin of 14 votes out of 571 ballots cast. The vote tally was 273 in favor of the Union, 287 opposed to the Union. One ballot was voided and 10 ballots were challenged, but were not sufficient in number to affect the results of the election.[152]

F. Abare is Disciplined for Statements on Social Media

1. Abare's terms, conditions and privileges of employment

Abare, employed by the Company since 1998, currently fills several roles.[153] He is currently assigned as a furnace operator in the Cold Mill's annealing and metal movement department. For the past 3 years, with the exception of the period of April to October, 2014, he has also served as a crew leader in that section. As a crew leader, Abare receives an additional $2-per hour

---

[142] GC Exh. 19 at 24:58-25:10; GC Exh. 20 at 19:2-21.

[143] GC Exh. 19 at 34:08-12; GC Exh. 20 at 24:8-20.

[144] GC Exh. 19 at 14:55-15:32; GC Exh. 20 at 11:15-12:6.

[145] GC Exh. 19 at 40:19-33; GC Exh. 20 at 29:4-8.

[146] Quinn did not dispute Spencer's credible testimony about the letter that was shown to employees or his explanation of the charges filed by the Union. (R. Exh. 66; GC Exh. 5, 40-41; Tr. 145-146, 901, 903-905, 912, 946-947, 951, 1258.) I also credit Spencer's testimony that GC Exh. 41 was a fair and accurate copy of the letter displayed on Quinn's computer, as well as what Quinn told him. (Tr. 910-912; GC Exh. 40.)

[147] GC Exh. 40; R. Exh. 66.

[148] GC Exh. 10.

[149] GC Exh. 11.

[150] The Company does not dispute Abare's prominent role during the election. (Tr. 587.)

[151] Johnson and Thomas provided conflicting accounts. (Tr. 1208, 1999.) Johnson's version was corroborated by Mario Martinez (Tr. 889.), while Thomas's testimony was only partially corroborated by Mark Caltabiano, who testified that he only heard part of the conversation between Johnson and Thomas. (Tr. 2158.) I credit Johnson's testimony because the Company never contacted Martinez even though Johnson reported the incident and listed Martinez as an eyewitness. (Tr. 889.)

[152] G C Exh. 13.

[153] Subsequent to a motion by General Counsel, I issued an order precluding the Company from asserting an affirmative defense that Abare is a statutory supervisor pursuant to Sec. 2(11) of the Act. (ALJ Exh. 5.)

wage rate and led a crew of seven furnace and crane operators. His responsibilities include receiving work orders from the area coordinator, assigning tasks to crew members, and evaluating their technical skills.[154]

Abare is considered a "very good" employee by company management and, prior to April, had never been disciplined.[155] In his most recent annual performance evaluation on March 15, supervisor Joseph Vanella stated that he "has done a great job as a crew leader. He is respected by his crew as well as others outside the crew."[156]

In addition to crew leader duties, Abare has spent approximately 70 additional hours a year over the past 5 years training new crane operators. In obtaining the certification to provide such training, Abare attended a Company-funded crane training course.[157]

Given the nature of the Company's sprawling facility and the difficulties inherent in getting outside assistance in the event of a fire or medical emergency, the Company has its own Emergency Medical Squad (EMS) and Fire Department Squad (FDS). Abare has been a member of both for the past 12 years, including service as a FDS shift captain for the past several years. In 2013, the FDS awarded him the Firefighter of the Year Award. Much of his work as an EMT or fireman, whenever needed, is generally performed in lieu of his regular duties. However, there have been occasions when his EMT or FDS work lasted beyond the end of his shift and resulted in overtime pay. In obtaining and maintaining continuing State certification as an EMT and fireman, the Company has funded and/or provided the monthly and annual training. Such training amounts to approximately 110 to 140 additional hours per week in addition to Abare's regularly scheduled work hours and have been paid at an overtime rate. In addition to the remuneration for performing these duties, Abare, like other company firefighters, is rewarded with the privilege of parking his vehicle in the Company's enclosed parking facility. That privilege contrasts the accommodations of most coworkers, who are provided only with access to the Company's outdoor parking lot.[158]

2. Abare's Facebook post

On Saturday, March 29, still embittered by the Union's loss in the election, Abare took to cyberspace to express his frustration. He accessed his Facebook social media account and posted the following critique of his wages and coworkers who voted against the Union:[159]

> As I look at my pay stub for the 36 hour check we get twice a month, One worse than the other. I would just like to thank all the F*#KTARDS out there that voted "NO" and that they wanted to give them another chance…! The chance they gave them was to screw us more and not get back the things we lost. . . ! Eat $hit "NO" Voters. . .[160]

Abare's Facebook post was viewed by at least 11 employees, each of whom indicated approval by a "Like" response to the post. Several of these Facebook "Friends" also commented on the post.[161] However, one of those employees demonstrated that a "Friend," as that term is used on Facebook, can be seriously overrated. Facebook "Friend" and fellow fire department member John Whitcomb, after viewing Abare's post, provided a copy of it to Sheftic and Smith. A few days later, Sheftic referred the matter back to Quinn for disciplinary action.[162]

3. Abare's demotion

On April 4, Cold Mill Manager Greg Dufore and Quinn called Abare into a meeting about the Facebook post. During the meeting, Quinn confronted Abare with his Facebook post. Abare admitted the Facebook posting was his. Quinn told Abare that the post violated the Company's social media policy and provided him with a copy of it, adding that "you may not be aware that we have a social media policy."[163] Abare apologized, explained that he posted the comments out of frustration and added that his wife chastised him for the inappropriate comments. He also offered to apologize to anyone else offended by the post. Quinn and Dufore told Abare that Sheftic and Smith were very interested in the outcome of the meeting.[164]

Subsequent to the April 4 meeting, Smith and Sheftic decided to send a message by demoting Abare because of the Facebook post. On April 11, Quinn and Dufore carried out their directive at a followup meeting with Abare. At that meeting, Quinn informed Abare that he was removed from his positions

[154] The Company agrees with Abare's description of himself as the "go-to person for his work area. (Tr. 242, 255–256, 494, 498–499, 503–507, 2938.)

[155] Abare's testimony that he has never been disciplined was not refuted. (Tr. 489.) Indeed, Quinn, a human resource supervisor and the Company's designated representative during the hearing, spoke on behalf of management in conceding that Abare was a "very good employee." (Tr. 2883.)

[156] GC Exh. 21.

[157] Abare does not receive extra compensation for training other employees. (Tr. 253–255, 3061–3062, 3066–3067; GC Exh. 23.)

[158] It is undisputed that Abare played a prominent role as fire captain, at one point describing himself as the "commander" of the FDS during his shift. (Tr. 244–253, 1872; GC Exh. 22 and 24 at 1–10, 14.

[159] Abare's testimony regarding the changes to his pay was not disputed. (Tr. 472–473, 487–488, 568–569, 578.)

[160] GC Exh. 25.

[161] While 11 coworkers expressed approval for the post in the "Like" section, it is evident that persons with "Friend" access do not have to indicate that they "Like" it in order to view it. (Tr. 473–474, 1870, 1881–-1882; GC Exhs. 2, 25(b), 11.)

[162] Given the failure of either Sheftic or Smith to testify, I do not credit Quinn's hearsay testimony that Sheftic referred the matter for action solely because Abare disrespected "employees that voted against the Union." Nor do I credit uncorroborated hearsay testimony that anyone other than Whitcomb brought the Facebook post to his attention. (Tr.1882–1883, 1886, 2884–2887, 2939; GC Exh. 25(b)).

[163] The social media policy was the only policy introduced on this point. (GC Exh. 26.) Quinn testified that Abare's post violated the Company's "code of conduct" because the "terminology" used to describe other employees was "inappropriate."The Company did not, however, offer a "code of conduct" policy into evidence or identify what provision was violated by Abare's comments. Nor did Quinn identify any other employee disciplined, or demoted for violating a code of conduct policy. (Tr. 2896.)

[164] Abare and Quinn provided fairly consistent versions. Significantly, however, Quinn did not dispute Abare's testimony about Smith and Sheftic's interest in the meeting (Tr. 464–469, 571, 2887.).

as a crew leader position, FDS captain, EMS member, and crane trainer. Quinn explained that the decision as to whether the demotions or removals were "forever," and their duration, depended on how Abare "react[ed]" to the disciplinary action. Abare again offered to apologize to anyone offended by his post, but to no avail. Abare was replaced as crew leader by fellow union supporter Michelle Johnson.[165]

Quinn briefly documented his actions after the meeting. His report stated, in pertinent part, that the Company expected better behavior from someone in a "leadership role in plant;" Company did not have "confidence in his ability to perform his "duties" based on his Facebook post.[166]

The model behavior outlined in the Company's online social media rules hardly reflects the vulgar and otherwise offensive language commonly heard within the Company's work environment, including in the presence of supervisors. Numerous employees often use foul and demeaning language when routinely addressing each other in work areas and, prior to April 11, have never been disciplined. Such terms have included "fucktard," "idiot," "retard," "brain-dead," and a host of lewd anatomical references.[167]

The Company's established tolerance of vulgar language in the workplace was also reflected by the lack of any discipline for such behavior. In fact, the Company's past discipline of crew leaders consisted of four demotions for performance related issues.[168] In one of those instances, the Company gave the employee an opportunity to remediate his performance deficiencies.[169] Abare, as previously noted, had a good performance record and had never been disciplined.

G. The Company's Postelection Response to the Complaint

As previously noted, the Company customarily notifies employees sometime between October and December each year about changes to wages and benefits. Moreover, unscheduled overtime was previously eliminated in December 2013. However, on May 22, or 16 days after the initial complaint was filled, the Company announced that it would give all Oswego hourly employees 3-percent annual pay raises for the next 5 years, starting January 1, 2015.[170] The Company also announced that, starting July 1, it would restore premium overtime rates for employees who worked on their scheduled days off, and would not make changes to its pension plan or the J-12 shift schedule during the same 5-year period. Cognizant that the atypical timing of its pay and benefits announcement would be deemed suspicious, Palmieri told the local press that the announced changes were not related to its opposition to the union campaign.[171]

In late June, Martens and Smith pleaded the Company's case against the complaint allegations in two letters to employees denying that their captive audience statements in February constituted threats.[172] Martens stated:

> I have reviewed my comments…and do not believe that they could reasonably be interpreted as a threat. In fact, my comments were the opposite…But to eliminate any possible misunderstanding or misconception, let me be absolutely clear: I did not and would never make any threats to close the Oswego plant. When I mentioned the closure of our plant in Saguenay, it was simply to emphasize the commitment to the Oswego plant…I hope this provides clarity and eliminates any confusion or possibility that a negative inference could be interpreted from my comments."[173]

Smith similarly stated:

> I have reviewed my comments from this meeting, and I do not believe that they could reasonably be interpreted as any type of threat…my opinion was based on the deadlines and commitments we face and my personal observations of the distractions we all experienced during the weeks leading up to the union election…To eliminate any possible misunderstanding or misconception, I want you to be unmistakably clear certain that I did not and would never make any threats.[174]

H. The District Court's Preliminary Injunction

On September 4, during the pendency of these proceedings, Judge Gary L. Sharpe of the United States District Court for the Northern District of New York granted a motion by the Union

[165] Quinn testified Smith and Sheftic were involved in the decision to discipline Abare. Again, however, neither of those high level managers testified. (Tr. 462, 464, 470–472, 892, 2939.)

[166] Given the significant amount of attention by the Company to this episode, the scant documentation relating to Abare's demotion casts serious doubt as to its motivation for taking such action. (R. Exh. 160 ; Tr. 2894–2899.)

[167] The Company did not dispute the extensive credible testimony confirming the common use of foul language by employees, including supervisors, in work areas. (Tr. 488, 1024, 1027-28, 837-838, 890-892, 1024–1028, 1034–1037, 1427.)

[168] The scant documentation referred only to performance reasons for their reclassification and there were no references to behavioral issues. (Tr. 2900–2902, 2909–2910, 2917, R. Exh. 177–178.)

[169] R. Exh. 156.

[170] The Company's motion in limine regarding evidence of its postelection conduct was partially granted with respect to limiting postelection statements or other conduct to evidence "that directly refutes the Respondent's evidence of mitigation." (ALJ Exh. 6.) Having opened the proverbial evidentiary door on mitigation with letters to employees that included an unusual mid-year announcement of a series of annual pay raises , the General Counsel and Charging Party were entitled to refute the specific mitigation alleged with contextual evidence. The Company's December 16, 2014 motion to strike CP Exh. 2–6 is denied. (ALJ Exh. 8(a)-(b).)

[171] The General Counsel and Charging Party do not allege the postelection pay raises and restoration of unscheduled overtime as violations, but contend that the action reflects continued unlawful postelection behavior by the Company. Since I found that premium overtime pay had been taken away and then restored on January 9, I find Smith's statement implying that it had not been restored as a calculated attempt to respond to the corresponding allegations in the complaint. (CP Exh. 2-6.)

[172] It is undisputed that the letters were sent to all employees. (R. Exh. 54, 56; Tr. 2981.) Subsequent to the Company's motion to preclude evidence relating to postelection conduct, I granted an order limiting evidence of such conduct to that which directly refuted the Company's evidence of mitigation. (ALJ Exh. 6.)

[173] R. Exh. 56.

[174] R. Exh. 54.

for a preliminary injunction.[175] The injunction ordered the Company to refrain from engaging in various specific prohibited activities or in any like or related manner interfering with, restraining, or coercing employees in exercise of their rights guaranteed under Section 7.[176] The injunction further ordered the Company to: within 5 days, restore Abare, post copies of the order, and grant agents of the NLRB reasonable access to the plant; within 10 days, have Smith and Martens read the order to the bargaining unit; and within 21 days, file with the court a sworn affidavit setting forth the manner in which the Company complied with the order.[177]

On September 11, the Company complied with Judge Sharpe's order by reading his order to all hourly employees.[178]

LEGAL ANALYSIS

I. THE RESTORATION OF SUNDAY PREMIUM PAY

The first of several alleged violations during the campaign pertains to the Company's restoration of Sunday premium pay and the unscheduled overtime without any business justification and for the purpose of inducing employees to oppose union affiliation. The Company denies that it restored Sunday premium pay since it never actually eliminated it. Even if it is found that the benefit was eliminated and then restored, the Company contends that it was done for purely business reasons and without any knowledge of an incipient union campaign.

The danger inherent in well-timed increases in benefits is the coercive inference that employees' failure to comply with the employer's position may curtail future benefits. See *NLRB v. Exchange Parts Co*., 375 U.S. 405, 409 (1964). Conferral of benefits during an organizing campaign is sufficient to constitute interference with employees' Section 7 rights. *Hampton Inn NY - JFK Airport*, 348 NLRB 16, 17 (2006). To establish improper motivation requires a showing that an employer knew or had knowledge of facts reasonably indicating that a union was actively seeking to organize. Id. at 18 (quoting *NLRB v. Gotham Industries*, 406 F.2d 1306, 1310 (1st Cir. 1969)). The employer may rebut the coercive inference by establishing an explanation other than the pending election for the timing of the announcement or bestowal of the benefit. *Star, Inc*., 337 NLRB 962, 962 (2002). Absent a showing of legitimate business reasons for the timing of the grant of benefits, improper motive and interference with employee rights is inferred. *Newburg Eggs, Inc.*, 357 NLRB No. 171 slip op. at 11 (2011).

The fact that the Company admitted in its January 9 letter to employees that it restored the Sunday and overtime premium pay is fairly determinative regarding the fact that these benefits were once conferred, then taken away and subsequently restored—especially given the lack of *any* testimony by high level managers to the contrary.

On December 16, the Company announced a new pay scale, including, inter alia, the elimination of Sunday premium pay and the bridge to overtime. The new pay scale was to become effective January 1. When employees expressed concern about the changes, Sheftic responded that the Company would consider their concerns. However, when an employee suggested that the employees might seek to affiliate with a labor organization, Sheftic responded that it was the Company's "hope that we don't have to have a union here at this point." Such a possibility became a reality on January 9, when the Union submitted a written demand for voluntary recognition to the Company based on signed authorization cards from a majority of employees.

The Company relies on evidence that Smith and Sheftic told crew leaders about the restoration of Sunday premium pay sometime between 7:30 and 9 a.m. on the same day, subsequently followed by a memorandum from Smith confirming the same. However, Ridgeway's statement in the January 9 letter referring to Smith's awareness of the campaign was neither denied in Smith's subsequent response nor testimony by Smith or any other high level manager. Coupled with warnings by employees to Sheftic and at least one supervisor that employees might reach out to a union, followed by the organizing committee's solicitation of union authorization cards from of hundreds of employees, including some of the very crew leaders that the Company refers to as Section 2(11) supervisors, and the participation of antiunion employees at the organizing meetings in late December and early January, there is sufficient circumstantial evidence that the Company knew of the incipient union campaign prior to receiving Ridgeway's letter on January 9.

Based on the foregoing, the weight of the credible evidence indicates that the Company's restoration of Sunday premium pay and the bridge to overtime on January 9, the same day in which it received the Union's written demand for voluntary recognition, was motivated by the Company's attempt to squash an incipient organizing campaign in violation of Section 8(a)(1) of the Act. See *MEMC Electronic Materials, Inc.*, 342 NLRB 1172, 1174–1176 (2004).

II. CAPTIVE AUDIENCE SPEECHES

The other complaint allegations with the broadest implications during the campaign involve the alleged threats by Martens, the Company's president and chief executive officer, to close the plant, reduce pay and benefits, impose more onerous working conditions, and rescind retroactively premium and unscheduled overtime pay, along with a warning that the Company would lose business if employees selected the Union. The Company denies that the speeches threatened, intimidated, or instructed employees on how to vote and contends that the statements were overwhelmingly positive, informed employees about the bargaining process, and merely advised employees to do what was best for themselves and their families.

Employer predictions are lawful when "carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to

[175] *Ley ex rel NLRB v. Novelis Corp.*, No. 5:14-cv-775 (GLS/DEP), 2014 WL 4384980 (N.D.N.Y. Sept. 4, 2014).

[176] Id. at 7.

[177] Id.

[178] The General Counsel and Charging Party do not dispute the Company's compliance in carrying out Judge Sharpe's order. (R. Exh. 49, 54, 56, 77; Tr. 1640–1642, 1690–1691, 1746–1747, 1809–1810, 1833–1835, 1864, 1866, 1881, 1927–1928, 1935–1937, 1976–1977, 1985, 2001–2003, 2018, 2022–2023, 2035–2036, 2038, 2079–2080, 2100–2101, 2113–2114, 2141–2142, 2168–2169, 2194–2195, 2221, 2276–2277, 2233–2236, 2310–12, 2329–2330, 2427–2430, 2443–2444, 2477, 2487–2488, 2502–2503, 2528–2530, 2982–2983.)

convey a management decision already arrived at to close the plant in case of unionization." *NLRB v. Gissel Packing Co*., 395 U.S. 575, 618 (1969). Employer predictions become unlawful threats, however, when "there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities." Id. They become unlawful when their context has a reasonable tendency to interfere with, restrain, or coerce employees' exercise of Section 7 rights. *Flying Foods*, 345 NLRB 101, 105–106 (2005).

A. Plant Closure

During mandatory employee meetings held a few days before the representation election, the Company's highest level managers presented their closing arguments against union representation. During repeated statements to employees over the course of 2 days, Martens referred to a prior company decision to close a Canadian plant and transfer the work to Oswego, suggesting that it had been his personal decision to save jobs at Oswego, which had incurred a decrease in business in its nonautomotive product operations. He then proceeded to tell the employees that, should they select the Union as their labor representative, the future of the Oswego plant and its work force would be decided on the basis of a "business decision." The implication of this statement, notwithstanding the Company's ongoing expansion plans, was that if economic circumstances changed, he would no longer make decisions on the same basis that he did in moving the Canadian work to Oswego. While he referred to such a future decision as a "business decision," the fact is that, by his own words, his past "business" decisions had *not* been based on objective criteria. Thus, employees were led to believe that he would base future decisions at the Oswego plant on subjective criteria, such as the presence of a union.

Employer predictions that a plant will or may close are unlawful absent proof. *Gissel*, 395 U.S. at 618–619. Implied threats of plant closure are also unlawful. See *Mohawk Bedding Co*., 204 NLRB 277, 278–279 (1973).

It is inconsequential that no high level manager testified about the decision to lay off employees at the Company's Saguenay plant and move that work to Oswego. While I am not convinced by Martens' campaign era statement that the decision was a "personal" one, as opposed to one based on objective business criteria, it is what he sought to impress upon the employees. Martens' shrewd attempt to coerce employees by conflating the terms "business decision" and "personal decision" does not pass muster. The sophisticated ploy was devoid of economic or other objective proof to support Martens' prediction and reasonably left employees pondering, 2 days before the election, the long-term future of Oswego plant operations based on his personal considerations. The threats violated Section 8(a)(1) of the Act. See *Allegheny Ludlum Corp.*, 104 F.3d 1354, 1364 (D.C. Cir. 1997) (given the context, employer's comparison to past poor business conditions where it found ways to avoid layoffs constituted an unlawful implied threat that if the union won the employer would not look as hard to find ways to avoid future layoffs). Cf. *Tri-Cast, Inc.*, 274 NLRB 377 (1985) (employer's statements that, postunionization, it would no longer be able to deal with employees on an informal, individualized basis were lawful).

B. Reduced Pay and Benefits

At these meetings, Martens also threatened reduced pay if employees selected the Union as their labor representative. He repeatedly mentioned the contracts at the Company's unionized plants, explained that their employees were paid less and warned that the pay scale for unionized Oswego employees would begin at the same levels—clearly predicting that employees would be paid less than they are now.

An employer's description of the collective-bargaining process, including the reality that employees may end up with less as a result, does not violate the Act. *Wild Oats Markets, Inc.,* 344 NLRB 717 (2005). Further, an employer has a right to compare wages and benefits at its nonunion facilities with those received at its unionized locations. *Langdale Forest Prods.*, 335 NLRB 602 (2001). However, bargaining-from-scratch statements are unlawful when "in context, they reasonably could be understood by employees as a threat of loss of existing benefits and leave employees with the impression that what they may ultimately receive depends upon what the union can induce the employer to restore." *Taylor-Dunn Mfg. Co.*, 252 NLRB 799, 800 (1980). Statements that imply a regressive bargaining posture, i.e., beginning negotiations by withdrawing benefits, are unlawful. *Kenrich Petrochemicals*, 294 NLRB 519, 530 (1989). The presence of contemporaneous threats or unfair labor practices is often a critical factor in determining whether bargaining-from-scratch statements imply a threat to discontinue existing benefits prior to negotiations or rather that the mere designation of a union will not automatically secure an increase in wages and benefits. *Coach & Equipment Sales Corp*., 228 NLRB 440, 440-41 (1977).

Marten's comments about likely pay and benefits resulting from bargaining violated Section 8(a)(1). By warning that unionization would begin at a pay scale analogous to the Company's lower-paid unionized plants, he did more than compare the two locations. Martens implied a loss of existing benefits, thereby adopting a regressive bargaining posture. Given that these statements were made during a meeting in which contemporaneous threats were espoused, employees present reasonably perceived Marten's statements as a threat to discontinue existing benefits prior to negotiations.

C. More Onerous Working Conditions

Martens and Smith also threatened that Oswego employees would forfeit the flexible work schedules that they currently enjoy if the Union prevailed. They mentioned these developments as an eventuality while omitting any mention of the need to bargain over such changes based on objective facts.

A threat of more onerous working conditions is unlawful. *Liberty House Nursing Homes*, 245 NLRB 1194, 1999 (1979). Similarly, a statement that the presence of a union could deteriorate employment conditions, e.g., "it could get much worse," is also unlawful absent a reference to the collective-bargaining process. *Metro One Loss Prevention Service Group*, 356 NLRB No. 20, slip op. at 1 (2010).

Martin and Smith's statements that employees would lose their flexible work schedules constituted threats of more onerous working conditions. Since those threats omitted any reference to the collective-bargaining process, they violated Section

8(a)(1) of the Act. See *Allegheny Ludlum Corp.*, 320 NLRB 484, 484 (1995).

D. Loss of Business

Smith's campaign remarks stressed the Company's relationship with the automobile industry and predicted that unionization would impede the Company's ability to adequately perform its contractual obligations. He did not offer objective criteria to support such an assertion, instead declaring that the impediment of a union presence would cause the Company to lose current and future contracts at the Oswego plant, further resulting in layoffs.

Predictions that unionization will cause loss of business are unlawful absent objective evidence. *Crown Cork & Seal Co.*, 255 NLRB 14, 14 (1981). See also *Contempora Fabrics, Inc.*, 344 NLRB 851 (2005) (collecting cases).

Smith's conjectural statements regarding the consequences of unionization would have on the Company's contractual obligations with the automobile industry were unsupported by objective criteria. The further prediction that such consequences would result in layoffs violated Section 8(a)(1) of the Act.

E. Rescinding Sunday Premium Pay

On February 18, Martens and Smith displayed to employees a redacted February 10 letter from Board Agent Petock and represented that it contained charges of violations under the Act relating to the restoration of Sunday premium and unscheduled overtime pay. He also predicted that the newly restored benefit would have to be rescinded retroactively to January 1 because of the Union's charges. Petock obviously learned about the restoration of Sunday premium pay during her investigation of the January 27 charges in Case 3–CA–121293 involving specific unfair labor practices occurring between January 12 and 23. However, whether such information was conveyed to Petock or uncovered by her during her investigation of the actual charges is of no consequence. Petock merely conveyed to the Company that it was one of several "allegations." The Company had been served with the charges on January 27 and knew that this allegation was not among them. There is no doubt that the Company's actions were deliberately calculated to cause fallout among union supporters and still undecided employees by blaming the Union for the potential loss of Sunday premium pay.

Absent threat of reprisal or promise of benefit, an employer may communicate both general views on unionization and specific views about a particular union. *NLRB v. Gissel Packing Co*., 395 U.S. 575, 618 (1969). Words of disparagement alone concerning a union or its officials are insufficient for finding a violation of Section 8(a)(1). *Sears, Roebuck, & Co.*, 305 NLRB 193, 193 (1991). However, disparagement is unlawful when, under all the circumstances, the conduct reasonably tends to interfere with the free exercise of the rights of employees under Section 7. *Atlas Logistics Group Retail Services*, 357 NLRB No. 37, slip op. at 6 (2011).

The Company disparaged the Union by displaying an altered Board document and misrepresenting it as charges filed by the Union seeking the rescission of Sunday premium pay and the bridge to overtime. In assessing campaign misrepresentations, the Board does not typically probe the truth or falsity of parties' campaign statements unless "a party has used forged documents which render the voters unable to recognize propaganda for what it is." *Durham School. Services,* 360 NLRB No. 108 (2014) (quoting *Midland National Life Insurance Co.*, 263 NLRB 127, 133 (1983)). The standard of review is premised on a "view of employees as mature individuals who are capable of recognizing campaign propaganda for what it is and discounting it." Id. at 132 (quoting *Shopping Kart Food Market, Inc.*, 228 NLRB 1311, 1313 (1977)).

The dissemination of blurred language regarding allegations about restored premium pay on an altered document, while not forged, was displayed in conjunction with a false statement that it reflected a charge filed by the Union. Under the circumstances, it can hardly be said that employees, without the filed charges to compare at that moment, were capable of recognizing the Company's propaganda for what it was. Moreover, the warning by Martens and Smith that the Company would have to rescind such benefits retroactive to January 1 was not accompanied by objective facts. Lastly, the Company's posting of both the altered and unaltered versions of the Petock letter on Company bulletin boards after employees were bombarded with the altered version by Martens' at the captive audience meeting hardly undoes the harm. Since the Company never told employees that the pay restoration allegation was not, in fact, among charges filed by the Union, the follow-up action did not constitute a legally sufficient retraction of Marten's false, misleading and disparaging remarks. See *Casino San Pablo*, 361 NLRB No. 148, slip op at 6 (2014) (revision does not cure violation unless it is unambiguous, specific in nature to the coercive conduct, and includes assurances to employees that going forward the employer will not interfere with their Section 7 rights).

The Company cites *Virginia Concrete Corp.*, for the proposition that "[m]ere misstatements of law or Board actions are not objectionable under *Midland*." 338 NLRB 1182, 1186 (2003). In *Virginia Concrete Corp*., the judge found that the employer's statements regarding the consequences that would arise from the union filing a charge improperly involved the Board and its processes because the employer misstated Board law. Id. (internal quotation marks omitted). The Board reversed, holding that misstatements of law or Board actions were not actionable to the extent those statements are insufficient to implicate the Board and its processes. Id.

Va. Concrete Corp. is distinguishable from the instant case since the misstatements of Board action here were accompanied by an altered Board document and represented as charges by the Company. The Board's decision in *Riveredge Hospital*, 264 NLRB 1094 (1982), is informative in this regard. In *Riveredge Hospital*, the union distributed a leaflet which stated, in part, that the U.S. Government had issued a complaint against Riveredge. Id. at 1094. The Board held that the leaflet, as a misrepresentation of Board action, was not in and of itself objectionable under *Midland*. See id. at 1094–1095. In reaching this conclusion, the Board distinguished misrepresentations of Board processes from physical alterations of Board documents, noting that a "physical alteration involves the misuse of the Board's documents to secure an advantage while the misrepresentation merely involves a party's allegation that the Board

has taken an action against the other party and is essentially the same as any other misrepresentation." Id. at 1095.

The distinction between misstatements or misrepresentations of Board processes and misrepresentations of Board authority was further clarified in *Goffstown Truck Center, Inc*., 356 NLRB No. 33 (2010). In *Goffstown Truck Center*, the Board found that a misstatement of the Board's processes purporting to come from the Board itself carries more weight and therefore compromises the integrity of the election process. See id. at 2. In reaching this conclusion, the Board noted that the distinction between lawful misrepresentations and the types of actions which used a "false cloak of Board authority," such as the alteration of sample ballots, was that the latter went "beyond the realm of typical campaign propaganda which 'employees are capable of recognizing…for what it is.'" Id. at 3 (quoting *Midland*, 263 NLRB at 132).

The decisions in *Va. Concrete Corp*., *Riveredge Hospital*, and *Goffstown Truck Center* thus clarify that while misstatements of law or Board action are not unlawful, misrepresentations which utilize a false cloak of Board authority, e.g., through the physical alteration of Board documents, are unlawful insofar as they render a reasonable employee unable to recognize the propaganda for what it is.

Under the circumstances, the Company unlawfully disparaged the Union and violated Section 8(a)(1) by falsely representing to employees that (1) the Union filed charges seeking the rescission of Sunday premium pay and the unscheduled overtime, and (2) that it would have to rescind the benefits retroactively to January 1.

III. THE NO SOLICITATION AND DISTRIBUTION RULES

The complaint also alleges that the Company's solicitation and distribution policies unlawfully restrict employees in the exercise of their Section 7 rights. The Company denies the charge.

Employees are rightfully on the employer's property. Accordingly, the employer's management rather than property interests are implicated in promulgating a no-solicitation rule. See *Eastex v. NLRB*, 437 U.S. 556, 573 (1978). As such, employers may lawfully impose restrictions on workplace communications among employees. *Stone & Webster Engineering Corp*., 220 NLRB 905 (1975); *Pilot Freight Carriers, Inc*., 265 NLRB 129, 133 (1982). Thus, employers may lawfully ban worktime solicitations when defined as not to include before or after regular working hours, lunchbreaks, and rest periods. *Sunland Constr. Co*., 309 NLRB 1224, 1238 (1992). However, a no-solicitation rule is unlawful when it unduly restricts the organizational activities of employees during periods and in places where these activities do not interfere with the employer's operations. *Our Way, Inc*., 268 NLRB 394 (1983); *Laidlaw Transit, Inc*., 315 NLRB 79, 82 (1994), cited in *Adtranz, ABB Daimler-Benz*, 331 NLRB 291 (2000). Therefore, a prohibition on communication among employees during either paid or unpaid nonwork periods is overly broad. *St. John's Hospital*, 222 NLRB 1150 (1976). Moreover, employees who have rightful access to their employer's email system in the course of their work have a right to use the email system to engage in Section 7-protected communications on nonworking time. *Purple Communications, Inc*., 361 NLRB No. 126, slip op. at 14 (2014).

The Company's policy prohibits "solicitation and distribution in working areas of its premises and during working time (including company email or any other company distribution lists)." The Company's policy further prohibits "unauthorized posting of notices, photographs or other printed or written materials on bulletin boards or in other working areas and during working time."

The Company's policy is facially valid insofar as it uniformly prohibits the posting of unauthorized literature on bulletin boards or in other working areas during working time. *The Register Guard*, 351 NLRB 1110 (2007) (employees have no statutory right to use an employer's equipment for Section 7 purposes, provided the restrictions are nondiscriminatory). However, the Company's policy prohibiting distribution to "[include] Company email" is impermissibly vague to the extent that an employee who has rightful access to the email system would reasonably feel restrained from posting Section 7 material via email during non-work time. See *Purple Communications, Inc*., 361 NLRB No. 126, supra. By promulgating a policy that is impermissibly vague, the Company violated Section 8(a)(1).

IV. ENFORCEMENT OF NO SOLICITATION AND DISTRIBUTION RULE

And Other Supervisory Conduct During the Campaign

The complaint alleges that Company Supervisors Bro, Taylor, Gordon and Granbois selectively and disparately enforced the Company's rules against distribution and solicitation of prounion literature in favor of antiunion literature. The Company denies these allegations and contends that the aforementioned supervisors took an evenhanded approach and removed prounion and antiunion literature from work areas during the campaign.

An employer may uniformly enforce a rule prohibiting the use of its bulletin boards by employees for all purposes. *Vincent's Steak House*, 216 NLRB 647, 647 (1975). However, even when facially valid, a no-solicitation rule may be unlawful when enforced in a discriminatory manner. *Lawson Co*., 267 NLRB 463 (1983); *Hammary Mfg. Corp*., 265 NLRB 57 (1982); *St. Vincent's Hospital*, 265 NLRB 38 (1982). A discriminatory manner is evinced through the restriction of prounion solicitations to nonworking-times and areas while alternately placing no such restrictions on antiunion campaigning. *Reno Hilton Resorts*, 320 NLRB 197, 208 (1995). See also *Eaton Technologies, Inc*., 322 NLRB 848, 853 (1997) (having permitted use of bulletin boards for nonwork-related messages the employer cannot discriminate against the posting of union messages.) Similarly, discrimination becomes evident when an employer permits the use of bulletin boards for nonunion postings but alters its enforcement policy subsequent to the commencement of a union campaign. See id. at 322 NLRB at 854.

A. January 12

On January 12, Bro, the Cold Mill operations leader, entered the combination pulpit work/break area, a room where employees, among other things, posted flyers for fundraising and other

personal endeavors. Bro noticed union and company campaign material and questioned Rookey as to the origin of the union literature. After Rookey professed ignorance as to which employee placed it there, Bro removed the union literature and left the pulpit. Bro's act of confiscating union literature while permitting Company material of the same nature to remain was unlawfully discriminatory. *Cooper Health Systems*, 327 NLRB 1159, 1164 (1999).

B. January 21

In mid-January, Bro removed a union meeting notice posted on the public bulletin. On January 21, Bro removed a prounion flyer from the Cold Mill bulletin board. In light of the Company's past custom and practice of permitting employees to post a variety of personal items on bulletin boards, Bro's removal of union materials from bulletin boards was unlawfully discriminatory. See *Bon Marche*, 308 NLRB 184, 199 (1992).

On January 21, Gordon entered the cabana office, an office/break room which usually contains newspapers, magazines and other personal items placed there by employees. Gordon told employees present that they could not have prounion fliers in the cabana. Gordon then removed prounion literature from the window and countertop and replaced it with the Company's campaign literature. Gordon's confiscation of union materials in favor of company materials of a similar nature was unlawfully discriminatory. See *Blue Bird Body Co.*, 251 NLRB 1481, 1485 (1980).

C. January 23

On January 23, three company supervisors violated Section 8(a)(1) through coercive conduct. Bro met with operators in the Cold Mill furnace office, a mixed work/break location containing, among other things, newspapers, magazines and personal flyers. Bro removed a Union fact sheet, explaining that no pro or antiunion literature would be permitted on bulletin boards or clipboards. Bro also handed out a Company pamphlet. Bro's explanation of Company policy uniformly prohibiting pro and anti-Union literature from bulletin boards was lawful. However, his act of confiscating Union literature while concurrently distributing Company literature of a similar nature was unlawfully discriminatory. See *Blue Bird Body Co.*, 251 NLRB at 1485.

During the same meeting, Bro also directed employees wearing prounion stickers to remove or cover them up beneath their uniforms. In the absence of any showing of special circumstances, Bro's order unlawfully restricted employees' long-established right to wear stickers at work. See, e.g., *St. Luke's Hospital*, 314 NLRB 434, 494 (1994) (employees have a protected right to wear union insignia at work). See also *Northeast Industries Service. Co.*, 320 NLRB 977, 977 fn. 1 (1996) (union stickers on hardhats); *Feldkamp Enterprises*, 323 NLRB 1193, 1201 (1997) (same).

During the same meeting, Dan Taylor, a shipping supervisor, entered and removed Union materials from both a desk and employees' clipboards. In light of the Company's longstanding practice of placing its literature of a similar nature in these areas, Taylor's confiscation of union materials was unlawfully discriminatory. See *Gertz*, 262 NLRB 985, 985 fn .3 (1982).

On the same day, Tom Granbois removed a Union meeting notice from the Remelt cafeteria bulletin board. In light of the Company's past custom and practice of permitting employees to post a variety of items on bulletin boards, Granbois' removal of union materials from bulletin boards was also unlawfully discriminatory. See id.

V. SUPERVISORY THREATS, UNLAWFUL INTERROGATION AND POLLING OF EMPLOYEES

The complaint alleges that Bro and Formoza unlawfully interrogated and/or threatened employees during the organizing campaign. The Company denies the allegations.

Questioning an employee constitutes unlawful interrogation when, considering the totality of the circumstances, the interaction at issue would reasonably tend to coerce the employee to an extent that he or she would feel restrained from exercising rights protected by Section 7 of the Act. *Westwood Health Care Center*, 330 NLRB 935, 940 (2000); *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). Consideration of the totality of the circumstances includes, but is not rigidly limited to: (1) the truthfulness of the replies from the employee being questioned; (2) the nature of the information sought, i.e., whether the questioner sought information upon which to base taking action against individual employees; (3) the identity of the questioner, i.e., how high up the questioner was in the company hierarchy; (4) the place and method of interrogation, i.e., whether the employee was called from work to a supervisor's office and whether there was an atmosphere of unnatural formality; and (5) the background between the employer and union, i.e., whether a history of employer hostility and discrimination exists. *Metro-West Ambulance Service, Inc.*, 360 NLRB No. 124, slip op. at 63 (2014); *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964). Whether an interrogation is courteous rather than rude or profane is not dispositive. *Woodcrest Health Care Center*, 360 NLRB No. 58, slip op. at 7 (2014).

A. January 23

During a January 23 meeting, Bro drilled employees with an antiunion question-and-answer session in their work areas: "You know what you need to do to keep the Union out of here. You need to vote no." Some employees remained silent while others repeated Bro's directive; one employee said that he would vote in favor of the Union. Bro resorted to a blackboard to present the Company's position, and when an employee disagreed with Bro's analysis by referring to his pay stub, Bro responded that anyone who did not like working for the Company could find a new job.

Bro advocated the Company's position, but also discouraged workers who disagreed with his presentation and coached individual employees one-by-one on how to vote. Under the circumstances, Bro unlawfully interrogated employees and restrained them from exercising their Section 7 rights in violation of Section 8(a)(1). See *Roma Baking Co.*, 263 NLRB 24, 30 (1982).

B. January 28

On January 28, Formoza approached Cowan in his work area and said that he wanted to discuss the Union. Cowan expressed

his discomfort with the topic. Formoza warned of the impact that a union victory might have on the J-12 shift employees, including the possibility of a schedule change or a shift lay-off.

Formoza, an operations leader, pursued discussion about the Union despite Cowan's attempts to steer the conversation elsewhere. In light of Cowen's relatively brief tenure with the Company, Formoza's hypothesis that unionization could lead to layoffs in order of seniority constituted an implied threat. Given the totality of the circumstances, including the location of the incident, a reasonable employee in Cowen's situation would have reasonably felt restrained from exercising his or her Section 7 rights. See *Central Valley Meat Co.*, 346 NLRB 1078, 1087 (2006). Formoza's actions constituted an unlawful interrogation in violation of Section 8(a)(1).

C. January 30

On January 30, Bro met with a different set of employees in a mixed pulpit/break area. Bro first asked the group generally how they would vote if they did not want a union. Bro then proceeded to repeat the question directly to each individual one-by-one. Phelps did not answer. Rookey responded by stating that without a union employees would "[t]ake it in the ass." When Bro did not reply, Rookey questioned Bro by asking him how employees should vote if they wanted union representation. Bro responded, "Vote yes, of course." Another employee answered, "If I don't want a union I'll vote no and if I do want a union I'll vote yes."

Bro, an operations leader, met with employees in a mixed work/break area. Bro coached employees both as a group and individually, one-by-one how to vote. Rookey and Bro's combative exchange suggests that Rookey did not feel restrained in exercising his Section 7 rights. However, the fact that another employee felt free to express a choice to vote either for or against the Union is not dispositive since the standard is whether a reasonable employee would have felt coerced during the interaction. *Multi-Ad Services*, 331 NLRB 1226, 1227–1228 (2000), enfd. 255 F.3d 363 (7th Cir. 2001) (test is an objective one that does not rely on the subjective aspect of whether employee was actually intimidated); accord *El Rancho Market*, 235 NLRB 468, 471 (1978). In any event, such a suggestion is undermined by the fact that Phelps, rather than responding to Bro's questioning, remained silent. Given the totality of the circumstances, Bro's management position, the combative nature of the encounter, and Bro's role in other similar situations, the interaction at issue would reasonably tend to coerce an employee to an extent that he or she would feel restrained from exercising Section 7 rights.

VI. QUINN'S SOLICITATION OF GRIEVANCES

The complaint alleges that Quinn unlawfully solicited employee grievances during the campaign in a manner that included an implied promise to resolve them. The Company denies that Quinn solicited grievances and was simply engaging employees during one his typical strolls through the plant.

Absent previous practice, "solicitation of grievances in the midst of a union campaign inherently constitutes an implied promise to remedy the grievances." *Clark Distribution Systems*, Inc., 336 NLRB 747, 748 (2001). Grievance solicitation during an organizational campaign creates a "compelling inference," that the employer seeks to influence employees to vote against union representation. *Traction Wholesale Center Co.*, 328 NLRB 1058 (1999).

On February 15, Quinn visited the Remelt control room and initiated a discussion with Parker, Boyzuck, and Barkley. After a discussion of general morale and specific employee concerns, Quinn stated that "things could be fixed" if the Company was "given another chance," and that though "it would never be as good as it was . . . it would be better than it is now." Quinn added that "they couldn't start making things better until a 'No' vote was in." Given that it was unusual for Quinn to engage in discussion with *those* employees in the work area, his statement that a situation in which the Company prevailed "would be better than it is now" constitutes an implied promise to remedy grievances if employees voted against the Union and is thus a violation of Section 8(a)(1). See *Allen-Stone Boxes, Inc.*, 252 NLRB 1228, 1231 (1980).

VII. THE SOCIAL MEDIA STANDARD AND ITS APPLICATION TO ABARE

The complaint alleges that the Company, prior to the election, promulgated an unlawful social media policy which unlawfully restricted its employees' Section 7 rights to engage in protected speech. It further alleges that the Company enforced this policy by discriminatorily demoting Abare after the election because he posted critical comments on social media. The Company contends that both its policy and the manner in which it demoted Abare due to his disrespectful and vulgar comments towards his antiunion coworkers were unlawful.

A. The Social Media Standard

A rule violates 8(a)(1) when employees would reasonably construe its language to prohibit Section 7 activity. *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004). Overbroad phrasing is reasonably construed by employees to encompass discussions and interactions protected by Section 7. *Fresh & Easy Neighborhood Market*, 361 NLRB No. 8 , slip op. at 2 (2014).

The Company's social media policy provides, inter alia, that "[a]nything that an employee posts online that potentially can tarnish the Company's image ultimately will be the employee's responsibility." The policy provides further that "taking public positions online that are counter to the Company's interest might cause conflict and may be subject to disciplinary action."

The Company's social media policy uses overly broad language, threatening employees with discipline for posting messages that may "potentially" or "might" conflict with the Company's position. These clauses are not aberrations, but rather comport with the essential structure and aim of the Company's social media standard, the theme of which is to encourage employees to self-monitor their "personal behavior" on social media in light of company values. See *Lutheran Heritage Village-Livonia*, 343 NLRB at 646 (citing *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998)) (noting that the Board must "refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights."). Thus, an employee could reasonably construe this language to

prohibit, e.g., protests of unfair labor practices, activity which may "potentially tarnish" or "cause conflict" with the Company's image, but which is yet protected by Section 7. See *Hills & Dales General Hospital*, 360 NLRB No. 70, slip op. at 2 (2014) (language requiring that employees represent the Company in the community in a positive and professional manner was found overbroad and ambiguous).

B. Application of the Social Media Standard to Abare

The General Counsel asserts that the Company violated Section 8(a)(3) and (1) by demoting Abare in retaliation for his social media posting. The Company asserts that (1) Abare's posting was not protected concerted activity, (2) alternately, that it was not aware of the posting's concerted status, and (3) Abare's reprimand was a valid response consistent with past practice and company policy.

Analysis of Abare's demotion is governed by the burden-shifting framework set forth in *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). Under *Wright Line*, the General Counsel must prove that an employee's union or other protected activity was a motivating factor in the employer's action against the employee. The elements required to support such a showing are union or protected concerted activity, employer knowledge of that activity, and union animus on the part of the employer. See, e.g., *Consolidated Bus Transit*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009); cf. *Libertyville Toyota*., 360 NLRB No. 141, slip op. at 5 fn. 10 (2014) (rejecting a heightened showing of particularized motivating animus towards the employee's own protected activity or to further demonstrate some additional, undefined "nexus" between the employee's protected activity and the adverse action). If the General Counsel carries that initial burden, the burden then shifts to the employer to prove, as an affirmative defense, that it would have taken the same action even in the absence of the protected activity. Id. at 1066. If, however, the evidence establishes that the reasons given for the respondent's action are pretextual, the respondent fails by definition to show that it would have taken the same action for those reasons, and its Wright Line defense necessarily fails. See *Golden State Foods Corp*., 340 NLRB 382, 385 (2003), citing *Limestone Apparel Corp*., 255 NLRB 722 (1981).

1. Concerted activity

Concerted activity is activity "engaged in, with or on the authority of other employees, and not solely by and of the employee himself." *Meyers Industries*, 281 NLRB 882, 885 (1986) *(Meyers II)*, affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). The concept of "mutual aid or protection" focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to "improve terms and conditions of employment or otherwise improve their lot as employees." *Eastex, Inc*. v. *NLRB*, 437 U.S. 556, 565 (1978). An employee's subjective motive for taking action is not relevant to whether that action was concerted; rather, the analysis focuses on whether there is a link between the activity and matters concerning the workplace or employee' interests as employees. *Fresh & Easy Neighborhood Market, Inc*., 361 NLRB No. 12, slip op. at 4 (2014). Social media postings, including "likes," are concerted activities when such postings supplement workplace discussions. See *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 3 (2014).

On March 29, following the election, Abare posted on social media: "As I look at my pay stub…One worse than the other. I would just like to thank all the F*#KTARDS out there that voted "NO" …The chance they gave them was to screw us more and not get back the things we lost. . . ! Eat $hit "NO" Voters…" Abare's post was viewed by at least 11 employees, each of whom indicated his approval by a "Like" response to the post. Several of these Facebook "Friends" also commented on the post. Abare's post made direct reference to the election, a quintessential concerted activity. Further, Abare's post made direct reference to wages, a basic term and condition of employment. See *Aroostook County Regional Ophthalmology Center,* 317 NLRB 218, 220 (1995), enf. denied in part on other grounds 81 F.3d 209, 214 (D.C. Cir. 1996) (discussion of wages was inherently concerted because it was vital to employment). Abare's post, corroborated by the "likes" of coworkers, clearly constituted concerted activity.

2. Protected status

The Board recently clarified the correct legal standard for analyzing the circumstances under which concerted postings on social media sites lose their protected status. See *Triple Play Sports Bar & Grille*, 361 NLRB No. 31 (2014); accord: *Bettie Page Clothing*, 361 NLRB No. 79, at slip op. 1 fn.1 (2014). In *Triple Play Sports Bar & Grille*, the Board first held that application of the test under *Atlantic Steel Co.*, 245 NLRB 814 (1979), was ill-suited to social media postings, which were held off-site and off-duty, involving both employees and non-employees, with no managers and no confrontation with a manager these circumstances. See 361 NLRB No. 31 at 4. The Board continued its analysis of the protected status of concerted postings in the social media context by next holding that the standards set forth in *NLRB v. Electrical Workers IBEW Local 1229 (Jefferson Standard)*, 346 U.S. 464 (1953), and *Linn v. United Plant Guard Workers* Local 114, 383 U.S. 53 (1966), respectively, outlined the proper scope for balancing an employee's Section 7 rights against an employer's legitimate interest in both preventing the disparagement of its products or services and protecting its reputation. See id. at 5. Applying *Jefferson Standard* to the social media postings at issue, the Board held that given that the comments in question clearly disclosed the existence of an ongoing labor dispute, and that the comments did not mention the employer's products or services, the comments were not disloyal, but rather, were aimed at seeking and providing mutual support looking toward group action. See id. at 7. Next, applying *Linn*, the Board found no basis for finding that the employees' claims that their withholding was insufficient to cover their tax liability, or that this shortfall was due to an error on the respondent's part, were maliciously untrue. See id. The Board held further that the employee's characterization of her employer as an "asshole" in connection with the asserted tax-withholding errors could not reasonably have been read as a statement of fact; rather, the employee was

merely (profanely) voicing a negative personal opinion. Id. Accordingly, the statements did not lose protection. Id.

Thus, under *Triple Play Sports Bar & Grille*, comments posted on a social media site accessible by both employees and non-employees do not lose their protected status when such comments clearly disclose the existence of an ongoing labor dispute, do not mention the employer's products or services, and are not made with either the knowledge of their falsity or with reckless disregard for their truth or falsity. Cf. *Richmond Dist. Neighborhood Center*, 361 NLRB No. 74 (2014) (social media postings pervasively advocating insubordination with detailed descriptions of specific acts are not protected).

As discussed above, Abare's post clearly disclosed the existence of an ongoing labor dispute. Further, Abare's post did not disparage or otherwise mention the Company's products or services. Finally, Abare's post, though vulgar, clearly reflected a negative personal opinion and could not reasonably have been construed as a statement of fact. See *Plaza Auto Center, Inc.*, 355 NLRB 493, 505 fn. 29 (2010) (collecting cases). Thus, Abare's post did not lose its protected status under the Act.

3. The Company's animus

Knowledge of an employee's union activities may be proven through direct or circumstantial evidence, including "the employer's demonstrated knowledge of general union activity, the employer's demonstrated union animus, the timing of the discharge in relation to the employee's protected activities, and the pretextual reasons for the discharge asserted by the employer." *Kajima Eng'g & Construction Inc.*, 331 NLRB 1604 (2000). Pretext demonstrates animus. *Lucky Cab Co.*, 360 NLRB No. 43 (2014). An employer's failure to follow its own practice of progressive discipline demonstrates animus. *Santa Fe Tortilla Co.*, 360 NLRB No. 130 at slip op. 3 (2014) (citing *2 Sisters Food Group, Inc.*, 357 NLRB No. 168 (2011)). Animus is demonstrated by independent unfair labor practices. See *Amptech, Inc.*, 342 NLRB 1131, 1135 (2004).

In response to the Company's November email announcing a change in benefits, Abare asked Sheftic if it was true that certain benefits, including Sunday premium pay and unscheduled overtime pay, were being eliminated. When Sheftic asked if the gathering was an organized meeting and who organized it, Abare responded that Sheftic could "call this a work stoppage or you can call it whatever you may want to call it, a safety shutdown, a safety timeout, whatever it might be that you feel comfortable calling this but there are a lot of employees out there that their minds are not on the job." That upper management's focus on Abare had filtered down to midlevel managers was evident from Bro's inquiry during as to whether Union literature had been placed in the office/break area by Abare. Finally, during the election, Abare served as the Union's observer. The Company clearly had direct evidence of Abare's union activities.

The Company has a disciplinary procedure relating to unsatisfactory work performance. Steps in the procedure range from a "casual and friendly reminder," followed by (1) a warning for recurrences within a 3-month period, (2) sending an employee home for a single recurrence within a 6-month period, and (3) suspension or termination for a second recurrence within a 6-month period. The policy also provides guidance stating that "there shall be no disciplinary demotions, suspensions or other forms of punishment—as a normal means of disciplining employees."

Dufore and Quinn called Abare into a meeting on April 4, during which Abare apologized. On April 11, at a followup meeting, Quinn and Dufore demoted Abare. Quinn informed Abare that he was removed from his positions as a crew leader, FDS captain, EMS member and crane trainer. In disciplining Abare, the Company neither warned him nor sent him home. The Company thereby failed to follow its own progressive disciplinary policy and thus demonstrated animus.

In addition to the Company's postelection conduct toward Abare because of his support for the Union, animus is also demonstrated by the aforementioned 8(a)(1) violations that resulted from the Company's preelection antiunion conduct. See *K.W. Electric, Inc.*, 342 NLRB 1231, 1242 (2004).

4. The Company's justification for Abare's demotion

Where the General Counsel makes a strong showing of discriminatory motivation, an employer's rebuttal burden is substantial. See *Bettie Page Clothing*, 359 NLRB No. 96 (2013), enfd. *Bettie Page Clothing*, 361 NLRB No. 79 (2014). An employer fails to establish a legitimate reason for its actions when it vacillates in offering a rational and consistent account of its actions. *Aluminum Technical Extrusions*, 274 NLRB 1414, 1418 (1985). Disparate treatment establishes pretext. *Windsor Convalescent Center*, 349 NLRB 480 (2007), enf. denied on other grounds 570 F.3d 354 (D.C. Cir. 2009).

The Company argues that the severity of Abare's conduct is compounded by the offensive nature of his comment, his targeting of coworkers with different viewpoints, and his leadership roles. It further contends that Abare was not demoted for violating the Company's social media policy, or in retaliation for alleged exercise of Section 7 rights; rather, the Company removed him from those roles for violating a code of conduct. Finally, the Company argues that its treatment of Abare was consistent with the discipline meted out to other employees in similar situations. Thus, Abare would have been disciplined even in the absence for his protected concerted activity.

The Company's argument lacks merit. As a general matter, the Company's reasons for the demotion have been inconsistent. When Quinn confronted Abare with his Facebook post, he stated that the post violated the Company's social media policy and provided him with a copy of it, adding that "you may not be aware that we have a social media policy." The Company now argues, however, Abare was demoted for violating the code of conduct. The Company has thus shifted its reasons for demoting Abare, demonstrating pretext. *Approved Electric Corp.*, 356 NLRB No. 45, slip op. at 3 (2010) (shifting reasons raise the inference of pretext); accord: *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999).

Further, the Company failed to establish that any employees, much less crew leaders, have ever been disciplined for similar behavior. The Company has demoted only four crew leaders due to performance-related issues. In one of those instances, the Company gave the employee an opportunity to remediate his performance deficiencies. In addition, the record establishes

that numerous plant employees, including supervisors, often use foul and demeaning language, including terms such as "fucktard," "idiot," "retard," "brain-dead" and a host of lewd anatomical references. The Company's demotion of Abare was thus disparate demonstrating pretext. See *United States Gypsum Co.*, 259 NLRB 1105, 1107 (1982).

The Company has thus failed to establish a legitimate reason for its actions absent unlawful animus. See *Alternative Energy Applications, Inc.*, 361 NLRB No. 139, slip op. at 5 (2014).

VIII. APPLICABLE REMEDY

The aforementioned 8(a)(1) violations constituted overwhelming evidence of conduct by the Company during the month leading up to the election which eroded the ideal conditions necessary to facilitate the free choice of employees and determine their uninhibited desires. *Jensen Enterprises,* 339 NLRB No. 105 (2003); *Robert Orr-Sysco Food Servs.*, 338 NLRB 614 (2002) (narrowness of the vote is a factor); *Clark Equipment Co.*, 278 NLRB 495, 505 (1986) (factors include the number of violations, their severity, the extent of dissemination, the size of the unit and other relevant factors); *Playskool Mfg. Co.*, 140 NLRB 1417 (1963); *General Shoe Corp.*, 77 NLRB 124 (1948). Thus, the petitioning Union has met its burden in Case 03–RC–120447 and there is no doubt that the results of the election must be set aside. When considered in context with the unfair labor practice proceedings, it is also evident that, at the very least, the traditional remedies are warranted—a rerun of the election in disposition of the representation case and a cease and desist order and posting of a notice in the unfair labor practice proceedings.

There is a much closer call, however, with respect to the General Counsel's request for an order granting the extraordinary remedy of a bargaining order designating the Union as the legal representative of Company's employees pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 610 (1969). The General Counsel contends that the timing and enduring nature of the Company's unlawful conduct warrants a bargaining order. The Company maintains, however, that the record evidence fails to meet the high standard for issuing such relief.

In *Gissel*, the Supreme Court held that a bargaining order is warranted when "an employer has committed independent unfair labor practices which have made the holding of a fair election unlikely or which have in fact undermined a union's majority and caused an election to be set aside." Id. at 610. The traditional remedy for unfair labor practices is to hold an election once the atmosphere has been cleared of past misconduct; a bargaining order thus is an extraordinary remedy applied when it is unlikely that the atmosphere can be cleansed. *Aqua Cool*, 332 NLRB 95, 97 (2000). However, a bargaining order is not punitive, but rather is designed both to remedy past election misconduct and to deter future misconduct. *Gissel*, 395 U.S. at 612; *General Fabrications Corp.*, 329 NLRB 1114, 1116 (1999). The issuance of a bargaining order, then, seeks to balance the rights of employees who favor unionization, and whose majority strength has been undermined by the employer's unfair labor practices, against the rights of those employees opposing the union who may choose to file a decertification petition at the appropriate time pursuant to Section 9(c)(1). See *Overnite Transportaion Co.*, 329 NLRB 990, 996 (1999).

A bargaining order is warranted absent a card majority in exceptional cases marked by outrageous and pervasive unfair labor practices. *Gissel.* 395 U.S. at 613 (internal quotation marks omitted). A bargaining order is also warranted with a card majority "in less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." Id. at 614. In these less extraordinary cases, the extensiveness of an employer's unfair practices is relevant both in terms of those practices' past effect on election conditions and in terms of the likelihood of their recurrence in the future. *Id*. Minor or less extensive unfair labor practices which have a minimal impact on the election machinery will not warrant a bargaining order. Id. at 615. In evaluating these factors, the fundamental question is whether there is a slight possibility of erasing the effects of past practices and of ensuring a fair rerun by the use of traditional remedies, and that employee sentiment once expressed through cards would thus be better protected by a bargaining order. *Id*. at 614–615.

A. Establishment of Majority Status Prior to the Election

Cumberland Shoe Corp. established that an unambiguous card is valid unless and until it is rendered invalid through solicitation misrepresenting the sole purpose of the card. See 144 NLRB 1268, 1269 (1963). A card may be ambiguous, and thus facially invalid, through either the words on the card or through the manner in which the card is presented to the signee. The Board has found that a card is rendered ambiguous through the words on the card when it both authorizes union representation and states that "[t]he purpose of signing the card is to have a Board-conducted election" (*Nissan Research & Development*, 296 NLRB 598, 599 (1989) (internal quotation marks omitted)). The Board has clarified that cards which seek both majority status and cards which seek representation must, of necessity, express the intent to be represented by a particular labor organization. *Levi Strauss & Co.*, 172 NLRB 732, 733 (1968). Thus, "the fact that employees are told in the course of solicitation that an election is contemplated, or that a purpose of the card is to make an election possible, provides . . .*insufficient* basis in itself for vitiating unambiguously worded authorization cards on the theory of misrepresentation." Id. Absent evidence of such representation, enquiry into the subjective motives or understanding of the signatory to determine his or her intentions toward usage of the card is irrelevant. See *Sunrise Healthcare Corp.*, 320 NLRB 510, 524 (1995). As the Supreme Court clarified, summarizing and expanding upon *Cumberland Shoe* and *Levi Strauss*:

> [E]mployees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature. There is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election…in hearing testimony concerning a card challenge, trial examiners should not neglect their obligation to ensure employee free choice by a too easy mechanical appli-

> cation of the Cumberland rule. We also accept the observation that employees are more likely than not, many months after a card drive and in response to questions by company counsel, to give testimony damaging to the union, particularly where company officials have previously threatened reprisals for union activity in violation of s 8(a)(1). We therefore reject any rule that requires a probe of an employee's subjective motivations as involving an endless and unreliable inquiry.

NLRB v. Gissel Packing Co., 395 U.S. 575, 606–608 (1969).

The record evidence reveals that Ridgeway, Abare, Spencer and the rest of an organizing committee of about 25 employees obtained 356 signed union authorization cards from employees during the organizing campaign, 351 of which were properly authenticated by witnesses, the employees themselves or handwriting comparison. Cards may be authenticated by comparing signatures with other handwriting. See *Action Auto Stores*, 298 NLRB 875, 879 (1990) (citing Fed. R. Evid. 901(b)(3)) (authenticating cards by comparing the signature on the card with the employee's name and social security number on employment application). See also *U.S. v. Rhodis*, 58 Fed. Appx. 855, 856–857 (2d Cir. 2003) (factfinder may compare "a known handwriting sample with another sample to determine if handwriting in the latter is genuine"); *Parts Depot, Inc.*, 332 NLRB 670, 674 (2000); *Thrift Drug Co. of Pennsylvania*, 167 NLRB 426, 430 (1967) (cards authenticated by comparison with other samples by nonexperts); *Traction Wholesale Ctr. Co.*, 328 NLRB 1058, 1059 (1999) (cards authenticated by judicial comparison of signatures to other records); *Justak Bros*., 253 NLRB 1054, 1079 (1981) (same).

With respect to what employees said or were told during the solicitation of cards, however, the testimony did not overly impress. Both sides produced many witnesses who testified to mere snapshots of what they discussed with solicitors since it was evident in the overwhelming number of these cases that the conversations lasted significantly longer than the short, rote responses given. Nevertheless, the testimony revealed consistent statements by solicitors advising employees to read the cards, requesting that they provide the detailed information requested by the card and sign it, and advising coworkers that they could request return of their cards if they changed their minds. In certain instances, solicitors explained the purpose of the card when asked. In many instances, solicitors outlined the process of requesting union representation through a signed authorization card, some mentioned that the cards would result in a representation election and yet a few responded that the card would be used to get more information about the Union.

Notably, there was testimony from only a few witnesses that they requested return of their union authorization cards. In light of the parade of recanting employees called by the Company to testify that they were duped into signing cards in order to get more information about the Union, I find it peculiar that most of them never requested return of their cards, especially after experiencing the onslaught of the Company's campaign information relating to election "facts" and "employee rights." An equally relevant consideration is the absence of any statement by the Company or antiunion employees during their dissemination of anti-Union propaganda about the Union misleading employees about the purpose of the authorization cards.

In some instances, the General Counsel's witnesses did not possess the most accurate recollection as to when they signed or witnessed a card being signed. Many of them were looking at the cards when asked about the dates when signed. In such instances, however, the Board recognizes a presumption that the card was signed on the date appearing thereon. Multimatic Products, 288 NLRB 1279, 1350 fn. 126 (1988), Zero Corp., 262 NLRB 495, 499 (1982); Jasta Mfg. Co., 246 NLRB 48, 63 (1979).

It was also evident in certain situations that the solicitors did not witness the signing of cards but merely collected completed and signed cards. In such situations, authorization cards are authenticated "when returned by the signatory to the person soliciting them even though the solicitor did not witness the actual act of signing." *Evergreen America Corp.*, 348 NLRB 178, 179 (2006) (quoting *McEwan Mfg. Co.*, 172 NLRB 990, 992 (1968)). See also *Henry Colder Co.*, 163 NLRB 105, 116 (1967) (personal authentication of each and every card by their signers is contrary to the rule to which forgery is an exception).

To the extent that some solicitors stated that the cards would be used to get more information or get an election, their words did not clearly and deliberately direct the signer to disregard and forget the language above his or her signature. Cards are not invalidated through confused testimony regarding their receipt. See *Evergreen America Corp.*, 348 NLRB at 179 (citing *Stride Rite*, 228 NLRB 224, 235 (1977)).

In addition to the record evidence as to what employees were essentially told about the purpose of the card, is the language of the card indicating that its purpose was to authorize "representation" in "collective bargaining" and to be "used to secure union recognition and collective bargaining rights." The language of the cards, which required the entry of detailed information that was obviously read by the card signer, was clear and unambiguous. Under the circumstances, all but five of the cards were sufficiently authenticated, were thus valid and evidenced the majority support of the Union as of January 9.

B. Sufficiency of Traditional Remedies

Consideration of a bargaining order examines the nature and pervasiveness of the employer's practices. *Holly Farms Corp.*, 311 NLRB 273, 281 (1993) (citing *FJN Mfg*., 305 NLRB 656, 657 (1991)). In weighing a violation's pervasiveness, relevant considerations include the number of employees directly affected by the violation, the size of the unit, the extent of dissemination among the work force, and the identity of the perpetrator of the unfair labor practice. *Id.* A bargaining order is not warranted when the violations are not disseminated among the bargaining unit, such as when they are committed by low-level managers and affect employees on an individual basis. See, e.g., *Cast-Matic Corp*., 350 NLRB 1349 (2007); *Desert Aggregates*, 340 NLRB 289 (2003) (violations, including unlawful discharges, were committed on an individual basis by low-level supervisors); *Philips Industries*, 295 NLRB 717 (1989) (same). Also, a bargaining order is not warranted when the most widely disseminated violations occur before a union demand for recognition and thus cannot have been said to have eroded the union's

majority support. See, e.g., *Jewish Home for the Elderly of Fairfield County*, 343 NLRB 1069, 1121–1122 (2004). Conversely, violations are more likely to warrant a bargaining order when they are disseminated among employees to the extent of affecting all or a significant portion of the bargaining unit. *Evergreen America Corp.*, 348 NLRB 178, 180–181 (2006).

1. Severity of the violations

A bargaining order is warranted, absent significant mitigating circumstances, when the employer engages in the type of hallmark violations committed here – threats of plant closure, threats of loss of employment, the grant of benefits to employees, and the reassignment, demotion, or discharge of union adherents. *NLRB v. Jamaica Towing, Inc.* 632 F.2d 208, 212–213 (2d Cir. 1980). Hallmark violations are significant in that they are reasonably likely to have an effect on a substantial percentage of the work force and to remain in employees memories for a long period. Id. at 213. Cf. *Aqua Cool*, 332 NLRB 95 (2000) (single hallmark violation was directed to a single employee and thus counseled against issuing a bargaining order).

The Company committed a hallmark violation when, during captive audience meetings, it threatened plant closure and loss of business. This violation, which was directly disseminated to the bargaining unit, will likely remain etched in employees' memories for a long period. See *Aldworth Co.*, 338 NLRB 137, 149–150 (2002) (noting that allusions to potential total loss of business are the types of threats most likely to have the effect of causing union disaffection and that "[t]hreats of this kind are not likely to be forgotten by employees whose jobs depend on the stability of that relationship"). Threats of plant closure and loss of jobs are more likely to destroy election conditions for a longer period of time than other unfair labor practices. *Homer D. Bronson Co.*, 349 NLRB 512, 549 (2007) (citing *A.P.R.A. Fuel, Inc.*, 309 NLRB 480, 481 (1992), enfd. mem. 28 F.3d 103 (2d Cir. 1994)).

The Company also committed a significant hallmark violation when it granted a benefit to employees by restoring Sunday premium pay. This violation was disseminated to the entire bargaining unit and is likely to have a long-lasting effect, not only because of its significance to employees, but also because this benefit will regularly appear in paychecks as a "continuing reminder." *MEMC Elec. Materials, Inc.*, 342 NLRB 1172, 1174 (2004) (quoting *Holly Farms*, 311 NLRB at 281–282).

The Company committed another significant hallmark violation when it demoted Abare, a known union adherent shortly after the election and during the pendency of these proceeding by purportedly applying an unlawfully restrictive social media policy. Abare's demotion was widely known among the work force. Demotion of union adherents in violation of Section 8(a)(3) represent a complete action likely to have a lasting inhibitive effect on a substantial portion of the workforce. See *Jamaica Towing, Inc.*, 632 F.2d at 213.

In addition to the hallmark violations, the Company committed several other violations, including interrogating employees, promising benefits, threatening decreased benefits, and expressing anti-union resolve. *Id*. A factor which exacerbates the severity of a violation is the extent to which the violations are disseminated among employees. See *Evergreen Am. Corp.*, 348 NLRB 178, 180 (2006); *Cogburn Healthcare Center, Inc.*, 335 NLRB 1397, 1399 (2001). A second factor which exacerbates the severity of a violation is involvement of a high-ranking official. *Parts Depot, Inc.*, 322 NLRB 670, 675 (2000) (citing *M.J. Metal Products*, 328 NLRB 1184, 1185 (1999)).

The Company committed several other violations during the captive audience meetings. It threatened reduced pay and benefits as well as more onerous working conditions. These threats were directly disseminated to the bargaining unit. Further, the severity of this violation was exacerbated by its communication via high-ranking officials. See *Aldworth Co.*, 338 NLRB at 149 (captive audience meetings convey a significant impact when conducted by high-level officials). When the antiunion message is so clearly communicated by the words and deeds of the highest levels of management, it is highly coercive and unlikely to be forgotten. See *Electro-Voice*, 320 NLRB 1094, 1096 (1996); *America's Best Quality Coatings Corp.*, 313 NLRB 470, 472 (1993), enfd. 44 F.3d 516 (7th Cir. 1995), cert. denied 115 S.Ct. 2609 (1995).

The Company also violated the Act during the captive audience meetings when it unlawfully disparaged the Union by misrepresenting an altered Board document. These violations were disseminated among the entire bargaining unit by high-ranking officials two days before the election. *M.J. Metal Products, Inc.*, 328 NLRB 1184, 1185 (1999) (communications by the highest level of management are highly likely to be coercive and unlikely to be forgotten).

The Company further violated the Act through supervisory encounters with smaller groups of employees prior to the election. During those encounters, supervisors interrogated, threatened and discriminatorily enforced the Company's unlawfully over broad and restrictive solicitation and distribution policy. These discriminatory actions committed by supervisors were likely to leave an impression sufficient to outweigh the general good-faith assurances issued by management. *Garvey Marine, Inc.*, 328 NLRB 991, 993 (1999).

Finally, the Company combined the chilling effect of coercive conduct by supervisors with the warmer approach taken by Quinn of unlawfully soliciting grievances during the Union campaign. Solicitation of grievances has a long-lasting effect on employees' freedom of choice by eliminating, through unlawful means, the very reason for a union's existence. See *Teledyne Dental Products Corp.*, 210 NLRB 435, 435–436 (1974).

Thus, the Company's commission of several hallmark violations along with numerous other violations, many of which directly affected the entire bargaining unit, and many of which directly involved upper-level management, strongly suggests that the lingering effect of these violations is unlikely to be eradicated by traditional remedies. *Evergreen America Corp.*, 348 NLRB at 182; *Koons Ford of Annapolis*, 282 NLRB 506, 509 (1986).

2. Remediation of potential effects of the violations

Evaluation of whether a bargaining order is warranted depends upon the situation as of the time the employer committed the unfair labor practices. *Highland Plastics, Inc.*, 256 NLRB

146, 147 (1981). Evaluation must consider the likelihood of the recurrence of violations. *Gissel*, 395 U.S. at 614. Evaluation may also, but need not, consider changed circumstances, such as the passage of time, the addition of new employees, and the issuance of a 10(j) injunction. See *Evergreen America Corp*., 348 NLRB at 181–182.

The Company cites *Cogburn Health Center, Inc. v. NLRB*, for the preposition that mitigating or changed circumstances, such as employee or management turnover may counsel against issuing a bargaining order. 437 F.3d 1266 (D.C. Cir 2006). Cf. *Overnite Transportation*, 334 NLRB 1074, 1076 (2001) (Board evaluation of bargaining order does not consider employee turnover). In *Cogburn Health Center,* the court found it significant that only 44 percent of the voting employees remained employed by the company. *Id.* Further, the court noted key changes in company management, including the death of a co-owner/vice president and departure of another coowner, who together had been responsible for 15 unfair labor practices, 5 of 15 instances of unlawful interrogation, and four of six discharges. Id. at 1274–1275. Finally, 5 years had passed since the commission of the unfair labor practices and the Board's analysis of the case which, in turn, amounted to 10 years by the time the court reached the matter. Id. at 1275.

Aside from the relatively brief amount of time that has passed since the election, *Cogburn Health Ctr*. is distinguishable from the instant case in that the high-level management officials implicated in the hallmark violations—Martens, Palmieri and Smith remain with the Company; only one such official, Sheftic, is no longer in the Company's employ. Further, since the election, the Company has added only about 50 new employees to a work force of 600, equating to roughly 8 percent of the bargaining unit. This change in the unit composition is minimal as compared to the significant percentage demonstrated in *Cogburn Health Center*, and is, thus, not relevant as a mitigating factor. See also *NLRB v. Marion Rohr Corp.*, 714 F.2d 228, 231 (2d Cir. 1983) (35% turnover rate is a relevant factor); *NLRB v. Chester Valley, Inc.*, 652 F.2d 263, 273 (2d Cir. 1981) (same).

The Company further cites *J.L.M., Inc. v. NLRB*, in support of its larger argument that employer communications to employees to clarify and/or cure conduct that could be perceived as an unfair labor practice are directly relevant to whether employees "continue to feel the effects of the ULPs." 31 F.3d 79, 85 (2d Cir. 1994). However, the court in *J.L.M., Inc.* made no reference to employer communications meant to cure past misconduct; its discussion, rather, was whether, in the context of significant turnover (roughly 57%), employees would continue to feel the effects of past misconduct after the passage of 3 years. See id. The Company's reliance upon *J.L.M., Inc.* is thus not pertinent.

Further, in regard to the ability of an employer to cure unlawful conduct, the Board has clarified that such repudiation must not only admit wrongdoing, but must also be adequately publicized, timely, unambiguous, specific in nature to the coercive conduct, untainted by other unlawful conduct, and must assure employees that, going forward, the employer will not interfere with the exercise of their Section 7 rights. See *DirectTV*, 359 NLRB No. 54, slip op. at 4 (2013) (citing Passavant Memorial Area Hospital, 237 NLRB 138 (1978)). See also *Astro Printing Services.*, 300 NLRB 1028, 1029 (1990) (assurances by an employer to employees of their rights to engage in union activity or disavowals of misconduct, absent unequivocal admission, fail to remedy the long-lasting effects of past misconduct).

The Company also relies on the issuance of a preliminary injunction issued by the District Court and its compliance with that order, including the reading to all employees of their rights and restoring the status quo. It also refers to a memorandum to all employees disseminated in June in which Martens and Smith addressed past violations. Each stated, "I did not and would never make any threats." However, the statements merely denied any wrongdoing and attributed the Company's unlawful conduct to "possible misunderstanding or misconception." This equivocating language is insufficient to repudiate past violations. See *Rivers Casino*, 356 NLRB No. 142, slip op. at 3 (2011) (referring to an earlier violation as a "misunderstanding" is not sufficiently clear to effectuate repudiation). Further, the Company's memoranda, though publicized, lacked assurances of employee rights, and were neither unambiguous nor unequivocal in admitting wrongdoing, thus failing to cure past violations. See id. (citing *Bell Halter, Inc.*, 276 NLRB 1208, 1213–1214 (1985)).

The Company's reliance on its compliance with the District Court's preliminary injunction order is also unavailing. In such instances, the Board has clarified that compliance with such orders does not actually remedy unfair labor practices, but rather returns parties to the status quo ante pending disposition by the Board. *R.L. White Co.*, 262 NLRB 575, 581 (1982).

The Company unlawfully demoted Abare, a leading Union supporter, even though he apologized and assured Quinn that he would not do it again. Quinn conceded that Abare was an excellent employee, but conditioned the duration of the demotion on Abare's future behavior. Since Quinn was not concerned about performance, his remarks would be reasonably interpreted as referring to either future social media commentary or other activity by Abare adverse to the Company's labor relations interests. Thus, the postelection demotion and the admonition about further post-election conduct reflect a continuation of unlawful conduct during the post-election period. See *Transportation Repair & Service,*, 328 NLRB 107, 114 (1999) (postelection 8(a)(3) violation against union adherent diminishes the likelihood that a fair election can be held).

Contrary to the Company's assertion that it undertook meaningful measures in post-election employee communications to remediate or mitigate the impact of its unlawful conduct, contextual evidence negated it. The evidence related to the Company's postelection communications denying the allegations in the complaint, while also heaping 5 years of pay raises on the employees.[179] This was an unusual occurrence since pay and benefits changes have always been implemented between October and December of each year. The unusual timing of this change was coupled with announcements in May that the Company denied the charges, but felt that employees' rights would

[179] R. Exh. 54, 56.

be respected and hopefully expressed in a rerun election. The Company, clearly emboldened by how it peeled away union support with its unlawful tactics during the election campaign, would be pleased with such a result. That is not to be. The only fair, justified and appropriate remedy here is a bargaining order. See *Tipton Electric Co*., 242 NLRB 202, 202–203 (1979) (postelection grant of benefits represents a calculated application of the carrot and the stick to condition employee response to any union organizing effort, affording the employer an unlawfully acquired advantage in a rerun election which cannot be cured by simply ordering the employer to mend its ways and post a notice).

Based on the foregoing, the evidence establishes numerous violations by the Company of Sections 8(a)(1) and (3) of the Act. The unfair labor practice violations were sufficiently severe so as to erode the majority support that the Union had acquired and demonstrated on or before January 9, causing it to lose the representation election conducted on February 20–21. The practices also amount to hallmark and other violations demonstrating that traditional remedies, including a notice posting, cease and desist order and rerun of the election, would be insufficient to alleviate the impact reasonably incurred by eligible unit employees. Thus, a more extraordinary relief, including a bargaining order, is warranted.

VII. CONCLUSIONS OF LAW

The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

1. United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers, International Union, AFL–CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act.

2. The Company violated Section 8(a)(1) of the Act by engaging in the following conduct:

(a) Threatening employees with plant closure if they select the Union as their bargaining representative;

(b) Threatening employees with a reduction in wages of they select the Union as their bargaining representative;

(c) Threatening employees with more onerous working conditions, including mandatory overtime, if they select the Union as their bargaining representative;

(d) Disparaging the Union by telling employees that the Union is seeking to have the Company rescind their pay and/or benefits;

(e) Disparaging the Union by telling employees that they would have to pay back wages retroactively as a result of charges filed by the Union;

(f) Threatening employees that the Company would lose business if they select the Union as their bargaining representative;

(g) Threatening employees with job loss if they select the Union as their bargaining representative;

(h) Interrogating employees about their union membership, activities, and sympathies;

(i) Interrogating employees about the union membership, activities and sympathies of other employees;

(j) Coercing employees by asking them how to vote if they do not want the Union;

(k) Threatening employees by telling them that they did not have to work for the Company if they are unhappy with their terms and conditions of employment;

(l) Prohibiting employees from wearing union insignia on their uniforms while permitting employees to wear antiunion and other insignia;

(m) Promulgating and maintaining rules prohibiting all postings, distribution and solicitation related to Section 7 activities;

(n) Maintaining a rule that prohibits employees from posting, soliciting and distributing literature in all areas of the Company's premises;

(o) Selectively and disparately enforcing the Company's posting and distribution rules by prohibiting union postings and distributions while permitting nonunion and antiunion postings and distributions;

(p) Granting wage and/or benefit increases in order to discourage employees from supporting the Union;

(q) Soliciting employees' complaints and grievances and promising employees improved terms and conditions of employment if they did not select the Union as their bargaining representative;

(r) Demoting its employee Everett Abare because he engaged in protected concerted activity;

(s) Maintaining and giving effect to its overly broad unlawful social media policy.

3. The Company violated Section 8(a)(3) and (1) of the Act by demoting Everett Abare because of this union activities.

4. The following employees constitute a union appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees employed by the Employer at its Oswego, New York facility, including the classifications of Cold Mill Operator, Finishing Operator, Recycling Operator, Remelt Operator, Crane Technician, Mechanical Technician, Welding Technician, Remelt Operations Assistant, Hot Mill Operator, Electrical Technician, Process Technician, Mobile Equipment Technician, Roll Shop Technician, Production Process & Quality Technician, Production Process & Quality Specialist, EHS Facilitator, Planner, Shipping Receiving & Packing Specialist, Stores Technician, Maintenance Technician, Machinist, Facility Technician, and Storeroom Agent, excluding Office clerical employees and guards, professional employees, and supervisors as defined in the Act, and all other employees.

5. Since January 9, 2014, and continuing to date the Union has requested and continues to request that the Company recognize and bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive representative of all employees of the Company in the above-described unit.

6. Since January 9, 2014, a majority of the employees in the above Unit signed union authorization cards designating and selecting the Union as their exclusive collective bargaining representative for the purposes of collective bargaining with the Company.

7. Since January 9, 2014, and continuing to date, the Union has been the representative for the purpose of collective bar-

gaining of employees in the above described unit and by virtue of 9(a) of the Act has been can is now the exclusive representative of the employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

8. Since about January 13, 2014, and at all times thereafter the Company has failed and refused to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

9. The Company has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of all employees in the above-described unit.

10. The Company unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Company has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. For the reasons set forth above, such relief shall include an order that the Company, on request, bargain collectively with the Union as the exclusive bargaining representative of the employees in the above-described unit.

As a bargaining order has been found appropriate with respect to the unit which includes live haul employees, it is recommended that the election held in Case 03–RC–I120447 be set aside and that the petition in that proceeding be dismissed. On these findings of fact and conclusions of law and on the entire record, I issue the following recommended [179]

ORDER

The Respondent, Novelis Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with plant closure if they select the Union as their bargaining representative;

(b) Threatening employees with a reduction in wages of they select the Union as their bargaining representative;

(c) Threatening employees with more onerous working conditions, including mandatory overtime, if they select the Union as their bargaining representative;

(d) Disparaging the Union by telling employees that the Union is seeking to have Respondent rescind their pay and/or benefits;

(e) Disparaging the Union by telling employees that they would have to pay back wages retroactively as a result of charges filed by the Union;

(f) Threatening employees that Respondent would lose business if they select the Union as their bargaining representative;

(g) Threatening employees with job loss if they select the Union as their bargaining representative;

(h) Interrogating employees about their union membership, activities, and sympathies;

(i) Interrogating employees about the union membership, activities and sympathies of other employees;

(j) Coercing employees by asking them how to vote if they do not want the Union;

(k) Threatening employees by telling them that they did not have to work for Respondent if they are unhappy with their terms and conditions of employment;

(l) Prohibiting employees from wearing union insignia on their uniforms while permitting employees to wear anti-union and other insignia;

(m) Promulgating and maintaining rules prohibiting all postings, distribution and solicitation related to Section 7 activities;

(n) Maintaining a rule that prohibits employees from posting, soliciting and distributing literature in all areas of Respondent's premises;

(o) Selectively and disparately enforcing Respondent's posting and distribution rules by prohibiting union postings and distributions while permitting nonunion and anti-union postings and distributions;

(p) Granting wage and/or benefit increases in order to discourage employees from supporting the Union;

(q) Soliciting employees' complaints and grievances and promising employees improved terms and conditions of employment if they did not select the Union as their bargaining representative;

(r) Demoting employees because they engage in protected concerted activity or union activity;

(s) Maintaining and giving effect to its overly broad unlawful social media policy;

(t) Refusing to recognize and bargain with the Union as the exclusive collective-bargaining representatives of the employees in the Unit set forth below:

> All full-time and regular part-time employees employed by the Employer at its Oswego, New York facility, including the classifications of Cold Mill Operator, Finishing Operator, Recycling Operator, Remelt Operator, Crane Technician, Mechanical Technician, Welding Technician, Remelt Operations Assistant, Hot Mill Operator, Electrical Technician, Process Technician, Mobile Equipment Technician, Roll Shop Technician, Production Process & Quality Technician, Production Process & Quality Specialist, EHS Facilitator, Planner, Shipping Receiving & Packing Specialist, Stores Technician, Maintenance Technician, Machinist, Facility Technician, and Storeroom Agent, excluding Office clerical employees and guards, professional employees, and supervisors as defined in the Act, and all other employees.

(u) In any like or related manner interfering with, restraining or coercing Respondent's employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed

[179] 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.

agreement:

> All full-time and regular part-time employees employed by the Employer at its Oswego, New York facility, including the classifications of Cold Mill Operator, Finishing Operator, Recycling Operator, Remelt Operator, Crane Technician, Mechanical Technician, Welding Technician, Remelt Operations Assistant, Hot Mill Operator, Electrical Technician, Process Technician, Mobile Equipment Technician, Roll Shop Technician, Production Process & Quality Technician, Production Process & Quality Specialist, EHS Facilitator, Planner, Shipping Receiving & Packing Specialist, Stores Technician, Maintenance Technician, Machinist, Facility Technician, and Storeroom Agent, excluding Office clerical employees and guards, professional employees, and supervisors as defined in the Act, and all other employees.

(b) Within 14 days from the date of the Board's Order, restore Everett Abare to the positions he previously held at his previous wage and other terms and conditions of employment.

(c) Make Everett Abare whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

(d) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful demotion, and within 3 days thereafter notify Everett Abare in writing that this has been done and that the demotion will not be used against him in any way.

(e) 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 analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Oswego, New York, copies of the attached "Notice to Employees.[180]" Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn statement of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

3. It is further ordered that the election conducted in Case 03-RC-120447 on February 20 and 21, 2014 shall be set aside, and the petition shall be dismissed.

[180] 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."

Dated, Washington, D.C. January 30, 2015

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 do anything which interferes with, restrains or coerces you with respect to these rights. More specifically,

WE WILL NOT threaten you with plant closure if you select the Union as your bargaining representative.

WE WILL NOT threaten you with a reduction in wages if you select the Union as your bargaining representative.

WE WILL NOT threaten you with more onerous working conditions, including mandatory overtime, if you select the Union as your bargaining representative.

WE WILL NOT disparage the Union by telling you that the Union is seeking to have Respondent rescind your pay and/or benefits.

WE WILL NOT disparage the Union by telling you, you would have to pay back wages retroactively as a result of the charges filed by the Union.

WE WILL NOT threaten you that Respondent would lose business if you select the Union as your bargaining representative.

WE WILL NOT threaten you with job loss if you select the Union as your bargaining representative.

WE WILL NOT interrogate you about your union membership, activities and sympathies.

WE WILL NOT coerce employees by asking you how to vote if you do not want the Union.

WE WILL NOT threaten you by telling them that you did not have to work for Respondent if you are unhappy with your terms and conditions of employment.

WE WILL NOT prohibit employees from wearing union insignia on your uniforms while permitting you to wear antiunion and other insignia.

WE WILL NOT promulgate and maintain rules prohibiting all postings, distribution, and solicitation related Section 7 activities.

WE WILL NOT maintain a rule that prohibits you from posting, soliciting and distributing literature in all areas of Respondent's premises.

WE WILL NOT selectively and disparately enforce Respondent's posting and distribution rules by prohibiting union postings and distributions while permitting nonunion and anti-union

postings and distributions.

WE WILL NOT grant wage and/or benefit increases in order to discourage you from supporting the Union.

WE WILL NOT solicit your complaints and grievances and promise you improved terms and conditions of employment if you did not select the Union as your bargaining representative.

WE WILL NOT demote you for your union activities and/or protected concerted activities. United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers, International Union, AFL–CIO, is the employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit:

> All full-time and regular part-time employees employed by the Employer at its Oswego, New York facility, including the classifications of Cold Mill Operator, Finishing Operator, Recycling Operator, Remelt Operator, Crane Technician, Mechanical Technician, Welding Technician, Remelt Operations Assistant, Hot Mill Operator, Electrical Technician, Process Technician, Mobile Equipment Technician, Roll Shop Technician, Production Process & Quality Technician, Production Process & Quality Specialist, EHS Facilitator, Planner, Shipping Receiving & Packing Specialist, Stores Technician, Maintenance Technician, Machinist, Facility Technician, and Storeroom Agent, excluding Office clerical employees and guards, professional employees, and supervisors as defined in the Act, and all other employees.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the above bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL, rescind our unlawful solicitation/distribution and social media policies.

WE WILL, upon request, bargain in good faith with the Union as the exclusive collective-bargaining representative of unit employees.

WE WILL, within 14 days from the date of this Order, offer Everett Abare full reinstatement to his former positions.

WE WILL, make Everett Abare whole for any loss of earnings and other benefits resulting from his demotions, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful demotion of Everett Abare, and WE WILL, within 3 days thereafter, notify him in writing that his had been done and that the demotion will not be used against him in any way.

NOVELIS CORP.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/03-CA-121293 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.