

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

REGION 8

IN THE MATTER OF:
UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO/CLC, LOCAL 9130-03

Charging Party

Case No. 08-CA-167138

and

OMNISOURCE CORPORATION,
Respondent.

**OMNISOURCE CORPORATION'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW the Respondent, OmniSource Corporation, ("OmniSource" or "Company"), by counsel, Barrett McNagny LLP, and for its Proposed Findings of Fact and Conclusions of Law, submit the following:

FINDINGS OF FACT

1. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, Local 9130-036 ("Union") filed a charge against OmniSource on January 6, 2016, GC Ex, 1(a), and an amended charge filed on May 25, 2016. GC Ex, 1(c).

2. The Regional Director for Region 8 issued a Complaint that was consolidated with a Complaint the Regional Director issued against the Union based on a charge filed by OmniSource against the Union on February 3, 2016 (GC Ex. 13), amended on February 5, 2016 (GC Ex. 14), and amended again on May 27, 2016. *See* GC Ex. 1(e); *id.* ¶ 2(C), at 2.
3. The Consolidated Complaint was amended on June 2, 2016. GC Ex. 1(h).
4. A hearing was held in this matter on September 12-15, 2015.

I. Parties

5. OmniSource is in the business of scrap recycling. Tr. at 37, 197.
6. OmniSource has about 70 locations, about seven or eight of which are unionized facilities with five different bargaining units. Tr. at 173.
7. The following individuals are supervisors within the meaning of Section 2(11) of the Act and agents of OmniSource within the meaning of Section 2(13) of the Act:

Andrew Ables (“Ables”), OmniSource’s Corporate Human Resources Manager since 2008 and, other than for a few months in 2004, employed by OmniSource since June of 2001. GC Ex. 1(j) ¶ 5, at 3-4; Tr. at 36, 171-72. Ables ultimately made the termination decision that is the subject of the instant grievance. Tr. at 42-43, 45.

Chris Charlebois (“Charlebois”), OmniSource manager, currently working as a co-manager of the Mansfield facility. Tr. at 711; GC Ex. 1(j) ¶ 5, at 3-4.

Bob Oney (“Oney”), co-manager of OmniSource’s Mansfield facility and employed at Mansfield since 2004. Tr. at 862; GC Ex. 1(j) ¶ 5, at 3-4. 1. Oney joined OmniSource as a union employee in 1998. Following a 2001 layoff, Oney later returned to OmniSource in 2004 as a supervisor. Tr. at 863. Oney has held the position of Plant Manager at Mansfield for the last three years. Tr. at 862.

Linda McKinley (“McKinley”), Mid-Ohio Human Resources Manager for OmniSource and responsible for OmniSource’s Lima, St. Mary’s, and Mansfield, Ohio locations. Tr. at 46, 924; GC Ex. 1(j) ¶ 5, at 3-4. 1. As part of her job, McKinley conducts HR investigations and has conducted hundreds over her career. Tr. at 925.

Patrick Harte (“Harte”), Northern Ohio Division Transportation Manager for OmniSource, which includes Mansfield. Tr. at 653; GC Ex. 1(j) ¶ 5, at 3-4.

Curtis West (“West”), Scale Master/Dispatcher at Mansfield. Tr. at 691; GC Ex. 1(j) ¶ 5, at 3-4.

Robert Carman (“Carman”), Mid-Ohio Regional Manager for OmniSource handles operational and marketing capacities for the facilities in Lima, St. Mary’s, and Mansfield, Ohio. Tr. at 794; GC Ex. 1(j) ¶ 5, at 3-4.

8. United Steelworkers Local 9130 (“Union”) is an amalgamated unit that has multiple locations. Tr. at 304-05. Local 9130-03 is the unit of employees represented by the Union at OmniSource’s Mansfield Ohio location (“Union”). Tr. at 305-06.

9. Approximately 34 bargaining unit employees worked at OmniSource’s Mansfield location (“Mansfield”). Tr. at 509-10.

10. The following individuals with the Union played a significant role in the events giving rise to the instant dispute:

Roy Thompson (“Thompson”) worked at Mansfield as a crane operator loading both trucks and railcars with scrap metal from October 4, 2004, until his termination on December 18, 2015. Tr. at 197-98. Thompson’s direct supervisor was Brian Laughery, a Yard Supervisor, who reported to co-managers Oney and Charlebois. Tr. at 199; GC Ex. 1(j) ¶ 5, at 3-4. Thompson was a member of the Union, but held no positions in the Union. Tr. at 199-200. **Terry Timman**

(“Timman”) was employed at Mansfield as a “pre-loader” from June 16, 2003, to December 18, 2015. Tr. at 290-91. As a pre-loader, Timman operated a dump truck to move materials around the yard. Tr. at 291. Timman is a member of United Steelworkers Local 9130 and replaced Darrell Smith as the Unit Griever in September of 2015. Tr. at 293-94; GC Ex. 1(g) ¶ 6, at 2. As Unit Griever, Timman’s responsibilities included filing grievances and representing the grievant, as well as participating in biweekly labor/management meetings. Tr. at 303-04.

Darrell Smith (“Smith”) was employed at Mansfield as a torcher from June 23, 1993, to December 18, 2015. Tr. at 569-70. Smith was a member of Local 9130 and was the Unit Griever from 2003 until 2015. Tr. at 571. In September or October of 2015 Smith became the Unit Recording Secretary. Tr. at 572; GC Ex. 1(g) ¶ 6, at 2.

Rick Dean (“Dean”) was employed at Mansfield as a truck driver from September 2002 to December 18, 2015. Tr. at 509. Curt West was Dean’s supervisor. Tr. at 510. Dean was a member of Local 9130, was elected trucking steward in 2012, and was elected Unit Chair in 2015. Tr. at 511-12; GC Ex. 1(g) ¶ 6, at 2. As Unit Chair, Dean oversaw the Unit Griever and Unit Recording Secretary. Tr. at 512.

Tim Philpott (“Philpott”) is the Local Executive Secretary of the Union, was formerly its Secretary and Chair, and is currently employed at the Mansfield facility as a torcher. Tr. at 230, 306-07, 631; GC Ex. 1(g) ¶ 6, at 2.

Donnie Blatt (“Blatt”) is the International Representative of the Union. He was apprised of the events detailed below through discussions with Linda McKinley and other OmniSource managers. Tr. at 936-46; GC Ex. 1(g) ¶ 6, at 2. Blatt also represented the Union members in questioning Charlebois in a December 15, 2015 meeting. Tr. at 997.

11. Charlebois had previously been employed by OmniSource as the division manager for Omni Auto Parts in Macedonia, Ohio. Tr. at 729.

II. The Events Leading to the Alleged Unlawful Activity

A. OmniSource Division Manager Chris Charlebois is assigned to Mansfield to effect change at the facility (July 2015).

12. In July 2015, OmniSource assigned a Division Manager, Charlebois, to its Mansfield, Ohio facility to assume an executive management role there (as co-manager) in order to mentor the existing management there, bring the facility in line with the Company's change in culture, specifically in helping move that facility forward in its standards regarding safety, environmental metrics, team building and communications, and making sure the local managers were working within the collective bargaining agreement. Tr. at 53-54, 107-08, 711, 731-32, 933, 951-52.

Charlebois had previously worked with companies operating under collective bargaining agreements at three other facilities, including one for OmniSource. Tr. at 711, 731-32.

13. Charlebois was a long-time, highly respected employee. *E.g.*, 1000; 1010 (noting accusations that Charlebois grabbed someone were inconsistent with his "normal demeanor"); *id.* at 53-54 (Charlebois entrusted to address culture and safety issues at Mansfield).

14. Before Charlebois' arrival, Mansfield had a single plant manager, Oney, who started working for OmniSource as a union employee, was laid-off, then restarted working in Mansfield in 2004, and had been Plant Manager for three years. Tr. at 862-63.

15. Oney had a good personal relationship with many of the employees. *E.g.*, Tr. at 267, 891, 1030-32.

16. Thompson, Timman, Smith, and Dean, first encountered Charlebois at a mandatory monthly safety meeting held in July of 2015 in the Mansfield breakroom. Tr. at 207-08, 298, 573, 753.

17. That meeting was run by OmniSource's Mid-Ohio Safety Coordinator, Eric Murray. Tr. at 208, 298-99, 372; GC Ex. 1(j) ¶ 5, at 3-4.

18. To illustrate a point about teamwork, Murray brought a Jenga game (wooden blocks forming a tower). Tr. at 208-09, 299-300, 372, 574.

19. According to Thompson, Charlebois was asked to participate and, in response, Thompson, who had never met Charlebois before, stated, "Yeah. You should do it, because it would take a member of management to fuck it up." Tr. at 209-10, 253-55, 300, 372, 575. Charlebois responded, "I can see you're the smart-ass in the group," and told Thompson to sit down and pay attention. Tr. at 211, 300-01, 373, 585, 757.

20. Notwithstanding Thompson's antics, some of the employees did participate in the teambuilding exercise. Tr. at 376.

21. Charlebois judged Thompson to be someone who was rude, sarcastic, disengaged, distracting the other employees, on his cell phone, and agitated. Tr. at 754-55.

22. Despite being told by some co-workers that he had "pissed off" the new boss, as Thompson was leaving the meeting Thompson intentionally knocked the game over. Tr. at 212-13, 254-56, 301, 375.

23. Notwithstanding his conduct at the meeting, Thompson was never disciplined and the Union did not counsel Thompson about his conduct in the meeting. Tr. at 375-76, 381, 383.

24. Following that meeting, Thompson would sometimes refer to Charlebois as "grumpy grandpa" or as "Walter," a reference to scowling, argumentative, and angry puppet made famous by comedian/ventriloquist Jeff Dunham. Tr. at 214, 256, 303, 583.

B. Employees resist Charlebois' attempt to implement change in Mansfield.

25. In connection with his duties as co-manager, Charlebois joined two management/employee committees; the Safety Committee and the Survey Committee.
26. Tr. at 202. Roy Thompson served on the Mansfield Safety Committee and Survey Committee. Tr. at 200-01, 204, 245-46.
27. Through the Safety Committee, safety issues affecting the Mansfield facility could be raised, such as ensuring the employees had the right kind of gloves they needed, a safety issue the Company, in fact, addressed as a result of the Committee's work. Tr. at 202-03.
28. The Mansfield Safety Committee was also responsible for installing handrails on the scales, putting ice stops on the roof, and switching the swing operation of a door. Tr. at 405-06.
29. The Survey Committee was designed to improve communication and trust between the employees and management. Tr. at 206, 246-47. For instance, one employee suggested pre-work meetings, and, in response, management started having such meetings. Tr. at 206-07.
30. Despite these accomplishments, Thompson, quit the committees, claiming that because not every suggestion was adopted by management, the Company did not take the employees' suggestions seriously. Tr. at 203-04, 207, 247-49.
31. Thompson encouraged others to do the same.
32. Thompson personally laid the blame for his leaving the committees with the new manager, Charlebois. Tr. at 203.
33. Other employees also blamed Charlebois for the tightening up on policies and behavior that had been permitted under Bob Oney. *E.g.*, Tr. at 959-60. For example, Oney did not require that the employees adhere to the time limits for breaks and let them take longer breaks than they

were allowed. Tr. at 959, 1029-32. Oney also was more permissive of the use of cell phones on the job and smoking. Tr. at 959.

34. Following Charlebois' arrival, employee Gary Sutherland was disciplined for using his cell phone. Tr. at 959, 1031-32.

35. The Union employees didn't like Charlebois' being at Mansfield. Tr. at 960.

C. An uneventful LMC meeting where no one complained (December 2, 2015).

36. Regular Labor Management Committee ("LMC") meetings are held in the conference room at Mansfield. Tr. at 309.

37. The LMC is a cooperative between the Union and management designed to work together on issues, find common ground, and attempt to avoid the grievance process. Tr. at 711, 926-27.

38. A regular meeting of the LMC was held on December 2, 2015.

39. In attendance for the Company (as is typical) were Oney, Charlebois, McKinley, Harte, and West. Tr. at 46, 48 52, 308, 315-17, 514, 587, 656-57, 693, 711, 865, 926. In attendance for the Union were unit representatives Timman, Dean, and Smith. Tr. at 308, 514, 586.

40. In order to fit everyone around one table, the chairs are typically very close to each other and a person could physically touch someone on either side of them. Tr. at 523, 559. And given the room's size, one can generally hear what is being said at the table. Tr. at 660-61.

41. The meeting was congenial and it concluded with the group scheduling their next meeting. Tr. at 939. McKinley personally was pleased with the overall tone of the meetings and the examples of engagement she saw between labor and management. Indeed, she thought to herself, "Gosh, this is good. This is – we're achieving what the company would like us to achieve." Tr. at 933.

D. Thompson refuses the request of three supervisors to fill out a routine safety report, agrees to fill out the report after a meeting with management and the union, and only later claims to have been physically assaulted before and verbally threatened in the meeting (December 7, 2015).

42. Around Thanksgiving 2015, Thompson experienced a safety problem while operating a crane with a 72” magnet to load railcars. Tr. at 215.

43. Thompson believed the magnet was too heavy for the crane and it created a safety issue which eventually resulted in the magnet damaging a ladder on the front of the crane’s base. Tr. at 216.

44. That same day, Thompson’s supervisor asked him to fill out a safety report as to what happened with the crane malfunction. Tr. at 218. At no time did anyone blame Thompson for the damage or the incident. Tr. at 256-57.

45. OmniSource’s system of reporting incidences – Intalex – is designed to allow all SDI facilities to learn about safety issues and give them the opportunity to see if such incidents can be avoided in the future. Tr. at 54, 875-76, 907-08. It was a relatively new system, having been implemented only three or four months before Thompson’s incident. Tr. at 886.

46. Thompson refused his direct supervisor’s request, claiming the Company would use the statement to blame him for the damage. Tr. at 218-19.

47. Thompson’s supervisor told him that it was not a big deal but the Company was requiring such safety reports to be completed. Tr. at 219. Thompson flatly refused his supervisor’s request – twice. Tr. at 219, 257, 876.

48. About a week later, Mansfield co-manager Bob Oney asked Thompson to fill out the safety report. Tr. at 219, 257, 877. Thompson again refused to fill out the report and accused OmniSource of trying to start a paper trail on him. Tr. at 257, 877.

49. During a conference call involving Oney, Charlebois, McKinley, and Carman, Oney informed them of Thompson's refusal. Tr. at 719. Carman and McKinley pointed out the importance of the reports in following the safety culture of OmniSource's parent company and they asked Oney and Charlebois to explain to Thompson the importance of the report, to get the report completed, and to report back to them. Tr. at 716.

50. As instructed, Oney met with Thompson and Thompson again absolutely refused to make the report. Tr. at 719. Oney then contacted the Unit Griever, Timman, to meet with Thompson respecting Thompson's refusal to fill out a safety report. Tr. at 219-20.

51. Oney also asked co-manager Charlebois to attend the meeting to help explain to Thompson the importance of the safety reports and the Company's safety culture and why the Company was requiring the reports. Tr. at 719. Oney told Charlebois he was having a hard time getting Thompson to buy into the safety program. Tr. at 879.

52. On December 7, 2015, Thompson was called in to meet with Timman, Oney, and Charlebois to discuss the uncompleted report. Thompson was entering the Mansfield conference room about five feet behind Timman. Tr. at 220, 221.

53. All four gentlemen entered the conference room and, at no time before they entered the room or during the meeting were any allegations made that an assault (or grabbing, or spinning around and holding) had occurred in the hallway as the men were walking through the door. Tr. at 389, 883-84, 891-92, 896.

54. Despite only moments having elapsed since the alleged assault, and despite being right next to his Unit Griever, Thompson said nothing to Timman about any alleged assault in the corridor. Tr. at 224, 275, 388, 389.

55. In the meeting, Charlebois told Thompson he needed to fill out a report, that he did nothing wrong, and was correct in letting his supervisor know about the incident. Tr. at 224. Charlebois spent most of his time talking about the importance of safety. Tr. at 720.

56. The Company repeatedly reassured Thompson that the report would not be used against him, but Thompson was agitated and concerned. Tr. at 260, 339, 720.

57. According to Oney, Thompson was very confrontational and constantly interrupted Charlebois, claiming the Company was just trying to create a reason to fire him. Tr. at 885.

58. Thompson still refused to fill out the report, noting he had wrecked equipment before and never filled out a report. He then asked what would happen if he refused. Tr. at 720. Charlebois responded that Oney would have to write Thompson up for insubordination and Thompson could be suspended for a day. Tr. at 720, 889. 268, 339, 720, 889.

59. Union representative Timman encouraged Thompson to fill out the report. Tr. at 721. At the time of the meeting, Timman knew that at least two other persons at Mansfield had been asked to fill out similar incident reports. Tr. at 386. Even though Timman told Thompson that others had filled out such reports, Thompson still refused to sign. Tr. at 387.

60. At this point, Thompson had been told by three supervisors and one Union official that he should fill out the report, but the only discipline discussed was a possible one-day suspension if he refused. Tr. at 387. Thompson still refused to fill out an incident report, even though Thompson later claimed he was afraid he would lose his job if he merely spoke up about Charlebois' alleged grabbing of him. Tr. at 257-58.

61. Oney testified that in discussing the safety program and Intalex, Charlebois said that everyone needed to conform to the new programs and that some old dinosaurs would not survive

(in the context of buying into the new safety programs). Tr. at 916-17. At no time did Charlebois ever mention shooting anyone or anything. Tr. at 715, 935; Co. Exs. 5-6.

62. Charlebois testified, “Near the end of the meeting, which only lasted maybe seven minutes, I made reference to a dinosaur to Terry Timman. ‘Here’s an example of an employee who is a dinosaur. How do we get them to buy in?’” Tr. at 715, 721. Charlebois recalled saying such dinosaurs would be left behind (not that they would not “survive” – and certainly not that they would be “shot”). Tr. at 790-91.

63. Thompson still refused to fill out a report, fearing it was a ruse designed to “develop some kind of paper trial on [him].” Tr. at 225.

64. The meeting then ended and Oney and Charlebois left Thompson and Timman alone to discuss matters. Tr. at 721.

65. About a minute or so later, Timman came into Charlebois’ office and said Thompson would fill out the report so long as Bob Oney wrote across the top of it “Will not be used as discipline.” GC Ex. 17, Tr. at 340-41, 721. This compromise was suggested by Union officer Timman and the Company honored his request. Tr. at 390.

66. Charlebois walked back into the room and thanked Thompson for filling out the report. Tr. at 721.

E. The Union Presents the Handwritten Grievance (December 7, 2015).

67. Following the meeting Timman walked to the break room and found Thompson “telling the guys in the break room what was going on or what happened to him.” Tr. at 341.

68. Thompson was telling his fellow employees that Charlebois “grabbed” him. Tr. at 341.

69. Unit Recording Secretary Smith first learned of the alleged incident when Thompson came back to the torching shanty and said he wanted to file a grievance because Charlebois grabbed him and commented about shooting old dinosaurs. Tr. at 593.

70. Thompson alleged that just before the meeting, a) Charlebois came out of his office and put his hand out like he wanted to shake Thompson's hand; b) Thompson didn't want to shake Charlebois' hand; so c) Thompson proceeded to walk by.

71. Thompson claims that Charlebois reached out and grabbed Thompson and pulled Thompson to him, saying, "What's wrong with you? You don't shake a man's hand when he puts it out in front of you?" Tr. at 221; *see also* Tr. at 264-65. Thompson reportedly said "no" and went into the conference room. Tr. at 221.

72. Thompson conceded that Charlebois did not appear to be upset and spoke to him in a normal tone of voice. Tr. at 275-76.

73. Thompson claimed Charlebois grabbed him by his jacket and pulled Thompson approximately one foot toward him, against Thompson's shoulder. Tr. at 223.

74. Thompson also claimed that *throughout* the December 7 meeting, Charlebois had said something to the effect of, you know, "People are going to conform to my way, or all the old dinosaurs will be shot." Tr. at 225 (emphasis added).

75. Thompson claims Charlebois spoke in a normal tone of voice and did not whisper it when making the alleged comments. Tr. at 275.

76. Timman and Smith had Thompson write up his allegations and later that day they presented the write up as a "verbal" first step to Charlebois and Oney. Tr. at 342, 594.

77. When Charlebois read Thompson's statement, he turned to Oney and Timman and asked whether either had heard or seen anything in connection with the alleged comment or the alleged grabbing and both denied hearing or seeing any such thing. Tr. at 724, 897.

78. Oney, who knew these men well and had been in the meeting, concluded immediately that Thompson's statement wasn't true. Tr. at 891, 895, 896.

79. Smith and Timman both concede that Charlebois denied ever grabbing Thompson. Tr. at 407, 594-95.

80. Smith recalled Charlebois denying Thompson's allegations, but Timman – who claimed not to remember the comment himself initially – claims Charlebois did not deny making the alleged December 7 dinosaur comment. Tr. at 345, 949.

81. The Union did not bring up any other alleged comments by Charlebois about dinosaurs when presenting the verbal grievance. Tr. at 636.

82. After receiving Thompson's statement, Oney made a copy of it and called McKinley as well as Oney's boss, Carman. Tr. at 899.

83. McKinley called Oney and Charlebois and asked what was going on. Tr. at 935.

84. Both denied that Charlebois had said anything about shooting anyone or anything and Charlebois said he never grabbed Thompson. Tr. at 935.

85. Charlebois told McKinley he had never done any such thing in his life. Tr. at 936.

86. On the evening of December 7, 2015, Charlebois contacted Carman and personally informed him of Thompson's grievance. Tr. at 795.

87. Charlebois was emotional about the false accusations that had been made against him, and he again denied ever grabbing Thompson or asserting anything to the effect of shooting dinosaurs. Tr. at 795-96.

88. Carman then contacted his boss, Mike Herrmann, the division manager of the northern and mid-Ohio facilities and an investigation started. Tr. at 796, 797; GC Ex. 1(j) ¶ 5, at 3-4.

F. Mansfield employees demand Charlebois' suspension and the written grievance report is prepared citing a workplace policy requiring the termination of anyone engaging in workplace violence or making threats (December 8, 2015).

89. On December 8, 2015, the yard employees were in the break room talking about the alleged incident and asking Oney why Charlebois was still at Mansfield since he had grabbed Thompson. Tr. at 598-99.

90. The employees wanted Charlebois suspended. Tr. at 599.

91. That day, Timman drafted a written grievance about the alleged incidents with the input of Unit Chair Dean. Tr. at 345, 525.

92. Despite earlier claims that he saw and heard nothing, Timman told Dean that Charlebois grabbed Thompson and turned him around and in the meeting Charlebois said, "you will comply and the old dinosaurs will be shot." Tr. at 527.

93. Timman asked Dean under what section to file the grievance and Dean told Timman to file it under the Letter of Understanding. Tr. at 525.

94. The Grievance Report filed on December 8, 2015 stated, "Roy Thompson on or about the time stated above [December 7, 2015 at 1:00 p.m.]. His concern for his and other union members safety. See written statement provide dated 12-7-15. Both verbal and physical threat's apply." GC Ex. 2.

95. The Grievance specifically cited the March 2, 2012, Letter of Understanding that provides "any verbal or physical altercation ["altercation is defined as a physical threat or physical harm"] that occurs in the workplace will result in immediate discharge for all parties

involved in that altercation. GC Ex. 3. The attachments were the two handwritten statements Thompson had made on December 7. GC Ex. 7.

G. The Company begins its formal investigation and the employees now claim Charlebois threatened to shoot them six days earlier (December 8, 2015).

96. Ables, tasked the mid-Ohio Human Resources Manager, McKinley, with going to Mansfield to investigate Thompson's allegations against Charlebois. Tr. at 925.

97. Carman assisted McKinley in the investigation. Tr. at 798.

98. On the morning of December 8, McKinley received a call from Union representative Blatt, with whom she had a good working relationship. Tr. at 948. Blatt demanded to know about a "supervisor in Mansfield threatening to shoot people, had been grabbing people, and also threatening to hold machine guns to their head to get them to do something." Tr. at 937.

99. McKinley said she was aware of Thompson's allegations but told Blatt she knew nothing of anyone claiming Charlebois threatened to hold a machine gun to someone's head. Tr. at 937. McKinley also commented that she was surprised any such thing could have happened since Timman was present at the December 7 meeting. Tr. at 937, 938.

100. When Blatt raised the December 2 LMC meeting, McKinley told Blatt she could not believe there was any inappropriate comment made because she was there and the meeting was congenial. Tr. at 939.

101. Carman contacted the people in the Mansfield dispatch office who worked closest to the place of the alleged assault. Tr. at 798. Amy Allen, whose desk was no more than 10 feet from the hallway when the grabbing allegedly occurred, stated she did not see or hear anything in relation to the alleged hallway assault, and the next closest people, Curt West and Amy Saunier, who were about 15 feet away, also did not hear or see anything to corroborate Thompson's assault claim. Tr. at 801-03.

102. Carman made written notes of his conversations and forwarded the notes to McKinley. Tr. at 799-800, 806; Co. Ex. 22.

103. Carman then called Oney who told Carman that Thompson was agitated during the December 7 meeting and claimed the Company was trying to get rid of him. Oney also said he heard Charlebois make no statements about shooting dinosaurs. Tr. at 804-05.

104. When McKinley arrived in Mansfield later on December 8 she asked to meet with Oney and Timman to discuss the allegations. Tr. at 941. Timman asked for Smith to be present, and McKinley agreed; the meeting started at 12:50 p.m. Tr. at 941; Co. Ex. 9.

105. That group also discussed the new allegations about what Charlebois allegedly said at the December 2 LMC meeting. Tr. at 941-42. McKinley asked each how, if the alleged statement about putting a machine gun to the employees' heads was made, did no one say anything about it. Tr. at 942. Timman responded, "Well, I just thought [the alleged statement] was a figure of speech." And [Smith stated] 'I didn't think much of it at the time.'" Tr. at 942-43.¹

¹ At the hearing, Timman and Smith both said they heard Charlebois say something to the effect of "What do I got to do, hold a machine gun to you guys to get something done here." Tr. at 312-13; id. at 590 (testimony of Smith). Timman claimed that, in response, Timman called the co-manager "Stalin" sarcastically (or arrogantly), to which Charlebois allegedly asked "where he could buy a union job." Tr. at 313, 590. Timman allegedly responded (again, allegedly sarcastically) "Tammany Hall." Tr. at 313, 412. Timman allegedly responded (again, allegedly sarcastically) "Tammany Hall." Tr. at 313, 412.

After indicating at the hearing that he could recall no more about the conversation, when the General Counsel asked whether Charlebois made a response to Timman's "Okay Stalin" comment, Timman then recalled Charlebois said Stalin was "worse than Hitler." Tr. at 313-14. Timman denied that when he compared Charlebois to a dictator responsible for the deaths of millions of people that he was trying to challenge, intimidate, or upset Charlebois. Tr. at 413. Timman testified that they were both being sarcastic and neither was threatening the other. Tr. at 413-14. Smith said Timman and Charlebois "kind of went on with their conversation, so I didn't think that much of it, so I went back to talking to [McKinley]." Tr. at 590.

Dean testified at the hearing that when he was engaged in a conversation with Pat Harte about trucking issues, he "heard Mr. Charlebois say, 'What do I have to do to get you to comply,' or 'listen.' . . . Hold a machine gun to your head?'" Tr. at 519. Despite hearing comments about a gun, Dean never looked up to see anyone's reaction to the comments. Tr. at 558. Dean then allegedly heard Timman say, "Who do you think you are, Stalin?" and either Charlebois or Timman said, "Worse than Hitler." Tr. at 519. Following the meeting, Dean never discussed the statement. Tr. at 519. Similarly, Smith never discussed the alleged comment after the meeting and never filed a grievance over it. Tr. at 634.

106. McKinley asked Smith whether they were taking the alleged December 2 comments out of context, but Smith refused to comment on the context and just claimed to report what Charlebois said. Tr. at 605-06.

107. Although they were present at the LMC meeting, McKinley and Oney never heard the alleged statement. Tr. at 874, 943. And McKinley reminded Timman she was sitting right across from him and Charlebois when the alleged threat was supposedly made. Tr. at 943.

108. Smith then changed the subject to their dissatisfaction with the changes Charlebois ushered into the plant (such as enforcing the policies about cell phone usage and break times), how they didn't like the changes, and arguing the Company should make changes gradually instead of being firm on the policies all at once. Tr. at 606, 959, 1029-32.

109. McKinley pointed out that the employees should not hold the person implementing the changes personally responsible for the making the changes. But Smith and Timman said they knew he was the one behind the changes and that's why the changes were happening. Tr. at 960. "They didn't like [Charlebois] being there." Tr. at 960.

110. When McKinley asked about the alleged December 7 comment about shooting dinosaurs, Timman stated that he might have heard something about dinosaurs, but did not recall anything about dinosaurs being shot, a fact reflected in Oney's and McKinley's contemporaneously made notes on the investigation. Tr. at 945; Co. Ex. 6, 9.

111. McKinley also asked Timman in that first meeting whether he heard anything in the hallway or whether Thompson acted funny when he came into the room for the December 7 meeting, and Timman replied that he saw nothing out of the ordinary. Tr. at 945-46. Co. Ex. 9.

112. Later that day (December 8), McKinley had another conversation with Blatt in which she shared with him the conflicting stories she gathered. Tr. at 946-47. Blatt asked McKinley to

bring Timman and Smith, as Union stewards, into the conference room so they could discuss the issues together and she did. Tr. at 612, 948-49.

113. McKinley asked Timman to bring Blatt up to speed on what had happened. Timman then stated (contrary to his prior statements) that he had, in fact, heard Charlebois state that dinosaurs would be shot and that the statement made the hair on his head stand up. Tr. at 949.

114. McKinley could not believe what she was hearing. Tr. at 949.

115. When McKinley pointed out that was contrary to what Timman had previously told her, Timman replied, "I just remembered." Tr. at 949; Co. Ex. 9.

116. Timman's statement that he only just remembered something that had been the subject of intense allegations for a day is not credible.

117. McKinley then again noted to Blatt that the Union members were saying one thing and management was saying another. Tr. at 950.

118. Discussing the LMC meeting, McKinley pointed out to the Union that neither she nor Oney heard any such statement respecting machine guns. Tr. at 968.

119. Blatt said that he didn't care if the accounts conflicted and demanded the company follow the "Letter of Understanding," otherwise other persons terminated under the Letter would need to be rehired. Tr. at 613, 950. 968.

120. The "others" Blatt wanted the Company to rehire were an employee who the Union acknowledges called his coworker a fucking faggot and threatened to bash his head in and another who said he was going to take a coworker up on the roof and beat him up. Tr. at 968-69.

121. After the call, Oney approached McKinley and stated that employees wanted to talk to them about obtaining crisis counseling since they claimed to be afraid, wanted Charlebois gone, and did not understand why he was still at Mansfield. Tr. at 962-63.

122. McKinley talked to the employees and told them about the free company assistance program, but no one used the program. Tr. at 966-67.

123. Employee Gary Sutherland (who had been suspended for using his cell phone after Charlebois came to Mansfield, Tr. at 959) told McKinley that if Charlebois was still at Mansfield on December 10 he would call the police. Tr. at 965.

124. About 10 employees were present for this conversation, but none appeared fearful or distraught. Tr. at 963-64 (“They might have been asking if they could have pizza rather than the hamburger we brought in[T]here was nothing in their physical demeanor to indicate they were distraught.”). Oney eventually told them to go back to work. Tr. at 964.

125. McKinley also asked all of the OmniSource management who attended the December 2, meeting whether they heard Charlebois say anything related to guns at the meeting, and none heard any such thing. Tr. at 968, 1018-19; Co. Ex. 10-12; *see also* Tr. at 661, 664, 699-701, 703, 712, 867, 874, 904, 906.

126. Later, McKinley spoke with Charlebois and he was distraught over the false allegations made by the employees against him. Tr. at 969.

H. Timman claims to remember yet another “dinosaur” comment.

127. For the first time, at the hearing Timman also testified respecting another comment Charlebois supposedly made about dinosaurs. *See* Tr. at 325.

128. Timman never asserted he informed the Company about it.

129. McKinley specifically testified that she did not recall Timman making such an allegation, and, importantly, none of the contemporaneously created, detailed statements documenting the investigation reference this alleged additional allegation against Charlebois, including those statements Timman wrote himself. Tr. at 1028.

130. This claim, made after OmniSource's investigation and which mirrors more closely what Charlebois stated happened at the *December 7* meeting, is not credible and does not tend to disprove Charlebois' account of what happened.

I. Because OmniSource did not remove Charlebois from Mansfield, an employee calls the police to report Charlebois (December 10).

131. As he had said he would do in the event the Company had not removed Charlebois from Mansfield, on December 10, 2015, Gary Sutherland called the police and reported the allegations against Charlebois. Tr. at 231-32, 282.

132. Sutherland feigned concern that Charlebois would attack him or someone else. Tr. at 232.

133. The police came to the site and investigated the claim of aggravated menacing with a personal weapon, a crime in violation of Ohio Rev. Code 2903.21. *See* G.C. Ex. 19.

134. As the alleged victim, Thompson spoke to the police about the alleged grabbing incident. Tr. at 231, 282.

135. The police report reflects Thompson said that when he walked past Charlebois in the hallway, Charlebois "grabbed ahold of [Thompson's] arms and spun him around holding [Thompson's] arms and stated, 'What's wrong? You're not going to shake a man's hand?'" G.C. Ex. 19. Thompson said Charlebois told him in the December 7 meeting "Everybody is going to conform to my ways or all you old dinosaurs are going to get shot," a statement Terry Timman corroborated to the police. G.C. Ex. 19. Thompson also told the police Charlebois had threatened to use guns against employees before and that he felt threatened by the statement and by the fact that Charlebois had access to the employee files. Tr. at 260; G.C. Ex. 19.

136. Thompson's assertion that the officer making the police report got everything right except the *key details* about the alleged hallway assault and, this time, the remark had Charlebois threatening "all *you* old dinosaurs," Tr. at 234-35, 262-63; GC Ex. 19, is not credible.

137. Following the interview, the police told Thompson he would have to go to and convince the district attorney to file charges against Charlebois based on the incident. Tr. at 232; GC Ex. 7, 18, 19. Thompson claims the District Attorney refused to prosecute Charlebois due to the lack of any bodily harm and the fact that the alleged statements were nothing more than hyperbole. Tr. at 236-37.

138. Though the District Attorney apparently did not give much credence to Thompson's story, the Company did hire security on site for a few weeks to address the employees' professed concerns. Tr. at 965-66.

139. On December 9, McKinley compiled the notes from her various meetings and investigation that occurred on December 8 and over the course of the next two days sent additional documents to Ables. Tr. at 349, 530, 609, 717, 725, 951, 952-54, 971-72, 975, 977, 1036-37; GC Ex. 4, 7, 32; Co. Ex. 4-12, 21.

J. OmniSource seeks more detailed information from the employees, the Union demands Charlebois' removal, and Timman "takes the Fifth." (December 14, 2015).

140. On Monday December 14, McKinley returned to Mansfield, as instructed by Herrman and Ables, to again meet with the employees and ask more specific questions, since their statements lacked detail and the evidence was conflicting. Tr. at 981; GC Ex. 37.

141. She asked Smith, Dean, and Timman the same set of questions about the December 2, LMC meeting, typed their answers, allowed the employees to read their answers to ensure they were correct, and then had them sign their typed answers. Tr. at 981-82; GC Exs. 25, 28,

33None of the individuals claimed to have been scared by the statements Charlebois allegedly made at the LMC meeting. Tr. at 986.

142. In Timman's and Smith's signed written statements, they were specifically asked what was being discussed before the comment was made. *Neither* claimed Charlebois was repeatedly requesting that they rejoin the Safety and Survey Committees. See Co. Exs 25, 33.

143. Nine months later at the hearing, they both testified in detail that Charlebois repeatedly pressured them to rejoin the committees and then, only after Timman and Smith finally relented, Charlebois stated, "What do I got to do, hold a machine gun to you guys to get something done here?" Tr. at 312-13 (testimony of Timman); *id.* at 590 (testimony of Smith).

144. This detail on the specific context of Charlebois' alleged statement is even more striking in Smith's case since in his signed, written statement made within two weeks of the meeting Smith told OmniSource, "*I don't even remember*; before or after the statement *to tell you the truth.*" Co. Ex. 33 (emphasis added).

145. By the time he testified before this tribunal nine months later, Smith's "memory" as to what was said had changed dramatically. See Tr. at 587-91 (providing substantial details in response to the General Counsel's question about his recollection of the December 2 LMC meeting). How Smith managed to remember so vividly what he had forgotten so quickly is never explained.

146. Both Timman's and Smith's testimony as to the context of the alleged statement lacks any credibility given their contrary signed, contemporaneous statements to the Company.

147. Following Unit Chair Dean's interview, Dean told McKinley he had a couple questions for her and asked the uniformed police officer who was at the facility providing security to come into the room to witness his questions to McKinley. Tr. at 538.

148. Dean asked why Charlebois was still at Mansfield and claimed “the employees were in a state of panic because someone was on site and had threatened to shoot them, and that the individual that had made the threat was still there, and they wanted him gone.” Tr. at 538, 988.

149. McKinley stated the Company was still investigating the charges. Tr. at 988-89.

150. Dean said the Company should be honoring the agreement, Charlebois should not be at work, and Dean threatened to file more charges against the Company. Tr. at 539, 989.

151. Dean told the police office that “there’s people out in the yard that are disturbed about this. You hear of workplace violence like this all the time on the news.” Tr. at 539.

152. At that time, the Company had provided uniformed officers on site, Tr. at 965-66, and McKinley reminded Dean that she had also offered to bring someone on site on December 8 for counseling and that information on the employee assistance program was posted. Tr. at 990.

153. McKinley also attempted to have Thompson and Timman answer additional questions about the events of December 7. Tr. at 993-94; GC 18, 33.

154. Thompson met with McKinley in the presence of Oney and Timman. Tr. at 228.

155. Thompson signed the written statement with the caveat that it was only “to the best of [his] recollection” since it had been “over a week since [his] original statement.” GC. Ex. 18.

156. In his interview, Thompson claimed Charlebois “grab[bed] a hold of me and pulled me backwards towards him. He said what’s wrong with you don’t shake a man’s hand when he puts it out to you. And that basically scared the shit out of me because I have never had anyone put their hands on me in the time I’ve worked here. I felt very intimidated.” GC Ex. 18.

157. Thompson claims he said nothing to Charlebois because he didn’t want to lose his job. GC Ex. 18.

158. Thompson also claimed he believed Charlebois' alleged statement – that “people were going to conform to his new way or the old dinosaurs were going to be shot” – was “a threat.” GC Ex. 18.

159. When asked why he didn't say anything during the December 7 meeting – where he repeatedly defied management's requests to fill out an Intalex report – Thompson stated “I'm not suppose [*sic*] to say something to management. I'm suppose [*sic*] to go to the union and they will handle it.” GC Ex. 18 (emphasis added).

160. When McKinley tried to ask Timman questions about the December 7 meeting (in the presence of Smith, Tr. at 518), Timman refused to comment or answer any questions and “plead[ed] the fifth.” GC Ex. 26; Tr. at 357.

161. When asked why he would not give any further statements on the matter, Timman claims that he “just felt that [he] had given enough statements already.” Tr. at 362.

162. Despite the fact that he pleaded “the fifth” and refused to give any more statements, when asked about whether he knew his own actions could be the subject of discipline, Timman claimed he had no idea that could be the case. Tr. at 365-66.

163. This assertion is not credible.

164. On December 14, 2015, McKinley forwarded all statements she collected that day to Ables. Tr. at 994-96; GC Ex. 18, 25, 26, 28, 33, Co. 15, 16; Tr. at 998 (stipulation of parties that Ables received the documents referenced during the investigation).

165. At the conclusion of her part of the investigation, McKinley was convinced that the employees were lying to get rid of Charlebois. Tr. at 1001-03.

166. As to the alleged grabbing incident, McKinley found Thompson's statement implausible because he never said anything initially, his behavior was not different in the

meeting immediately following the alleged assault, and no one heard or saw the alleged incident, even though there were people very close by. Tr. at 1005-07. The allegations were also contrary to her own knowledge and experience with Charlebois. Tr. at 1000.

K. The Union questions Charlebois and the Company tells the Union there will be consequences for lying (December 15, 2015).

167. On December 15, 2015, the Company and Union conducted a regularly scheduled step-three grievance meeting. Tr. at 996. Present for the Union were Dean, Timman, Smith, Philpott (who is currently the Local Executive Secretary), and International Representative Blatt, and for the Company were Charlebois, Ables, McKinley, Oney, Carman, and SDI's Corporate Security Director, Joel Squadrito. Tr. at 540, 620, 996; GC Ex. 1(j) ¶ 5, at 3-4; GC Ex. 1(g) ¶ 6, at 2.

168. At that point, no decision had been made on the investigation and the Company wanted to hear any other information that potentially could be relevant to the investigation. Tr. at 100.

169. At the end of the step-three meeting, the attendees discussed the allegations against Charlebois. Tr. at 620-21, 996.

170. Blatt pointed to the Letter of Understanding and said that other employees were fired for violating the policy and that the Letter also applies to management. Tr. at 621.

171. Ables stated that the Company was not through with its investigation. Tr. at 621.

172. Ables allowed Blatt to question Charlebois, who pointed out he didn't even own a gun, and who again denied making any threats or grabbing Thompson. Tr. at 409-10, 998.

173. Dean specifically denied to Ables any wrongdoing on the employees' part. Stating: "We ain't got nothing to hide. We didn't do nothing wrong." Tr. at 312-13; *see also id.* at 622 (testimony of Smith).

174. Ables responded in a stern, strong voice: "If I find that you are – you guys are lying, *there will be consequences.*" Tr. at 543-44, 567 (emphasis added).

175. In front of the Union, Dean told Ables that he took Ables' statement as a threat. Tr. at 544. Dean felt that Ables was threatening his livelihood. Tr. at 567.

176. Smith also testified that Ables stated that the investigation was still ongoing "and the guilty parties will be held accountable," Tr. at 623.

177. As to whom the phrase "guilty parties" referred, Smith said Ables looked at Smith, Dean, and Timman when he said the words and indicated that they (Smith, Dean, and Timman) would be held accountable. Tr. at 624.

178. When asked whether he knew management was going to issue discipline to anyone, Smith stated that, based on those comments, he knew that "it was on us now." Tr. at 624.

179. This testimony demonstrates the Union was aware they could be terminated at least three days before their termination, yet they chose to do nothing in response to that information.

L. The Union proposes a solution: move Charlebois to another OmniSource facility.

180. Before Ables made the decision to terminate the employees, the Union made a verbal proposal to the Company to resolve Thompson's grievance. Tr. at 75-76, 78-80; GC Ex. 12.

181. As part of the proposal, OmniSource would be required to rehire two employees: the one who called his coworker a "fucking faggot" and threatened to bash in his coworker's head, and another who said he was going to take a coworker to the roof and beat him up. See GC Ex. 12; Tr. at 968-69.

182. As for Charlebois, the Union demanded he be *moved* to the Toledo facility. See GC Ex. 12; Tr. at 79-80.

183. Ables reasonably believed this showed the improper and illegal motivation behind the multiple fabrications and lies: to remove Charlebois from Mansfield. Tr. at 75-76, 79-80.

M. Based on the results of the investigation and input from his team (who were unanimous as to the outcome), Ables decides to terminate the employees who lied to remove Charlebois and they are terminated on December 18.

184. Ables made the decision to discharge the employees after gathering the input of numerous people and discussed the decision with McKinley, Carman, Oney, Herrmann, Midwest Executive Vice President Scott Gible, and OmniSource President Russ Rinn. Tr. at 42-43, 811.

185. Among the input he received was Carman's conclusion that, based on the evidence gathered, the employees were not telling the truth and were just trying to remove Charlebois from Mansfield. Tr. at 811. Ables agreed. *E.g.*, Tr. at 63.

186. All management employees who participated in the investigation and discussed the matter with Ables agreed with Ables' conclusion regarding the employees' dishonesty and the decision to terminate them on seriousness of their conduct. Tr. at 43.

187. The four employees, Thompson, Dean, Smith, and Timman were terminated effective December 18, 2015. GC Ex. 8-11; Tr. at 101, 551-52, 625-28.

188. At a meeting, which was also attended by Philpott as a Union representative, Carman read each of them a statement setting forth the reasons why they were being terminated. Tr. at 242, 367, 627, 631, 819-20.

189. In making the decision to terminate, Ables relied on numerous pieces of information, including the following: (1) Oney's statement about the December 7 meeting where there was no mention of any grabbing incident or of anyone being shot, Tr. at 141-42; Co. Ex. 5, and his statement verifying that Timman completely changed his story from denying hearing the alleged statement to not only hearing it, but being so shocked that the hair on his head stood up, Tr. at 145-46; Co. Ex. 6; (2) McKinley's investigative notes detailing such things as the allegations themselves, Timman's repeatedly changing his story, the fact no member of management

(including McKinley herself) heard any statement about putting a machine gun to the employees at the December 2 LMC, the fact that no Union stewards complained at the time, and Charlebois' own denials that he said or did anything inappropriate, Co. Ex. 9; Tr. at 61, 151-61; (3) emails from Harte and West respecting the December 2 LMC meeting that they did not remember any statement made by Charlebois respecting guns or any statement by anyone that could be perceived as threatening, Co. Ex. 10, 11; Tr. at 162, 165-66; (4) McKinley's written statement about the December 2 LMC meeting in which she described it as "very amicable" and stated she "did not hear any threatening comments or any reference to the use of guns, Co. Ex. 12; Tr. at 166-67, a statement Ables found very persuasive since he had worked with McKinley for years and trusted her unreservedly, Tr. at 167; (5) McKinley's interview notes from a December 14, 2015, interview with Terry Timman in which McKinley recorded that Timman said "I have already given an oral and written statement, I'm not the grievor. At this time I will plead the fifth," and thereafter refused to answer any more questions about the incidents, Co. Ex. 16; Tr. at 167-69; (6) Remarkably similar written statements from Darrell Smith and Rick Dean respecting the December 2 LMC meeting, Co. Ex. 4, 7, which Ables believed "were made up and false because they are so clearly written, similar misspelling words on things like the name Chris. Both spelled K-r-i-s-s. And a more uncommon name . . . "Stolland," and they virtually read the same, so it appeared to me and I believe that they did write these together or certainly in some way talked about these," Tr. at 147; (7) Ables' telephone conversations with Charlebois and his statement, Tr. at 44, 56-58, 193-94; and (8) Ables' conversations with employees at the December 15 grievance meeting. Tr. at 95.

190. As to how Ables reached the conclusion that the employees had lied about the grabbing incident and the allegations about guns or shooting people, Ables pointed to the following: (1)

own familiarity with the hallway in question, Tr. at 71; Co. Ex. 1; (2) his own knowledge and familiarity with Charlebois, Tr. at 44, 74, 178; (3) his unreserved trust for McKinley who was directly across from Charlebois at the LMC meeting and heard nothing about a gun, Tr. at 167; (4) the fact that Thompson (who repeatedly defied authority) incredibly claimed he never said anything to his Union rep or anyone else in the December 7 meeting because he was scared and felt threatened, Tr. at 71-73; (5) the fact that the entire December 7 incident, as Thompson related it, did not make sense to Ables, Tr. at 73; (6) the fact that during the investigation into the December 7 incident Dean, Smith, and Timman, made false, defamatory, and slanderous claims that Charlebois threatened to hold a gun (or a machine gun) to the employees' heads, an actual threat of harm as opposed to a metaphor of some sort, Tr. at 81, 83, 86, 89, 90-91, 103-04, 136; (7) the fact that Timman was in the December 7 meeting with Thompson and lied about hearing a comment that Charlebois was going to "shoot" dinosaurs, Tr. at 92-93; (8) the fact that Timman repeatedly changed his story about what he did or did not hear on December 7 from denying hearing anything to, eventually, claiming he heard the threat and it was so shocking "it made the hair on his head stand up," Tr. at 95-98, 146; (9) Timman's "taking the Fifth" and refusing to answer further questions or sign a statement about what he saw or heard, indicating to Ables that Timman was lying and did not want to implicate himself any further, Tr. at 98; (10) the fact that long time employee Oney contradicted the employees' accounts of what was allegedly said at the meetings on both December 2 and December 7, Tr. at 142, 145-46; (11) the fact that Charlebois denied the physical assault and any of the verbal threats ever happened, Tr. at 57; (12) the fact that, in making an offer to settle the grievance, the Union demanded that OmniSource *move* Charlebois – a person they claimed to fear as someone who would *murder* his co-workers – to another location, a demand that belied any true belief on their part that

Charlebois was a danger to OmniSource employees, Tr. at 75, 79-80, 88, 90; and (13) the fact that the Union's demand was inappropriate and demonstrated that their lies were a ruse to orchestrate the removal of a manager they didn't like. Tr. at 79-80.

N. Post-termination events: Charlebois sues for defamation and passes a polygraph.

191. In February of 2016, Chris Charlebois commenced a civil action against the four individuals for defamation. Tr. at 114-15, 127-28, 277, 781; GC Ex. 36. Blatt and Dean informed the Company that the Union guys terminated were taking polygraph examinations and they asked why Charlebois wasn't taking one. Tr. at 728.

192. Charlebois willingly took a polygraph examination in order to protect his good name, his career, and his reputation. Tr. at 727.

193. On February 5, 2016, Charlebois took the polygraph examination on the issue of whether he had threatened to shoot people at work and whether he physically assaulted Thompson. Tr. at 432-33, 441.

194. The polygraph reports in question were procured approximately six weeks after the decision to terminate, found no specific reactions of deception on Charlebois' part, and concluded that Charlebois told the substantial truth when he denied the following: (1) ever threatening to shoot anyone; (2) ever saying he would shoot anyone; (3) ever saying he would point a gun at anyone; (4) ever saying he would line up people and shoot them; (5) ever grabbing Thompson in the hallway; (6) ever spinning Thompson around in the hallway; (7) ever trying to grab Thompson; and (8) ever assaulting Thompson in any way. Co. Exs. 17-18; Tr. at 440-41.

O. The Board investigates and finds sufficient evidence to charge the Union with interfering with OmniSource's rights under the Act.

195. Following its investigation into the charge filed by OmniSource against the Union, the Regional Director for Region 8 issued a Complaint against the Union based *See* GC Ex. 1(e); *id.* ¶ 2(C); *id.* Exs. 13-14.

196. Had the “investigation reveal[ed] that there [was] not violation of the [NLRA] or the evidence [was] insufficient to substantiate the charge,” under Board Rule § 101.5, the Regional Director would have recommended the Company withdraw the charge.

197. In the Amended Consolidated Complaint, the Regional Director alleged that the Union violated Section 8(b)(1)(B) of the Act by making maliciously false statements and filed and processed a grievance for the purpose of obtaining the termination of Chris Charlebois, a manager OmniSource chose to represent it for the purposes of collective bargaining or the adjustment of grievances. GC Ex. 1(e) ¶¶ 8, 10.

198. In conducting its own investigation into the charge OmniSource filed against the Union for its actions, the Board determined that a formal Complaint against the Union was warranted.²

199. Unlike Terry Timman’s, Oney and Charlebois’ statements about the December 7 meeting have never changed and are consistent that Charlebois never threatened to shoot anyone or anything. None of the persons who were close to the hallway heard any altercation. Tr. at 389, 713-14, 769-70, 883-84. And it was only well after the meeting occurred that Thompson

² This tribunal takes Judicial Notice that on September 7, 2016, the Union executed an Informal Settlement Agreement resolving the Board’s Complaint against the Union for its conduct, *see also* Tr. at 10-12, and, on September 9, 2016, the Regional Director issued an Order severing the two cases. GC Ex. 1(m). *See, e.g., N.L.R.B. v. Teamsters, Chauffeurs, Helpers & Taxicab Drivers, Local Union 327*, 419 F.2d 1282, 1284 (6th Cir. 1970) (citation omitted) (Board can take judicial notice of its own case against the same local union). In the settlement, the Union consented to posting its agreement that it “WILL NOT restrain or coerce OmniSource Corporation, an employer, in the selection of representatives for the purposes of collective bargaining or adjustment of grievances” and that it “WILL NOT, in any like or related matter, restrain or coerce OmniSource Corporation.”

claimed he was assaulted, even though he had been left alone with his Union steward before he agreed to fill out the safety report and said nothing.³ Tr. at 341.

200. The Regional Director alleged that, in violation of Section 8(b)(1)(B) of the Act, the Union made maliciously false statements and filed and processed a grievance for the purpose of obtaining the termination of Chris Charlebois, whom OmniSource chose to represent it for the purposes of collective bargaining or the adjustment of grievances, charges. GC Ex. 1(g) ¶¶ 8, 10.

P. The evidence at the hearing is consistent with the OmniSource’s decision to terminate and the Board’s determination that there was sufficient evidence to substantiate the charge that the Union violated by the Act by making maliciously false statements and filed and processed a grievance for the purpose of obtaining the termination of a manager OmniSource chose to represent it for the purposes of collective bargaining or the adjustment of grievances.

201. There is overwhelming evidence of employee wrongdoing in this matter, evidence that prompted OmniSource to file its own ULP claim, GC Ex 13, and presumably prompted the Regional Director to issue a Complaint charging the Union with making false and malicious statements designed to remove Charlebois from Mansfield. GC Ex 1(e).

202. There is no evidence that OmniSource was motivated in any part by anti-Union animus. *See, e.g.*, Tr. at 830, 831 (noting management did discuss various levels of discipline for the four employees involved, but none advocated for a lesser level of discipline than termination based on the level of integrity the employees’ actions violated – “to lie in order to remove a supervisor who was trying to promote a cultural change”); *see also* Tr. at 70 (Ables correcting the General Counsel’s attempts to characterize the termination as prompted by the filing of a grievance: “He wasn’t fired for filing the grievance. He was . . . fired . . . for lying about these statements. He’s

³ Thompson also claimed that he said nothing about the grabbing at the meeting because he “was afraid [he] would get fired.” Tr. at 228, 342. This testimony lacks credibility given Thompson’s other actions that indicated he had no such fear of management, such as claiming management would “fuck [things] up,” knocking over training materials, and repeatedly refusing the direct instructions of his supervisor and both plant managers, even when he was told he could be suspended from work for insubordination. Tr. at 257-58, 720, 889.

allowed to file a grievance, but he's not allowed to make false statements"); Tr. at 75, 79-80 (Ables correcting the General Counsel's attempts to characterize as union animus the Company's reaction to the Union's demand to merely transfer Charlebois – a demand the Company saw as not only motivation for the defamation, but evidence the Union did not believe its own story that Charlebois was a danger).

203. There is no evidence that the termination of the three Union officers or Thompson was intended to (or did) anything to quell the Union or any Union activity. Mansfield was, and remains, a union facility.

204. At the termination, Tim Philpott, who is now the Unit Secretary, appeared with the employees. Tr. at 230, 306-07, 367, 627-28, 631.

205. There was ample evidence that the Company works with the Union and takes seriously its responsibilities. *See, e.g.*, Tr. at 173 (noting OmniSource has had Union facilities since the 1970s); Tr. at 1018 (noting conversations between management and the union are not adversarial); *id.* at 636, 639-40 (Company allowed multiple individuals to leave the Mansfield location to attend to Union business such as negotiations or grievance handling); *id.* at 375-76, 381, 383 (Company did not discipline Thompson for disrupting a safety meeting and denigrating management with profane language); *id.* at 202-03, 205-06 (admission by Thompson that the Company adopted many employee recommendations made to management); *id.* at 206 (admission by Thompson that through the Survey Committee OmniSource was "trying to improve communication, as well as building trust between management and the employees and we were looking for ways to improve communication and trust between us"); *id.* at 390 (OmniSource honored Union's request to include on safety incident report the Company's agreement that the report could not be used for disciplinary purposes); *id.* at Tr. at 409-10, 998

(OmniSource permitted the Union's international representative to question Charlebois about the allegations against him at the end of an unrelated meeting); *id.* at 933, 1021 (testimony that OmniSource was working diligently on engagement and good relations with the Union).

206. The evidence demonstrates that OmniSource genuinely invited its employees to raise issues with any level of management and encouraged them to do through their various committees. Although Thompson claimed the committees were a waste of time, he conceded they effected beneficial changes and responded to many concerns. Tr. 202-03, 205-06.

207. This uncontradicted evidence supports the conclusion that union animus was not any factor in – let alone a substantial or motivating purpose behind – the decision to terminate.

208. There can be no question that OmniSource has articulated a legitimate business purpose in terminating the employees.

209. Moreover, OmniSource had a compelling reason to terminate these employees wholly unrelated to any union activity or any (entirely unidentified in evidence) anti-union animus: those employees conspired to lie about and to slander a manager by accusing him of criminal activity in order to facilitate his being removed from the facility.

210. The fact that the Union proposed moving Charlebois to a different facility in Toledo supports this conclusion. The fact that Charlebois is an experienced senior manager is flatly inconsistent with his, on numerous occasions, threatening to shoot his employees and manhandling one.

211. None of the five OmniSource's managers in attendance at the LMC meeting recalled any statements by Charlebois concerning guns or anything that could be perceived as threatening, and Charlebois personally denied making any statement about holding a machine gun to anyone's head to get them to do something. Co. Ex. 10-12; Tr. at 661, 699-701, 703, 712,

867, 874, 904, 906, 968, 1018-19. For his part, Charlebois did not recall having a conversation about Hitler and Stalin on that particular day, although he recalled such a conversation occurring at one time. Tr. at 738.

212. Oney testified that he heard nothing about a gun or about Stalin or Hitler during the LMC. Tr. at 867, 874, 904, 906. Oney believes he absolutely would have heard a comment about a gun. Tr. at 904-05. Transportation Manager Harte heard nothing unusual said by Charlebois at the meeting. Tr. at 661. Dispatcher recalled that Timman and Charlebois had a conversation about history and did recall the names Hitler and Stalin being mentioned, but West did not hear any comments about guns. Tr. at 699-701, 703. West said Timman and Charlebois were speaking in a normal tone of voice and were not whispering. Tr. at 701. West believes that a mention of shooting or guns would have grabbed his attention, since that's not a normal thing one hears in those meetings – it would be “an instant red flag.” Tr. at 704, 705. West was adamant that there was no comment made about a machine gun. Tr. at 707-08. At no time during the meeting did anyone claim that anything that could be perceived as a threat had been said. Tr. at 874.

213. McKinley, who was sitting directly across from Timman and Charlebois, heard Charlebois say to Timman, “You know I'm a history buff. Especially World War II.” Tr. at 932. Timman responded, “Well, so am I.” Tr. at 932. “Then Terry said, ‘Stalin,’ and Chris said, ‘Better than Hitler.’” Tr. at 932, 1020. Accordingly to McKinley, the exchange was just a casual conversation in a normal tone of voice among two men, but it struck her as nice since two persons from very different walks of life were “just engaging in this nice conversation. And of course we'd been working on engagement.” Tr. at 933, 1021. In fact, McKinley thought,

“Gosh, this is good. This is – we’re achieving what the company would like us to achieve.” Tr. at 933.

214. OmniSource reached its conclusion respecting the employees’ dishonesty in good faith. The only way that OmniSource could have concluded the four employees were *not* lying would be if it had reached the following fourteen conclusion, all of which are inherently incredible:

- ❖ That long time employee and manager Charlebois *repeatedly lied* about his conduct and his statements and repeatedly threatened the safety of his employees;
- ❖ That long time employee and manager Oney *repeatedly lied* about what he heard or did not hear in the December 7 meeting;
- ❖ That *not one of the five* members of management in a small conference room heard Charlebois’ comment about holding a machine gun to people or people’s heads at the December 2 LMC meeting (*including* those members of management who heard the conversation in which the comment was supposedly made), but the three Union representatives all heard the very same threatening comment *and then did nothing about it*;
- ❖ Alternatively, that every member of management at the December 2 LMC meeting was too distracted by other conversations in the room to hear a manager say something about holding a machine gun to someone’s head, but *not one* of the Union members was similarly distracted, including those engaged in other conversations at the time;
- ❖ That Timman who was asked within hours about whether he heard the alleged December 7 comment that dinosaurs would be shot *actually did forget* he heard it and only later “remembered” not only hearing the statement, but colorfully recalled that the statement was so disturbing it made the hair stand up on his head;

- ❖ That Timman and Smith’s detailed testimony at the hearing in which they conveniently provided a context for Charlebois’ alleged statement about having to hold a machine gun to your head (Charlebois’ repeatedly asking Timman and Smith to join the Safety and Survey Committees) was truthful, notwithstanding their signed, dated statements to the Company in which, in response to being asked what was being said at the time Charlebois made the alleged statement, neither reported any such conversation, and Smith claimed to have *no recollection whatsoever* of what was said.
- ❖ That when the Company wanted to question him further about what he saw and heard on December 7, Timman actually had a legitimate reason for refusing to answer any more questions and pleading “the Fifth”;
- ❖ That the December 7 altercation (grabbing) could occur in a narrow hallway close to a door where others were standing and near where other were working, but *nobody – not management, Union, or any other employee – heard or saw anything*;
- ❖ That Thompson was not trying to exaggerate his story about the alleged grabbing (by claiming he was spun around and his arms were held) or to exaggerate the alleged threat (by claiming the threat was “to shoot *you* old dinosaurs”), but that a trained police officer would get everything correct in his police report *except for the operative facts charging a crime*;
- ❖ That Thompson, a man who rejected Company authority so much that he openly denigrated management, repeatedly refused multiple requests to fill out a routine safety report even after those requests came from his own supervisor, from the Plant Manager, from the co-Manager, and from his Union representative (even under penalty of suspension from work), was now just too scared to accuse a disliked manager of assaulting him in the hallway – the

same manager Thompson said would “fuck [something] up” upon meeting him for the first time – so Thompson initially said nothing, and showed no change in emotion or affect following a supposedly disturbing event, *even when left alone with his Union representative*;

- ❖ That two Union members giving written statements to the Company *supposedly independently and without coordinated action* misspelled the names “Kriss” and “Stolland” for “Chris” and “Stalin” in their statements accusing Charlebois of making threats;
- ❖ That the employees’ negative opinion of Charlebois’ management style, derisive nicknames, and their desire that he leave Mansfield played no part in their actions;
- ❖ That the Mansfield employees were truly terrified and in need of crisis counseling (as opposed to attempting to bolster the case for Charlebois’ removal), but inexplicably failed to use the free counseling provided by the Company, a fact also unrebutted by the Board or the Union; and
- ❖ That Union members, who supposedly believed a manager had physically assaulted an employee and had repeatedly threatened to shoot employees, requested only that the manager be *transferred to another Ohio facility* (where maybe he could shoot someone else?), and not simply terminated.

215. The reasons why the employees were terminated have nothing to do with union activity, and no one contends that lying and making false accusations of criminal behavior because one does not like a person or his management style or activities is protected behavior under the Act.

216. It should be noted that the Company's good faith justification – a decision it reached at the conclusion of a thorough investigation – is bolstered by not only the contemporaneously gathered evidence and common sense, but also the polygraphic examination of Chris Charlebois.

217. The polygraph reports in question were procured approximately six weeks after the decision to terminate, found no specific reactions of deception on Charlebois' part, and concluded that Charlebois told the substantial truth when he denied the following: (1) ever threatening to shoot anyone; (2) ever saying he would shoot anyone; (3) ever saying he would point a gun at anyone; (4) ever saying he would line up people and shoot them; (5) ever grabbing Thompson in the hallway; (6) ever spinning Thompson around in the hallway; (7) ever trying to grab Thompson; and (8) ever assaulting Thompson in any way. Co. Exs. 17-18; Tr. at 440-41.

CONCLUSIONS OF LAW

A. OmniSource did not violate Section 8(a)(1) of the Act.

1. Section 8(a)(1) of the National Labor Relations Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in" Section 7 of the Act. 29 U.S.C. § 158(a)(1).

2. "It is only when the interference with § 7 rights outweighs the business justification for the employer's action that § 8(a)(1) is violated." *Textile Workers Union of America v. Darlington Mfg. Co.*, 380 U.S. 263, 269 (1965).

3. The overwhelming evidence is that the OmniSource had a legitimate business justification for its actions to remove employees it believed were deliberately lying about and slandering a supervisor in order to obtain the supervisor's removal from his job at Mansfield, and that the decision was unrelated to the employees' status and members or representatives of the Union. See, e.g., *HCA/Portsmouth Reg'l Hosp.*, 316 NLRB 919, 930 (1995) (finding no

violation of Section 8(a)(1) where hospital discharged nurse accused of maliciously spreading false rumors about her supervisor in an effort to remove the supervisor or get her fired).

4. While complaining about management is activity protected under the Act, “such activity may lose its protection under circumstances when such conduct includes defamatory statements, bad-faith conduct, or deliberate and malicious falsehoods.” *Id.* at 930 (citing *Puerto Rico Sheraton Hotel*, 248 NLRB 867, 874 (1980); *American Hospital Assn.*, 230 NLRB 54 (1977)).

5. The nature of the allegations lodged against Charlebois – assaulting an employee and threatening to shoot other employees – were extremely serious and undercut his ability to manage. *See also id.* at 930 (noting the seriousness of the slander that justified employee’s termination).

6. It would not effectuate the policies of the Act to reward an employee for trying to destroy the reputation and end the employment of another employee simply to serve her own ends.” *Id.* at 931.

7. Similarly here, engaging in a concerted plan to oust a disliked supervisor seen as an undesirable agent of unwanted change is not protected activity, and the discharge of those employees – the consequences of which Ables warned – does not violate the Act.

8. In *Int’l Union, United Auto., Aerospace & Agr. Implement Workers of Am. (UAW), AFL-CIO v. N.L.R.B.*, 514 F.3d 574 (6th Cir. 2008), three employees became dissatisfied with their supervisor, an outspoken union opponent who complained about the three employees’ work, despite his own poor work. *Id.* at 578. The three resolved to get the supervisor demoted and put together a letter and packet of information about the supervisor to send anonymously to the company. *Id.* at 578-79. To mask their identity, one of the employees falsely identified the

package as being sent by another employee, Pierson, who was also known to oppose union affiliation. *Id.* at 778. When the package was received, the company started an investigation into the allegations supposedly made by Pierson. When it discovered the stated sender's address did not match Pierson's, the company obtained security footage showing who actually sent the package. The company investigator then met with the sender, who denied sending the package. *Id.* at 580. The employee was then terminated based on his deceptive acts. *Id.*

9. The Court found the Board's conclusion that the employee's action in falsifying information removed from him the protections of the Act was neither illogical nor arbitrary. *Id.* at 584.

10. As the decision maker, this tribunal is required to make determination as to the credibility of the witnesses, just as Ables was called upon to make a determination as to who was being truthful in the investigation and who was lying. *See, e.g., Property Resources Corp. v. N.L.R.B.*, 863 F.2d 964, 967 (D.C. Cir. 1988) (crediting union's testimony where it was not "intrinsically implausible" and where manager's testimony was uncorroborated). I find the witnesses for the Company were credible, their stories were consistent over time, and their testimony and explanations for the events that occurred have not changed. On the other hand, I find the employees' testimony was internally inconsistent, was inconsistent with their prior statements, and, overall, lacks credibility.

11. For the same reasons, the substantial evidence in this case demonstrates that OmniSource did not engage in an unfair labor practice within the meaning of Section 8(a)(1) of the Act by conducting an investigation into alleged wrongdoing by Charlebois and subsequently terminating his accusers where, in the course of that investigation, the Company concluded the

four employees had deliberately slandered Charlebois, had lied to the Company about the allegations, and was motivated to do so to remove Charlebois from Mansfield.

12. The employee's actions and conduct in question for which they were discharged – concerted lying about a manager to effect his removal – is not conduct protected under the Act.

B. OmniSource did not violate Section 8(a)(3) of the Act.

13. Under Section 8(a)(3), it is an unfair labor practice for an employer to, among other things, discharge an employee for engaging in protected union activities. 29 U.S.C. § 158(a)(3).

14. The threshold test for determining whether an employee's discharge constitutes an unfair labor practice is whether the discharge was motivated by “anti-union animus.”

15. The General Counsel has the burden of showing, by a preponderance of the evidence, that the employee's exercise of rights protected by § 7 of the Act “was a substantial or a motivating factor in the discharge.” *N.L.R.B. v. Cook Family Foods, Ltd.*, 47 F.3d 809, 816 (6th Cir. 1995) (quoting *N.L.R.B. v. Consolidated Freightways Corp. of Delaware*, 651 F.2d 436 (6th Cir. 1981), and *N.L.R.B. v. Transportation Management Corp.*, 462 U.S. 393, 400 (1983)); see also *ITT Auto. v. N.L.R.B.*, 188 F.3d 375, 387 (6th Cir. 1999).

16. In *Cook Family Foods*, the Sixth Circuit reversed the Board's adoption of the ALJ's determination that the termination of employees from a ham processing plant was motivated by anti-union animus. Although the ALJ pointed to the fact that the employees were poor performers from the outset and were not fired until two days after circulating a union petition and one day after complaining about the temperature in the plant, 47 F.3d at 817, the Court found the reasoning unpersuasive since companies usually give employees time to train and improve and there was overwhelming evidence of the employees' poor performance. *Id.* (“Being a union activist does not immunize anyone from the natural consequences of sub-standard performance,

and the record of this case shows very clearly that the women would have been fired for sub-standard performance regardless of their union activities.”).

17. As in *Cook Family Foods*, in this case there is no evidence that anti-union animus played any part in the termination decision. *See also N.L.R.B. v. Brown*, 380 U.S. 278, 290 (1965) (pointing to evidence of the company working with and engaging with the Union and concluding that “not only is there absent in the record any independent evidence of improper motive, but the record contains positive evidence of the employers’ good faith”).

18. An examination of cases where anti-union animus is found demonstrates the *lack* of any such evidence here. This was not a time of organizing or bargaining, the employer has not made anti-union statements, there were no departures from usual practices, there was no election going on, salary increases or freezes were not an issue, the employer’s justification for termination has never wavered, and there is no background of any hostility on the part of OmniSource against the Union. *See, e.g., Property Resources Corp. v. N.L.R.B.*, 863 F.2d 964, 967 (D.C. Cir. 1988) (collecting cases discussing such evidence); *Acme Die Casting, a Div. of Lovejoy Industries, Inc. v. N.L.R.B.*, 26 F.3d 162, 167 (D.C. Cir. 1994) (discussing the various factors that demonstrated anti-union animus).

19. As the ALJ observed in *HCA/Portsmouth*, “[t]his is not a case where an employer is shown to reject employee input on issues of working conditions or to instill fear in its employees that raising issues or rocking the boat will result in adverse consequences. On the contrary, this Hospital seemed to genuinely invite its employees to raise issues with any level of management. They were encouraged to do so in staff meetings and in one on one meetings with supervisors.” 316 NLRB at 930.

20. The fact that some employees may be dissatisfied is not indicative that management harbors any anti-union animus. *See, e.g., HCA/Portsmouth*, 316 NLRB at 930 (The employee’s “concerns were addressed fully and without any sense of rancor or upset at their being raised. Clearly she did not like the answers, but the willingness of this management to address issues and be open to the staff is demonstrated.”) *Id.*

21. Even if there arguably were evidence of a mixed motive, OmniSource has demonstrated that the fact the employees were members of or were involved with the Union did not influence its decision; OmniSource would not have meted out a lesser discipline (or no discipline) given the fact that it had concluded these employees had lied and conspired to lie about Charlebois in order to remove him from the facility. *See, e.g., N.L.R.B. v. Fluor Daniel, Inc.*, 161 F.3d 953, 966 (6th Cir. 1998) (citing *N.L.R.B. v. Transportation Mgmt. Corp.*, 462 U.S. 393, 395 (1983), and discussing *Wright Line*, 251 N.L.R.B. 1083, 1089 (1980), *enforced*, 662 F.2d 899, 904 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982)).

22. “*Wright Line* is designed to preserve what has long been recognized as the employer’s general freedom to discharge an employee ‘for a good reason, a poor reason, or no reason at all, so long as the terms of the [Act] are not violated.’” *MCPC Inc. v. N.L.R.B.*, 813 F.3d 475, 488 (3d Cir. 2016) (citing *Meyers Indus. (Meyers I)*, 268 N.L.R.B. 493, 497 n.23 (1984) (quoting *N.L.R.B. v. Condenser Corp. of America*, 128 F.2d 67, 75 (3d Cir. 1942))).

23. In *International Union*, the Sixth Circuit affirmed the Board’s conclusion that the company met its burden by establishing it had a legitimate reason for terminating the employee who falsified the sender information on the packet of information sent to management in an effort to remove a manager and that this rationale was the consistently given reason for the termination. 514 F.3d at 585. The deceptive act – writing another person’s name on the package

– was the motivating act behind the termination, not any Union activity. The same reasoning applies here.

24. In *6 W. Corp. v. N.L.R.B.*, 237 F.3d 767 (7th Cir. 2001), the Seventh Circuit addressed the Board’s assertion of pretext and the Board’s reliance on the lack of any written policy requiring honesty in determining an employer violated the Act when it discharged an employee for theft: “No company needs to have a set procedure for what action it will take when adjudicating every single employee problem. It is also obvious that, at a bare minimum, *companies must be able to trust their employees* and be assured that no one is stealing documents from offices or private files. *It is also obvious that companies must be able to discharge a thief or an untruthful employee.*” *Id.* at 778 (emphasis added). Quoting the Eleventh Circuit, the court went on to note, “[f]alse statements impair the employer’s ability to make sound judgments that may be important to the employer’s legal, ethical and economic well-being. So, an employer is entitled to expect and to require truthfulness and accuracy from its employees in an internal investigation that is exploring possibly improper conduct in the business’s own workplace. . . . Therefore, an employer, in these situations, is entitled to rely on its good faith belief about falsity, concealment, and so forth.” *Id.* (quoting *EEOC v. Total System Services, Inc.*, 221 F.3d 1171, 1176 (11th Cir. 2000)).

25. The court found that terminated employee “Gibson gave his employer cryptic and false answers in response to inquiries about the materials stolen from the manager’s log. Whether Gibson actually stole the materials in question is irrelevant. What is relevant is that Tucci had a logical and legitimate reason to suspect that Gibson was involved in the removal of the documents. When Gibson was less than forthright with his answers, Tucci was justified in terminating his employment. Tucci would have terminated Gibson for giving misleading answers

in the course of an investigation into stolen property regardless of Gibson’s union involvement.”
Id. (footnote omitted) (citing *Vulcan Basement Waterproofing of Ill., Inc. v. N.L.R.B.*, 219 F.3d 677, 684 (7th Cir. 2000) (“[T]he employer can . . . avoid a finding of an unfair labor practice if it can show that it would have taken the action [Gibson’s termination] regardless of the employee’s union activities.”)).

26. Because there is no evidence of union animus, or, even if some could be shown, the overwhelming evidence demonstrates that the employees here were discharged for reasons wholly unrelated to their union status, OmniSource did not engage in an unfair labor practice within the meaning of Section 8(a)(3) of the Act by terminating four employees it concluded had deliberately slandered Charlebois, had lied to the Company about the allegations, and was motivated to do so to remove Charlebois from Mansfield.⁴

CONCLUSION AND RECOMMENDATION

On these findings of fact and conclusion of law and on the entire record, I recommend that the Complaint against OmniSource be dismissed and denied.

Date: _____

Honorable Paul Bogas, Administrative Law Judge

⁴Although the evidence is not necessary to consider given the overwhelming weight of the evidence demonstrating the employee’s deception, I admit the evidence relating to the polygraph examination of Charlebois as corroborative testimony. *See, e.g.*, NLRB Bench Book § 16-702.1 (citing *U.S. v. Picciononna*, 885 F.2d 1529, 1536 (11th Cir. 1989) (permitting use of testimony for such reason); *see also* Kenneth W. Graham, Jr., 22 Fed. Prac. & Proc. *Evid.* § 5169.3 (summarizing treatment of polygraph evidence across federal and state jurisdictions and noting that in the Sixth Circuit it is “admissible at the discretion of the trial judge”); *J.C. Penney, Co., Inc.*, 172 NLRB 1279, 1283 (1968), *enforced in relevant part*, 416 F.2d 702, 705 (7th Cir. 1969), cited in Bench Book § 16-702.1.

Moreover, given the breadth of the polygrapher’s training and experience, there is no credible claim that the test itself was performed in such a way as to compromise the results. *See* Co. Ex. 19; Tr. at 426-29, 432-35, 439-43.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of November, 2016, filed the foregoing document electronically with the National Labor Relations Board in Washington, D.C. and copies were served via email on the following:

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