

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

WESTROCK SERVICES, INC.	)	
	)	
Employer,	)	
	)	
v.	)	Case No.: 10-CA-195617
	)	
GRAPHIC COMMUNICATIONS	)	
CONFERENCE OF THE	)	
INTERNATIONAL BROTHERHOOD	)	
OF TEAMSTERS, LOCAL 197-M	)	
	)	
Charging Party.	)	
	)	

**CHARGING PARTY'S POST-HEARING BRIEF**  
**TO THE ADMINISTRATIVE LAW JUDGE**

To: Honorable Robert Ringler  
Administrative Law Judge  
National Labor Relations Board

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## INTRODUCTION

From the end of January through April 2017, an effort to decertify Local 197-M of the Graphic Communications Conference of the International Brotherhood of Teamsters (“Union” or “Local 197-M”), as the bargaining representative of production and maintenance employees, occurred at the WestRock Services, Inc. facility located at 2464 Amnicola Highway, Chattanooga, Tennessee 37406 (“Employer” or “WestRock” or “Chattanooga facility”).

While WestRock’s involvement in this decertification effort was not as blatant as supervisors personally circulating the decertification petition or telling employees that WestRock would increase their wages if only they voted out the Union, it was just as insidious. WestRock’s violations were undisguised and left the workforce with a clear message of the Employer’s position, what the Employer wanted the employees to do and what would result if they accomplished the Employer’s desired outcome.

Prior to the filing of the decertification petition with the National Labor Relations Board (“NLRB” or “Board”), the employees who were driving the decertification effort were given free rein around the plant by WestRock to solicit employees’ signatures on decertification cards and to distribute decertification cards both during working hours and in working areas in direct violation of the Employer’s formal solicitation and distribution policy. This unfettered access to employees was not similarly afforded to those employees who were trying to discuss the Union or conduct Union business. This disparate enforcement of the Employer’s written rules sent a clear message to employees that WestRock was promoting the signing of the decertification petition.

When the efforts of employees supporting decertification began to flag, WestRock called a mandatory employee meeting to explain the decertification process and to claim that once a sufficient number of employees signed decertification cards, WestRock would be able to tell them all of the benefits they would receive from the Employer if they voted out the Union. The purpose of this meeting and these statements to the employees was undeniably to encourage the employees to sign the decertification petition. Not surprisingly, the day after WestRock held this meeting, enough employees signed the decertification petition so that it could be filed with the NLRB.

Both of these violations of Section 8(a)(1) of the National Labor Relations Act (“Act”) alone were sufficient to taint the decertification petition and call for affirmation of the Regional Director’s dismissal of the petition. However, as detailed the below, the Employer continued its blatant violation the Act even after the petition with NLRB was filed.

After the decertification petition was filed with the Board, WestRock engaged in a series of captive audience meetings whereby they implicitly promised wage and benefit improvements if employees voted out the Union. First, Plant Manager Randy Reed told all of the employees that they were going to hear about how much better off they would be if they voted out the Union. Next, two employees from WestRock’s non-union Conway, Arkansas plant were brought in by, and undeniably spoke for and on behalf of, the Employer. These employees told the Chattanooga facility employees about all of the wage and benefit improvements that they received when they decertified their union. They warned the employees that continuing their relationship with the Union made the Chattanooga facility a target for plant closure, and they told the employees to listen closely when they met with the individual from the corporate office because he would tell them exactly what WestRock would be offering them if they voted the

Union out if they read between the lines. These employees even baselessly intimated at financial mismanagement by the Union. Finally, the WestRock's corporate Human Resources Director met with the employees and told them that wage improvements, additional 401(k) plan contributions, and short-term and long-term disability insurance enhancements that WestRock provided to its non-union facilities were "game changers" with respect to whether the employees should retain their support of the Union. Thereafter, the corporate Human Resources Director demonstrated for Chattanooga facility employees how much more 401(k) plan contributions they would receive if they operated under WestRock's non-union facility 401(k) plan and asked them if they would all like to retire from WestRock as millionaires.

These implicit and explicit promises of wage and benefit improvements if the Chattanooga employees voted out the Union, along with the threat of reprisals if the employees voted to keep the Union and disparagement of the Union for financial mismanagement, violated Section 8(a)(1) of the Act. These violations, and other detailed below, sufficiently tainted the election to determine whether the employees wanted to continue being represented by the Union thereby requiring affirmation of the Regional Director's decision to dismiss the decertification petition. The reasons that this conclusion must be reached are manifold: WestRock's unfair labor practices were concomitant with the filing of the decertification petition; the promises and threats made by WestRock were of a nature that would have a detrimental and lasting effect on employees; promises of benefits and threats of reprisals of this nature have a significant tendency to cause employee disaffection; and unlawful promises of benefits to rid the plant of the Union and threats of reprisals if the employees want to continue to exercise their Section 7 right to be represented by the Union have a harmful effect on employees' morale, organizational activities, and membership in the Union.

Accordingly, for the reasons stated herein, there should be findings that WestRock committed Section 8(a)(1) violations and an affirmation of the Regional Director's decision to dismiss the decertification petition filed by Petitioner Joe Pike in Case No. 10-RD-195447.

### STATEMENT OF FACTS

The employees at WestRock's Chattanooga facility are represented by Local 197-M. (Tr. at 30) There are approximately 110 to 115 employees in the bargaining unit represented by the Union at the Chattanooga facility. (Tr. at 599) The collective bargaining agreement covering the terms and conditions of employment of the employees represented by Local 197-M at the Chattanooga facility expired in 2016. (Tr. at 30-31) The Union and the Employer are in the process of negotiating a successor collective bargaining agreement. (Tr. at 31) In January or the beginning of February 2017, Journeyman Pressman Joe Pike and his helper, Feeder Operator Josh Tucker, started an effort to decertify the Union at the Chattanooga facility. (Tr. 530-531, 584, 601, 636) The petition was filed with the Board on March 24, 2017. (Tr. at 584) On June 28, 2017, the petition was dismissed by the Regional Director for Region 10 in Case No. 10-RD-195447 on account of the petition being tainted by the alleged unfair labor practices.

A. The Employer Permitted the Employees Soliciting Support for a Decertification of the Union to Have Free Rein Throughout the Chattanooga Facility In Violation of Employer Policy; Rights that were Not Similarly Afforded to Union Supporters.

The Employer has a written "No Solicitation and Distribution Policy" for the Chattanooga facility. (Tr. at 31-32, 638 and GC Ex. 2) Under the policy:

**Employees.** Employees are not permitted to solicit other employees, customers, contractors or vendors, or to distribute documents or non-business related items of any kind during the working time of any of the employees involved. Working time is the period when an employee is expected to be performing job duties but excludes approved meal and break periods.

Employees are not permitted to distribute documents or non-business related items in working areas at any time. Working areas are the areas that the Company has designated for work and include offices, conference rooms and the plant floor but exclude break rooms and parking lots.

Employees are not permitted to discuss union business while they work or while on company time. (Tr, at 32, 70, 111-112, 164-165, 192) When employees would come over to Union Shop Steward Leah Johnson to discuss union business with her, a supervisor would tell them that they were not permitted to discuss union business during working time. (Tr. at 32-33) This happened when other employees tried to discuss union business during working time also. (Tr. at 33-34, 111-112) According to Plant Manager Randy Reed, employees are allowed to speak on the clock as long as they do not interfere with each other. (Tr. at 623) In the Employer's eyes, employees coming up to Journeyman Pressman Joe Pike while he was working on his press so he could convince them to support his decertification effort was not interference (Tr. at 543, 576), but employees coming over to discuss Union business with Ms. Johnson while she was working on her press was interference. (Tr. at 32-33)

Throughout the two months that Journeyman Pressman Joe Pike and Feeder Operator Josh Tucker were trying to get co-workers to support their decertification effort, Mr. Pike and Mr. Tucker violated the Employer's "No Solicitation and Distribution Policy" by soliciting employees to sign cards in support of the decertification effort in work areas while employees were on company time. (Tr. at 529)<sup>1</sup> For instance, Mr. Tucker approached employee Taylor

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<sup>1</sup> Mr. Pike testified that for the last 15 to 30 minutes of his shift, the Employer permitted him to solicit for his decertification campaign other employees while they were working and while he too was on company time. (Tr. at 529)

Walker and asked him to sign a decertification card while Mr. Walker was near the Kamori press and still working his shift. (Tr. at 113-115). At the end of February or in early March, employee William Bearden was working on the Kamori Press to check on a job that was being readied for printing when Mr. Pike approached him and asked him to sign a piece a paper to decertify the Union. Mr. Pike, with Mr. Tucker present, then proceeded to explain to Mr. Bearden in detail for about ten minutes why he was trying to get the Union decertified and all of the better benefits Mr. Bearden would enjoy if the Union was decertified. (Tr. at 278-279)<sup>2</sup> Mr. Pike made three or four additional attempts to convince Mr. Bearden to sign a card to proceed with an election to decertify the Union while both he and Mr. Bearden were working. (Tr. at 279-280) Employee Patricia Steinaway testified that Mr. Pike was travelling around the Chattanooga facility, including in areas in which he had no business, in January or February 2017 soliciting employees to support his decertification effort. (Tr. at 431, 467-468). While Ms. Steinaway was working, Mr. Pike told her about his decertification effort and asked her if she wanted to sign a decertification card. *Id.* Mr. Pike confirmed that while he travelled around the plant for his job, he attempted to convince employees to sign a decertification card. (Tr. at 543-544) Mr. Pike's managers were aware that he was not at his press, and he was permitted by them to solicit for his decertification effort. (Tr. at 621) Mr. Pike also handed out decertification cards and tried to convince employees to sign those decertification cards whenever they passed him while he was working on his press. (Tr. at 543, 576) This was in direct violation of the Employer's policy that prohibited handing out literature in a work area. (Tr. at 642)

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<sup>2</sup> Interestingly, despite the Employer's claim that it was not involved at all in Mr. Pike's effort to decertify the Union, Mr. Pike was extremely well conversant in all of the improved benefits Chattanooga facility employees would receive from WestRock if they decertified the Union well before the Employer held any meetings with the Chattanooga employees to tell them the better benefits that the employees at non-union WestRock facilities receive. (Tr. at 278-279)

On at least two days in February 2017, Mr. Pike was soliciting for a decertification petition in the lower warehouse of the Finishing Department of the Chattanooga facility prior to the end of his shift. (Tr. at 35-37, 73, 234-236, 545) Mr. Pike was on the clock being paid by the Employer at the time he was in the Finishing Department handing out decertification cards to employees coming in and out of the plant. (Tr. at 589) Mr. Pike's supervisor released him to distribute decertification cards to other bargaining unit employees in the Finishing Department while he was on company time. (Tr. at 639) Employees complained to Plant Manager Reed that Mr. Pike was soliciting for a decertification petition in work areas during his working time. (Tr. at 37-38 and GC Ex. 3) During the second week of April, Mr. Pike and Mr. Tucker were again soliciting support for the decertification effort in the Finishing Department prior to the end of their shift. (Tr. at 167)

B. Plant Manager Randy Reed Told an Employee that She Would Get Paid When the Union is Out.

On March 1, 2017, bargaining unit member Jamie Ford approached Plant Manager Randy Reed and Supervisor Charlie White to tell them about the good work night her team had the night before. (Tr. at 237-239) During the conversation, Supervisor White asked Plant Manager Reed when WestRock was going to get Ms. Ford paid. (Tr. at 238-239) Plant Manager Reed responded in Ms. Ford's presence that there was "nothing he can do about it until the contract goes through or the Union is out." (Tr. at 239) Plant Manager Reed admitted that he made those statements in Ms. Ford's presence. (Tr. at 608)

C. Supervisor Sheila Smith Asks Employee Taylor Walker to Distribute Decertification Cards so She Can Convince Employees to Sign Them.

In early March while Mr. Pike and Mr. Tucker were struggling to find a sufficient number of their co-workers to support their decertification effort, Supervisor Sheila Smith asked employee Taylor Walker to get two blank decertification cards from where Mr. Pike kept them near his press and deliver them to two employees, Ryan Murray and Jeremy Lawrence. (Tr. at 95, 102-103, 115-116, 123-125) Ms. Smith told Mr. Walker that if he delivered blank cards to them, she would do her best to convince them to sign the cards. (Tr. at 116) At the time Ms. Smith asked Mr. Walker to deliver decertification cards to Mr. Murray and Mr. Lawrence, Mr. Walker had already signed a decertification card in front of Mr. Pike and Mr. Tucker, the two employees behind the decertification effort. (Tr. at 114-115, 541) Mr. Lawrence is Ms. Smith's nephew-by-marriage. (Tr. at 479, 483)

As part of his job, Mr. Walker travels around the Chattanooga facility. (Tr. at 97, 101, 103) Mr. Walker is the only employee on the first shift who travels around the Chattanooga facility as part of his job duties. (Tr. 103-104, 110)

Supervisor Smith became aware of the decertification effort in January or February of 2017. (Tr. at 523) Plant Manager Reed informed Ms. Smith that there was a decertification petition going around the shop and that the supervisors needed to be aware of it. (Tr. at 524) Supervisor Smith testified during her direct testimony, "I have no problem with the Union. Union or not, you know, it don't matter." (Tr. at 506) Yet, this Supervisor, who claimed to have no interest in the Union and was not involved in the decertification effort, took the time to research on the Internet, after she became aware of the decertification effort, what percentage of employees in the bargaining unit the Employer needed to sign decertification cards in order to move forward with a decertification election. (Tr. at 524)

Ms. Smith testified:

Q And you were aware that the – in order to move forward with an election, 30 percent of the members of the bargaining unit had to sign decertification cards?

A I wasn't aware of that until Randy had a meeting, **and I went on the internet and kind of looked around and see what we needed, what we was going up against.**

(Tr. at 524 (emphasis added))

Mr. Walker informed Union Shop Stewards Leah Johnson and Steve Brown of Supervisor Smith's solicitation of him to provide employees with decertification cards immediately after the event occurred. (Tr. at 93- 97, 116-117, 127, 167-168)

D. The Employees Behind the Decertification Effort Were Struggling to Obtain a Sufficient Number of Signatures to Move to an Election, so the Employer Scheduled a Mandatory Meeting to Convince Employees to Sign Decertification Cards by Telling Them that WestRock Could Inform the Employees of the Benefits that They Would Receive if They Decertified the Union Once the Petition Was Filed.

On March 22, 2017, prior to the filing of the petition with the Board to decertify the Union but after Mr. Pike and Mr. Tucker had spent a couple of months trying to obtain a sufficient number of signatures to support their decertification effort (Tr. at 585), WestRock held a series of captive audience meetings for all bargaining unit employees during working hours at the Chattanooga facility. (Tr. at 41-42, 168-169) Plant Manager Randy Reed led the meetings which were also attended by the plant's Human Resources Manager and several supervisors. (Tr. at 42, 169) During the meetings, Plant Manager Reed told the employees that after enough of them signed the decertification petition so it could be filed, WestRock would be able to tell the Chattanooga employees what WestRock would be able to offer to them if they decertified the

Union. (Tr. at 75, 468) Additionally, Plant Manager Reed read from a script in which he stated, in part:

The first step of the decertification process is for at [least] 30% of the employees to express an interest (typically by signing so called authorization cards), and filing a petition with the NLRB requesting a secret ballot election.

QUESTION: Do you know when an election would be held here at our plant?

Answer: It would depend on when 30% or more of our employees sign cards supporting decertification.

\* \* \* \* \*

However, until we receive notice from the NLRB that an election has been scheduled, we are not legally able to answer your questions and talk with you about our position on the decertification process and its consequences . . . .

However, the law does state that after the decertification petition is filed, Westrock would be able at that time to express our feelings on whether you are better off with or without this union. We would also be able to provide you with all the facts you need to decide whether you should keep the Teamsters here as your representative.

(GC Ex. 4)

After he read his speech, Plant Manager Reed solicited questions. In response to a question from employee Christian Gonzalez as to how the employees would know what they would get by signing the decertification card, Plant Manager Reed responded that he should sign the card and find out. (Tr. at 171) In response to another question, Mr. Reed stated that he did not believe that Mr. Pike had received enough signatures to file the petition yet. (Tr. at 242) In response to a questions from Union Shop Steward Johnson as to how the Employer was not involved in the decertification effort if it was allowing Mr. Pike to solicit signatures to decertify the Union on company time in the Finishing Department, Mr. Reed responded “Leah, we’re not talking about a 20 minute conversation here, we’re talking about a five minute conversation, and we don’t limit employees conversations with one another here.” (Tr. at 46-47) Plant Manager

Reed stated that there was no problem with Mr. Pike distributing cards during work hours so long as he was finished with his work and his supervisor approved it. (Tr. at 241)

WestRock's witness, Jeremiah Lawrence, testified on direct that during this meeting on the first shift, Plant Manager Randy Reed "called a meeting with documentation about the decertification. He went over with everybody on first shift and that's where I learned about it. And he basically said you can – here's what to do, if you want to sign a card after work, go see Joe Pike after hours. And if we get the right amount of votes, we'll have a vote." (Tr. at 482) Mr. Lawrence testified that Plant Manager Reed introduced Mr. Pike to the employees assembled during the first shift meeting on March 22, 2017, and told them that if they wanted to sign a decertification card, they should see Mr. Pike. (Tr. at 489-490)

A sufficient number of signatures on the decertification petition were obtained the day after these WestRock meetings, and Mr. Pike filed his decertification petition with the NLRB on March 24, 2017. (Tr. at 584)

E. Once the Decertification Petition was Filed with the Board, WestRock Begins Promising Improvements to the Employees' Wages, Benefits and Job Security If They Decertify the Union.

On March 27, 2017, days after the decertification petition was filed, the Employer held another captive audience meeting for the bargaining unit employees. (Tr. at 47-49) During the meeting, Plant Manager Reed again read from a script. *Id.* He stated the following to the employees:

I believe that you could all be much better off without having to pay union dues and without being held back by a union contract that *prevents* WestRock from rewarding you for the great work you do here.

\* \* \* \* \*

WestRock believes that you could be much better off without a union because our company prefers to work directly with our employees, and not have plants held back due to the cost and disruption of a union. We believe that your quality of life, your financial condition, and your job security could be better if you are union-free.

\* \* \* \* \*

All we want is **one year** to show you that things can be better here union-free.

(GC Ex. 5 (emphasis in original))

F. Plant Manager Randy Reed Discusses with Employees the Benefits of WestRock's 401(k) Plan for Non-Union Employees and then Solicits a Decertification Card from an Employee.

On March 27, 2017, Plant Manager Randy Reed spoke to employees Bill Bearden and Ken Frost while they were working on their press about the large amount of money that his son was able to amass in his 401(k) account (\$19,000.00) because he transferred from WestRock's unionized Chattanooga facility to WestRock's non-union Kimball plant. (Tr. at 139-142, 282-285). Plant Manager Reed admitted to explaining to Mr. Bearden and Mr. Frost how much money his son would be able to retire with as a result of him participating in WestRock's non-union 401(k) plan. (Tr. at 614)

Immediately after extolling the virtues of WestRock's 401(k) plan for non-union employees, Plant Manager Reed collected a decertification card from Mr. Frost. (Tr. at 143-144)

G. The Employer Brought in Employees from A Non-Union Plant to Make Promises of Benefits if the Chattanooga Facility Employees Decertified the Union and Threats of Reprisals if the Employees Failed to Decertify the Union.

1. The Employees that WestRock Brought in from Its Conway, Arkansas Plant to Speak to the Chattanooga Facility Employees Were Speaking on behalf of the Employer.

At the beginning of April 2017, WestRock brought in two employees from its Conway, Arkansas plant, Earl Johnson and David Brooks, to talk to the Chattanooga facility employees during working hours about their experiences with decertifying their union at the Conway plant. (Tr. at 50-52, 319, 323-324) These meetings were mandatory for the employees to attend. (Tr. at 641)<sup>3</sup>

WestRock paid for Mr. Johnson and Mr. Brooks to travel to and from the Chattanooga facility (including overtime pay for Mr. Johnson who was an hourly-paid employee) from April 2<sup>nd</sup> through April 6<sup>th</sup> and paid for all related expenses, including flights, hotel, car rental and meals. (Tr. at 335, 338-339) Mr. Brooks paid for his and Mr. Johnson's expenses for the Chattanooga trip using a WestRock corporate credit card. (Tr. at 379, 385, 404-405)

This was not the first time WestRock had enlisted Mr. Johnson and Mr. Brooks to travel the country to visit unionized WestRock plants to convince the employees to vote to decertify their union all at the expense of WestRock. (Tr. 325, 349) In each instance, Mr. Johnson and Mr. Brooks were requested by WestRock to visit a unionized plant, had their expenses paid by WestRock, were paid wages by WestRock to visit the unionized plants and met with WestRock management and attorneys prior to talking to employees about the benefits of decertifying their

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<sup>3</sup> According to the Employer, employees could opt-out of the meeting with the Conway employees. (Tr. at 641) However, Chattanooga facility employees were not informed by WestRock that they could opt out of these meetings. *Id.* An employee would have no reason to believe that an Employer-scheduled meeting during working time was anything other than a mandatory meeting that required their attendance. *Id.*

union. (Tr. at 349-350, 384) Prior to speaking to the Chattanooga employees, Mr. Johnson and Mr. Brooks spoke to employees in WestRock's North Chicago, Illinois and Fargo, North Dakota plants about their experiences in decertifying the union at the Conway plant and the benefits to them that sprung from that decertification. (Tr. at 325, 349-350, 384-385, 392)

On April 2, 2017, after arriving in Chattanooga, Mr. Johnson and Mr. Brooks went to the Chattanooga facility where they met with Plant Manager Reed for about an hour and then met with a WestRock attorney for about an hour. (Tr. at 338-341, 364)<sup>4</sup> During those meetings, Mr. Johnson and Mr. Brooks discussed the planned meetings with groups of Chattanooga employees and they were instructed by Plant Manager Reed and the WestRock attorney about what they were allowed to say and were not allowed to say during the employee meetings and told that they could not promise anything to the Chattanooga employees. (Tr. at 341, 387-388, 407, 629) This was because WestRock did not want Mr. Johnson or Mr. Brooks to promise anything on behalf of the Employer. (Tr. at 643) Plant Manager Reed then took Mr. Johnson and Mr. Brooks on a tour of the Chattanooga facility and introduced them to virtually every one of the Chattanooga employees. (Tr. at 340, 357) Mr. Johnson and Mr. Brooks were wearing black WestRock shirts, with the WestRock logo on one side and their name on the other side, when they went around the facility with Plant Manager Reed to meet the employees. (Tr. at 357, 379) Chattanooga facility employees do not wear WestRock shirts or uniforms while working. (Tr. at 414, 624-625)

Plant Manager Randy Reed also gave Mr. Johnson and Mr. Brooks free rein to move around the Chattanooga facility to talk to employees during working hours about their decertification experiences and how their wages and benefits changed after they decertified the

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<sup>4</sup> Mr. Johnson and Mr. Brooks also met with WestRock's attorney before they left Chattanooga after all of the employee meetings had been completed. (Tr. at 344-345)

union at their facility. (Tr. at 409) At other times, Plant Manager Randy Reed set up Mr. Johnson and Mr. Brooks in the Chattanooga facility breakroom and told employees to go see them and ask them any questions about decertifying the Union at Chattanooga. (Tr. at 409-411)

Over the course of the three full days in which they were in Chattanooga, Mr. Johnson and Mr. Brooks held ten meetings with groups of Chattanooga employees which lasted on average about an hour and fifteen minutes to an hour and thirty minutes each. (Tr. at 342, 390, 629-630) For each of those three full days, Mr. Johnson and Mr. Brooks spent at least twelve hours each day at the Chattanooga facility. (Tr. at 343, 345)

Plant Manager Reed introduced Mr. Johnson and Mr. Brooks to the assembled Chattanooga employees. (Tr. at 51, 172, 243) During each of these meetings, Mr. Johnson and Mr. Brooks were wearing their WestRock shirts. (Tr. at 357) The employees perceived Mr. Johnson and Mr. Brooks to be members of management. (Tr. at 80) At the conclusion of each meeting, Plant Manager Reed or another member of management came into the meeting to dismiss the assembled employees. (Tr. at 358, 390)

2. The Employees that WestRock Brought in from the Conway, Arkansas Plant Made Promises of Benefits and Threats of Reprisals to the Chattanooga Employees.

In introducing Mr. Johnson and Mr. Brooks to the assembled Chattanooga employees, Plant Manager Reed told them that Mr. Johnson and Mr. Brooks would be discussing what it was like at the Conway plant before and after the Conway employees decertified their union. (Tr. at 51, 172)

Mr. Johnson and Mr. Brooks explained to the Chattanooga employees that the Conway plant employees received a \$2.00 an hour pay increase across the board after their union was decertified. (Tr. at 56, 173, 352-353, 401) They also told them that WestRock increased the Conway employees' 401(k) plan matching contribution after they decertified their union. (Tr. at 56, 173, 352-353, 355) Mr. Johnson and Mr. Brooks discussed all of the positive wage and benefit improvements they received after the Conway plant decertified its union; they did not discuss that there might be any downsides to the Chattanooga employees if they decertified the Union or make any suggestions that their wages and benefits might not change at all. (Tr. at 356-357) Additionally, Mr. Johnson told the Chattanooga employees that union/management issues at the Conway plant put the Conway plant at risk of being shut down, that they were being watched by corporate headquarters, and that if they were not careful, the Chattanooga plant would be at risk of being shut down. (Tr. at 56, 175, 211-212) During those meetings, Mr. Johnson also told the Chattanooga employees that, with respect to the union that used to be in place at WestRock's Conway, Arkansas plant, there were "some shady things going on with their money" that they could not account for. (Tr. at 56-57). Mr. Johnson then told the Chattanooga employees that they "needed to really look closely at [the Union] to see if the money was being used appropriately." (Tr. at 57)

Mr. Johnson also told the Chattanooga employees that someone from Norcross would be coming to speak to them and that, although the person from Norcross would not come right out and tell the Chattanooga employees what WestRock would give to the Chattanooga employees if they decertified the Union, but that the Chattanooga employees should "listen closely" and "read between the lines" because Norcross would be "telling you what they are going to be able to offer" if the Chattanooga employees decertified the Union. (Tr. at 57, 246-247) WestRock's

corporate offices are located in Norcross, Georgia. (Tr. at 58, 247, 358) As this was not Mr. Brooks' nor Mr. Johnson's first experience in helping WestRock decertify a unionized shop, they knew exactly how WestRock was going to try to convince employees to decertify the Union. They knew that their meeting would shortly followed-up shortly by a meeting with a corporate official from Norcross who would tell the employees with a "wink-wink, nudge-nudge" that WestRock could not make them any promises if they decertified the Union, but in actuality promised the employees exactly what benefits WestRock would give to them if they decertified the Union if they only "listened closely" or "read between the lines."

Plant Manager Reed told employee Steven Brown that Mr. Brooks and Mr. Johnson were only supposed to talk about the decertification of the union at their plant and what WestRock has to offer employees without a union and that they should not have stated that Norcross was watching the Chattanooga plant. (Tr. at 181)

H. Shortly After the Meeting with the Conway Employees, a WestRock Corporate Executive Came to the Chattanooga Facility and Promised the Employees the Wages and Benefits that They would Receive if They Decertified the Union.

On April 14, 2017, Scott Pulice, WestRock's Corporate Human Resources Director (the "Norcross" corporate official), came to Chattanooga and promised all of the employees in a series of mandatory meetings that they would receive a number of benefits from WestRock if they decertified the Union. (Tr. at 58-61, 248) Plant Manager Reed was in attendance at the meetings held by Mr. Pulice. (Tr. at 60, 631-632)

During the meeting, Mr. Pulice presented from a number of slides. (Tr. at 60-61 and GC Ex. 6) Mr. Pulice informed the Chattanooga facility employees that the purpose of the meeting was to discuss the facts about wages and benefits so that the employees were able to make an

informed decision when they had the opportunity to vote. (GC Ex. 6, Slide 2) Mr. Pulice stated that he was there to answer the Chattanooga employees' questions. *Id.* These questions included: "Will I get STD and LTD if our plant is union-free?"; "What health insurance will I get if the plant is union-free?"; "What retirement benefits will I get if the plant is union-free?" and "What about other benefits if we were union-free?" (GC Ex. 6, Slides 4 and 5) Mr. Pulice informed the Chattanooga employees that the information they would receive from him would be a "TOTAL GAME CHANGER!" (GC Ex. 6, Slide 3) (Emphasis in original.)

Mr. Pulice then informed the Chattanooga employees that "Game Changer #1" was annual wage increases that WestRock non-union employees receive (up to 5% or 8% depending on personal performance) when compared to what the Chattanooga employees had been and would continue to receive as a unionized facility (1.5-2.5%). (GC Ex. 6, Slide 22) Mr. Pulice also informed the Chattanooga employees that all hourly employees at WestRock's union-free plants are eligible to participate in a voluntary long-term disability plan, but that this option is not available to employees in Chattanooga because they are in a union, and that WestRock has no plans to change long-term benefits at its union-free plants. (GC Ex. 6, Slide 27)

Mr. Pulice informed the Chattanooga employees that "GAME CHANGER #2" was the enhanced retirement benefits that WestRock's non-union employees receive. (GC Ex. 6 Slide 30) He informed the employees, "Today, with the GCC-IBT you have a 401(k) Plan that allows you a \$1 for \$1 match up to 1% - that's all" but that "Non-Union Employees have: \$1 for \$1 match up to 5% AND a 2.5% additional contribution EVEN IF EMPLOYEES DON'T CONTRIBUTE." *Id.* (Emphasis in original.)

Mr. Pulice then addressed "Game Changer #3 Short Term Disability" by informing employees that at the Chattanooga Facility with the GCC/IBT, they were eligible for short term

disability up to a maximum of \$200 per week but that all WestRock non-union employees receive short term disability in the amount of 50% of their weekly wages with no maximum for 26 weeks. (GC Ex. 6, Slide 36)

In concluding his slide presentation, Mr. Pulice asked the Chattanooga employees to think hard about the three “Game Changers” that he presented to them when they voted whether to keep the Union or not and that the Employer wanted one year to show the employees how things can change for the better and how much better off they would be without a union. (GC Ex 6, Slide 54) As Plant Manager Reed testified in response to a question from Judge Ringler:

Judge Ringler:           What does game changer mean to you?

The Witness:            I really don't – if I relate it back to sports, it's a move you make that makes the team better.

(Tr. at 645)

After concluding his slide presentation, Mr. Pulice returned to the 401(k) plan benefits WestRock offered to its non-union employees. (Tr. at 62, 183, 250) He asked an employee for his salary and then wrote it, \$40,000, on a dry-erase board. He then told the employees that the information he was going to provide would be a “game changer” and “would blow their minds.” (Tr. at 62) Mr. Pulice then explained and wrote on the board how this employee would retire as a millionaire if he received the same 401(k) contribution match and other employer contribution that WestRock provided to its non-union employees over the course of his employment at WestRock. (Tr. at 63-64, 89-90, 250) Mr. Pulice compared how much an employee would receive from the Employer's 401(k) plan over his career at WestRock if the Chattanooga facility was non-union as compared to how much he would receive in the 401(k) plan if the Chattanooga facility remained union. (Tr. at 633) He concluded by asking employees how they would feel if

they could all retire from WestRock as millionaires and asking them if that wouldn't be great.

(Tr. at 64)

I. Plant Manager Randy Reed Interrogates Employee Steven Brown Over a Facebook Post that was Critical of Mr. Reed.

Employee Steve Brown posted on Facebook stating in part: “To my brothers and sisters throughout the plant there is something Randy Reed is not trying to tell everyone for him to want to try to get rid of our Union we work so hard to keep . . . .” (GC Ex. 7) Shortly thereafter, Plant Manager Reed called Mr. Brown into a meeting to interrogate him about his Facebook post. (Tr. at 178-179). Plant Manager Reed asked Mr. Brown if he had a problem with the plant. (Tr. at 179) Then, Plant Manager Reed asked Mr. Brown if he had a problem with him. *Id.* He then asked Mr. Brown why he would say the things he said in his Facebook post. (Tr. at 180) Mr. Brown removed his Facebook post shortly after he put it up, and he has not re-posted it on Facebook. (Tr. at 219)

## ARGUMENT

A. WestRock Provided Assistance to Employees in Obtaining Signatures on a Decertification Petition in Violation of Section 8(a)(1) of the Act.

WestRock provided assistance to employees in obtaining signatures on a decertification petition by taking the following action:

- Allowing employees to solicit for signatures and distribute cards in support of a decertification effort in work areas and on company time in violation of the Employer's written No Solicitation and Distribution Policy while denying employees supportive of the Union the opportunity to discuss the Union in work areas or on company time;

- Paying employees to solicit for signatures in support of a decertification effort in work areas and on company time in violation of the Employer's written No Solicitation and Distribution Policy while denying employees supportive of the Union the opportunity to discuss the Union in work areas or on company time;
- Conducting mandatory employee meetings on Company time in an effort to convince a sufficient number of employees to support a decertification effort with promises of benefits to come once a sufficient number of employees supported the decertification petition;
- Promising employees that salary issues will be addressed once the Union is out;
- Trying to convince employees to distribute decertification cards to certain employees who had not yet signed them; and
- Collecting decertification cards from bargaining unit employees.

1. Applicable Law

“It is well settled that an employer violates Section 8(a)(1) of the Act by ‘actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition to decertify the bargaining representative.’” *Mickey's Linen & Towel Supply*, 349 NLRB 790, 791 (2007) (quoting *Wire Product Mfg. Co.*, 326 NLRB 625, 640 (1998), *enfd. sub nom. mem. NLRB v. R.T. Blankenship & Associates, Inc.*, 210 F.3d 375 (7th Cir. 2000)). “In determining whether an employer's assistance is unlawful, the appropriate inquiry is “whether the Respondent's conduct constitutes more than ministerial aid.” *Id.* (quoting *Times Herald*, 253 NLRB 524 (1980)).

Past Board decisions have severely circumscribed the extent to which an employer may become involved in employees' efforts to decertify a union. It is unlawful if the employer may be said to have become involved in furthering employee steps to decertify the union by participating in the preparation or circulation of the petition, solicitation of employees to sign it, or assistance in forwarding the petition. *E. States Optical Co.*, 275 NLRB 371, 375 (1985).

When the employer interferes with the employees' free choice of whether or not to resign from the union, the employer undermines the whole election process. *Id.*

It is well established that the lending of assistance by an employer in an employee's withdrawal from a union, or the suggestion of the means and manner by which this can be accomplished, encourages and assists employees in their withdrawal and thereby interferes with, restrains, and coerces such employees in the exercise of their statutory right to retain union membership, and is in violation of Section 8(a)(1) of the Act. *Id.* The decision regarding decertification responsibility to prepare and file a decertification petition belongs solely to the employees. *Armored Transport, Inc.*, 339 NLRB 374, 377 (2003). “Other than to provide general information about the process on the employees' unsolicited inquiry, an employer has no legitimate role in the activity, either to instigate or to facilitate it.” *Id.* (quoting *Harding Glass Co.*, 316 NLRB 985, 991 (1995), and cases cited therein). Thus, the Board has held an employer's lawful involvement with a decertification petition is limited to providing accurate information in response to employee questions without threats or promises. *Amer-Cal Indus.*, 274 NLRB 1046, 1051 (1985) and cases cited therein.

2. Disparately Enforcing a No Solicitation and Distribution Policy and Paying Employees to Solicit Signatures for a Decertification Petition on Company Time Are Violations of Section 8(a)(1) of the Act.

An employer violates Section 8(a)(1) of the Act by disparately enforcing a no-solicitation rule by according a decertification petition effort special treatment by permitting the solicitation of a decertification of a union on working time and in work areas, thereby assisting employees in filing the decertification petition. *Albertson's, Inc.*, 323 NLRB 1, 6-8 (1997), see also *Highland Yarn Mills, Inc.*, 313 NLRB 193, 208 (1993) (the disparate application

of a no-solicitation, no-distribution rule vis-a-vis union and antiunion employees is a clear violation of the Act).

Compensation bestowed upon employees to engage in decertification activities is a further signal tending to convince those involved in the decertification effort, and any future effort to repudiate the union, that the employer openly endorses their venture, and is therefore a violation of Section 8(a)(1) of the Act, especially when similar “activity on company time” permission is not bestowed on those who seek to engage in union activities. *Lee Lumber and Bldg. Material Corp.* 306 NLRB 408, 418 (1992), *enfd. in rel. part*, 117 F.3d 1454 (D.C. Cir. 1997)( providing a few hours of time with pay to three employees for participating in the filing of a decertification petition was held to be the employer rendering unlawful assistance in conjunction with decertification activity). See also, *N.L.R.B. v. Birmingham Publ'g Co.*, 262 F.2d 2, 6 (5th Cir. 1958)( an employee using company time to circulate a decertification petition and induce employees to sign it when the employer knew that the employee was circulating the petition on company time was violative of the Act).

WestRock management repeatedly allowed Joe Pike and Josh Tucker to solicit for their decertification petition and distribute decertification cards on company time and in work areas in violation of the Employer’s solicitation and distribution policy. At the same time, the Employer routinely prevented employees who sought to discuss Union business on company time and in work areas from being permitted to do so.

It was not disputed that WestRock has a written “No Solicitation and Distribution Policy” and that this policy was in force for the employees at the Chattanooga Facility when Joe Pike and Josh Tucker sought support from their co-workers for their decertification petition. (Tr. at 31-32, 638 and GC Ex. 2) Under the policy, employees are not permitted to solicit other employees or

distribute documents or non-business related items of any kind during the working time of any of the employees involved and they are not permitted to distribute documents or non-business related items in working areas at any time. *Id.* Under the policy, the term “working time” is defined as the period when an employee is expected to be performing job duties but excludes approved meal and break periods, which are not paid time. (Tr. at 528) Under the policy, the term “working areas” is defined as the areas that the Company has designated for work and includes offices, conference rooms and the plant floor but exclude break rooms and parking lots, where no work is performed. (GC Ex. 2)

Despite this official policy, Mr. Pike and Mr. Tucker spent two months, from the end of January 2017 through the end of March 2017, flagrantly violating the Employer’s No Solicitation and Distribution Policy. Mr. Pike testified that he solicited his co-workers to sign his decertification petition and handed out decertification cards whenever one of his co-workers passed into his work area while he was working:

Q Now, explain to the Judge just what your methodology was. How did you and Josh Tucker go about getting your cards signed? What did you do to make it happen?

A I tried to pass out literature -- you know, I put literature in the breakrooms and the bathroom. That didn't work, because they'd stay there about 10 minutes before they were thrown away. Okay. **So where my press was located, people come by my press all the time. And when somebody would walk by, I would talk to them about -- I would say hey, I'm trying to decertify the Union; blah, blah, blah; are you interested; would you like to sign a card or whatever. Some would say, yeah. I'd say, take the card;** read it; when you have time, you know, if you want to sign it, bring it back to me. I've done that.

(Tr. at 543 emphasis added)

Q BY MS. KIMBER: You solicited your coworkers to sign cards during your work schedule, right?

A Yes.

Q And during the time you were soliciting cards, people come to talk to you about your cards, about the decertification petition; is that correct?

A Yes.

Q And they come to you in your work area?

A Yeah.

Q And some people sign cards in that area?

A Yeah.

(Tr. at 576)

Mr. Tucker approached employee Taylor Walker and asked him to sign a decertification card while Mr. Walker was near the Kamori press while Mr. Walker was still working his shift.

(Tr. at 113-115) This testimony was not refuted. At the end of February or in early March, employee William Bearden was working on the Kamori Press to check on a job that was being readied for printing when Mr. Pike approached him and asked him to sign a piece a paper to decertify the Union and then Mr. Pike, with Mr. Tucker present, proceeded to explain to Mr. Bearden in detail for about ten minutes why he was trying to get the Union decertified and all of the better benefits Mr. Bearden would enjoy if the Union was decertified. (Tr. at 278-279) This testimony also was not refuted.

As Plant Manager Reed acknowledged, it was a clear, undeniable violation of WestRock's No Solicitation and Distribution Policy for Mr. Pike to solicit signatures for his decertification petition or hand out decertification cards while he was in his work area.

Q What about beyond talking, solicitation, asking people to sign things, handing out flyers?

A Can't hand out flyers at your workstation.

Q You can't hand out flyers?

A No, not at your workstations, not in the work areas.

**Q I assume that would also apply to decertification cards, that you can't hand those out while you're working?**

**A If you interrupt somebody in a working area, or you're in a working area, you can't hand out literature, yes, sir.**

(Tr. at 642 emphasis added)

Yet, despite Mr. Pike's and Mr. Tucker's repeated violations of the Employer's policy on solicitation and distribution in work areas, management repeatedly turned a blind eye to what Mr. Pike and Mr. Tucker were doing.

That management was not aware of what Mr. Pike and Mr. Tucker were doing strains credulity. As Mr. Pike admitted in response to being questioned as to whether he informed Plant Manager Reed that he was trying to get his co-workers to sign decertification cards, he stated, "Everybody knew I was trying to get them to sign cards." (Tr. at 585)

Mr. Pike's and Mr. Tucker's violation of WestRock's No Solicitation and Distribution Policy was not limited to soliciting and distributing to employees when employees came into Mr. Pike's and Mr. Tucker's work area. Mr. Pike and Mr. Tucker also had free rein to travel around the plant to solicit employees to sign their decertification petition and to hand out decertification cards while they and their co-workers were on company time and their co-workers were in their work areas.

Mr. Pike testified as follows:

**Q Now, for that last 15 to 20 to 30 minutes, depending on how the shift is winding up, you're still on the clock, correct?**

**A Yes.**

**Q But does the company allow you to do, by and large, what you want to do with that end-of-shift time?**

**A Basically, yes; I do.**

Q And is that the way it's always been since you've worked at WestRock?

A Yeah.

Q **Now, during the decertification campaign, did you take some of that time, that end of shift time when you weren't working, to go and talk to some people about decertification?**

A **Yes.**

(Tr. at 529 emphasis added)

Mr. Pike made four or five attempts to convince Mr. Bearden to sign a card to proceed with an election to decertify the Union while both he and Mr. Bearden were working. (Tr. at 279) As Mr. Bearden testified when describing his encounters with Mr. Pike trying to convince him to sign a decertification card:

THE WITNESS: Times we would just meet somewhere in the plant that might come up, other times it would be when I would go out to his press to be there like I was initially.

JUDGE RINGLER: All right. Now, when you saw him at his press, was he working at that time?

THE WITNESS: Yes.

(Tr. at 280)

Patricia Steinaway testified that in January or February 2017, Mr. Pike was travelling around the Chattanooga facility, including in areas in which he had no business, soliciting employees to support his decertification effort. (Tr. at 431, 467-468). While Ms. Steinaway was working, Mr. Pike told her about his decertification effort and asked her if she wanted to sign a decertification card. *Id.* Mr. Pike confirmed that while he travelled around the plant for his job, he attempted to convince employees to sign a decertification card. As Mr. Pike testified:

So I'm really all over the building in my position. And going and getting my plates, my plates are in – through a warehouse and in another part of the building, and I pass people through there. So I pass a lot of people and see a lot of people, and that's how I really got it started. And once you open your mouth, around that place, everybody knows, and then people would come to me.

(Tr. at 543-544) Mr. Pike's managers were aware that he was not at his press and that he was going around soliciting for his decertification effort. (Tr. at 544, 621)

On at least two days in February 2017, Mr. Pike was on the clock being paid by the Employer at the same time he was soliciting for a decertification petition to employees coming in and out of the plant in the lower warehouse part of the Finishing Department of the Chattanooga facility prior to the end of his shift. (Tr. at 35-37, 73, 234-236, 545) (Tr. at 589) Mr. Pike's supervisor released him to distribute decertification cards to other bargaining unit employees in the Finishing Department while he was on company time. (Tr. at 639) As Plant Manager Reed testified:

**Q So your testimony is that, even if you're on the clock, if you're done with your job, you can go solicit other employees?**

A As long as you're released from your supervisor, they know that you're not at your workstation. And you don't interrupt any other working employees.

Q So you have to be released by your supervisor?

A **Yeah. Basically, you've got to say, hey I'm not at my work area, or they know you're not at your work area, and they know that you're going to do X.**

(Tr. at 639 emphasis added)

Furthermore, in response to questions from employees as to why Mr. Pike was permitted to solicit for his decertification petition on working time in work areas, Plant Manager Reed's response indicated that Mr. Pike's efforts were undertaken with full support of management. Mr. Reed responded, "Leah, we're not talking about a 20 minute conversation here, we're talking about a five minute conversation, and we don't limit employees' conversations with one another here." (Tr. at 46-47) Furthermore, Plant Manager Reed stated that there was no problem with

Mr. Pike distributing decertification cards during work hours so long as he was finished with his work and his supervisor approved it. (Tr. at 241)

The Employer's claim that, even though Mr. Pike was still being paid by the Employer, he was not on working time when he solicited and distributed for his decertification effort because he had finished his work and was therefore not violating the Employer's solicitation and distribution policy does not pass the plausibility test. Although the policy states that working time is the period when an employee is expected to be performing job duties, it is hard to fathom how the Employer can be paying an employee and not expecting him or her to be performing job duties. (GC Ex. 2) This is reinforced by the exclusions in the policy for meal and break periods which are specifically unpaid time.<sup>5</sup> (Tr. at 528 and GC Ex. 2)

Even if, as claimed by the Employer, Mr. Pike was not on working time in violation of WestRock's No Solicitation and Distribution Policy when he was soliciting and distributing for the decertification effort, the Employer, with full knowledge and approval of his activities, paid him to solicit and distribute for the decertification effort. Mr. Pike received permission from management to solicit and distribute for his decertification effort while being paid by the Employer after he completed his work prior to the end of his shift.

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<sup>5</sup> Similarly, the Employer's claim that the warehouse, where Mr. Pike was soliciting for his decertification effort and distributing decertification cards, is not considered a working area is disingenuous. WestRock's solicitation and distribution policy defines working area as any area that the Employer has designated for work and includes offices, the conference rooms and the plant floor. (GC Ex. 2) It is difficult to see how work would not be performed in a warehouse or storage area, even if it is only occasional work such as the work that is performed in a conference room. The No Solicitation and Distribution Policy only excludes break rooms and parking lots from working areas, areas where no work is performed and where other activities take place such as eating, smoking and resting. *Id.* WestRock provided no evidence that any non-work activities, such as eating, smoking or resting, occurred in the warehouse area where Mr. Pike solicited and distributed for his decertification effort.

Thus, Mr. Pike was either the beneficiary of a disparately enforced solicitation and distribution policy or the Employer was paying him to solicit and distribute for the decertification effort. Either way, WestRock was actively encouraging, promoting, or providing assistance in the signing of an employee petition to decertify the bargaining representative in violation of Section 8(a)(1). *Mickey's Linen & Towel Supply*, 349 NLRB 790, 791 (2007)

Union supporters were not afforded the same privileges to conduct union business in work areas or on company time and were not permitted to travel around the plant to conduct union business. If a Union steward engaged in the same exact conduct which Joe Pike and Josh Tucker did in soliciting support for their decertification petition--soliciting and distributing to employees who came into their work area or traveling the plant to meet with employees in their work area to solicit or distribute to them--the Union supporters were immediately told to break it up and get back to work. Leah Johnson testified:

THE WITNESS: From the time that I've been a shop steward I know that there have been times where an employee or a coworker may come over to me with a question that may relate to some sort of union business or they have a question regarding the Union contract and my supervisor has said before, or told the employees. We were never disciplined for it; he just simply stated that we would need to wait until break or lunch just to make sure that I didn't get in trouble for discussing things on company time.

(Tr. at 32-32)

Taylor Walker testified:

Q And Charlie White's a shift supervisor?

A He's a shift supervisor over in the finishing department.

Q And what were you doing when he told you that you couldn't discuss union business?

A I rode on a forklift over to the finishing department to discuss something with Leah and it was a break. She was on the tape machine and Charlie came out and told me that if we were talking union business that we'd have to do it on break. And I had to go back over to my building.

(Tr. at 111-112)

Steve Brown testified:

A Yes. I mean, there's been times that we've -- I've went in and -- I go in at 10:45 and we discuss what I have to do through the night. And if something needs to be discussed as far as union-wise between me and the second shift man, which is our chief shop steward, Ron Edgeman, we will speak of what's going on and have been told, I hope you're not discussing union business. I hope --

MR. DEBRUGE: Judge, I'm going to object to the hearsay, "I've been told". It's non-responsive.

JUDGE RINGLER: Yeah. Who told you this?

THE WITNESS: Adam Cartwright, our second shift supervisor.

JUDGE RINGLER: Okay. And when did he tell you this?

THE WITNESS: He has done it numerous times, sir.

JUDGE RINGLER: Okay. Can you give me, you know, something a little more detailed than that? Maybe the range of times. How many times in the last year, for example?

THE WITNESS: Three.

JUDGE RINGLER: Do you want to tell a circumstance where he told you that?

THE WITNESS: It was basically after all the decertifications started in the Union, sir.

(Tr. at 165)

Mr. Brown testified on cross-examination:

A Well, sir, at the beginning of shift change, I have 15 minutes. I punch in at 10:45. I go over what my schedule has to offer for the night for my job duties. And if anything arises as far as my chief shop steward has something to say to me, we sort of stand off to the side and discuss it.

Q Nobody stops you from doing that, do they?

A We have been stopped a couple of times, I hope you're discussing work, not union business.

Q All right. I'm talking about are you allowed to have a union meeting when you're supposed to be working. What I'm talking about is, does the Company police the work floor and tell you you can't talk about the Union as long as you're doing your job.

A Right.

Q Is that correct?

A That's right.

(Tr. at 191-192)

The Employer's argument is that employees are allowed to speak to each other while on the clock so long as they do not interfere with each other's work. (Tr. at 623) But, what Mr. Pike and Mr. Tucker were permitted to do in support of the decertification effort went well beyond mere talking to co-workers in a way that was not interfering with their work. They engaged in active solicitation and distribution in work areas and on working time. While Mr. Pike and Mr. Tucker were working on their machine, they would solicit other employees, also on working time, to support their decertification effort and distribute decertification cards to them. Mr. Pike and Mr. Tucker, also while on working time, sought out employees throughout the plant so they could solicit them to support the decertification petition and distribute to them decertification cards. Mr. Pike was authorized by management to solicit and distribute for the decertification petition on company time in the warehouse area of the plant. None of this testimony was refuted. Supervisor knowledge and approval of these activities was not refuted.

In contrast, any time Union supporters did anything remotely similar to what management permitted Mr. Pike and Mr. Tucker to do with respect to their decertification petition, they were prohibited, broken-up, told to get back to work, threatened that they were violating company rules. Unlike for Mr. Pike and Mr. Tucker, any time a Union supporter

approached another Union supporter on the plant floor during working hours to discuss a matter of Union business, they were told to stop and wait until break time.

WestRock disparately enforced its No Solicitation and Distribution Policy in a way that favored those employees trying to decertify the Union. WestRock paid an employee to solicit for a decertification effort while on the clock. This disparate enforcement of a solicitation and distribution policy in a manner that favors a decertification effort goes well beyond the provision of ministerial aid and deeply into the realm of the promotion, encouragement and assistance of the decertification effort. See *Albertson's, Inc.*, 323 NLRB 1, 6-8 (1997); *Highland Yarn Mills, Inc.*, 313 NLRB 193, 208 (1993); *Lee Lumber and Bldg. Material Corp.* 306 NLRB 408, 418 (1992). Accordingly, WestRock inserted itself into the decertification effort, afforded the decertification petition special treatment, and lent the employees seeking decertification unlawful assistance in violation of Section 8(a)(1) of the Act.

B. The Employer Held Mandatory Meetings with Employees for the Sole Purpose of Encouraging Them to Sign the Decertification Petition.

After almost two months of having free rein throughout the plant to solicit signatures for their decertification petition during working time and while being paid by WestRock, Joe Pike and Josh Tucker were falling short of obtaining the requisite thirty percent of signatures from bargaining unit employees needed to file the petition to hold the decertification election. (Tr. at 585) The Employer solved this problem by holding a series of captive audience meetings with employees on March 22, 2017, for the sole purpose of convincing employees to sign the decertification petition. WestRock enticed the employees to sign the decertification petition by promising them that once a sufficient number of employees signed the petition, WestRock would

tell them all of the reasons why they would be better off by decertifying the Union. (Tr. at 41-42, 168-169)

During this captive audience meeting, Plant Manager Reed told the employees

The first step of the decertification process is for at [least] 30% of the employees to express an interest (typically by signing so called authorization cards), and filing a petition with the NLRB requesting a secret ballot election.

However, **until we receive notice from the NLRB that an election has been scheduled, we are not legally able to answer your questions and talk with you about our position on the decertification process and its consequences . . . .**

However, the law does state that **after the decertification petition is filed, Westrock would be able at that time to express our feelings on whether you are better off with or without this union. We would also be able to provide you with all the facts you need to decide whether you should keep the Teamsters here as your representative.**

(G.C. Ex 4) (Emphasis added.)

In response to a question from employee Christian Gonzalez as to how the employees would know what they were going to get by signing the decertification card, Plant Manager Reed responded that he should sign the card and find out. (Tr. at 171)

WestRock's witness, Jeremiah Lawrence, testified on direct that during this meeting on the first shift, Plant Manager Randy Reed "called a meeting with documentation about the decertification. He went over with everybody on first shift and that's where I learned about it. And he basically said you can – **here's what to do, if you want to sign a card after work, go see Joe Pike after hours. And if we get the right amount of votes, we'll have a vote.**" (Tr. at 482) (Emphasis added.) Mr. Lawrence testified that Plant Manager Reed introduced Mr. Pike to the employees assembled during the first shift meeting on March 22, 2017, and told them that if they wanted to sign a decertification card, then they should see Mr. Pike. (Tr. at 489-490)

Not surprisingly, a sufficient number of signatures on the decertification petition were obtained the day after this captive audience meeting, and Mr. Pike filed his decertification petition with the NLRB the day after that on March 24, 2017. (Tr. at 584)

By conducting this captive audience meeting, informing employees that they would need to sign the decertification petition to find out what WestRock would offer them if they decertified the Union, and instructing employees on who to see to sign the petition, WestRock crossed into the unlawful territory of promoting the decertification petition, encouraging employees to sign the decertification petition, and assisting employees with the signing of the decertification petition.

WestRock claimed that this meeting was in response to employee questions. But that claim is specious. Other than general, vague claims that the reason that they held the meeting was because “employees were asking questions,” WestRock provided no evidence that any specific employee or employees were asking the questions that WestRock felt compelled to answer in these March 22<sup>nd</sup> captive audience meetings. And, certainly not every employee in the Chattanooga facility was asking these questions. There was no reason WestRock needed to tell all employees in the plant that they needed to sign the petition in order to find out what WestRock had to offer them or to inform them of how to go about signing the petition other than to encourage the employees to sign the decertification petition and to promote the petition. *G & K Servs., Inc.*, 357 NLRB 1314, 1315–16 (2011) (vague testimony that information provided by the employer was in response to employer questions supports a finding that the employer volunteered unsolicited information, which, in turn, supports a finding of an implied promise); *Coca-Cola Bottling Co. of Dubuque*, 325 NLRB 1275, 1275-76, fn. 4 (1995) (finding implied

promise where employer offered no direct evidence employees had requested the information, and no indication was given “of the occasion on which questions were asked and of whom”).

Based on the “teasers” that Plant Manager Reed provided to the employees that he would be providing them with valuable information if they signed the decertification petition, along with the guidance he provided on how to sign the decertification, it is difficult to see how the purpose of this meeting was anything other than WestRock’s attempt to actively assist with the signing of the petition, promote the petition, and encourage employees to sign the petition to decertify the bargaining representative. *Mickey's Linen & Towel Supply*, 349 NLRB at 791.

Additionally, the timing of the meeting, in conjunction with Mr. Pike’s flagging efforts to obtain sufficient signatures on the petition, was not coincidental and is additional evidence that WestRock violated Section 8(a)(1) by holding the meeting. *Weisser Optical Co.*, 274 NLRB 961, 968 (1985); *Regency House of Wallingford, Inc.*, 356 NLRB 563, 577 (2011)(explaining the decertification process to employees during a meeting constitutes unlawful encouragement). The conduct of this meeting went far beyond the provision of ministerial aid in response to employee questions. See *Times Herald*, 253 NLRB 524 (1980); *E. States Optical Co.*, 275 NLRB at 375 (suggesting the means and manner by which a decertification can be accomplished, encourages and assists employees in their withdrawal and thereby interferes with, restrains, and coerces such employees in the exercise of their statutory right to retain union membership, and is in violation of Section 8(a)(1) of the Act); *Texaco, Inc. v. NLRB*, 722 F.2d 1226, 1233 -1235 (5th Cir. 1984) (“Section 8(a)(1) of the Act makes it unlawful for an employer to instigate and promote a decertification proceeding or induce employees to sign any other form of union repudiating document, particularly where the solicitation is strengthened by the express or implied threats of reprisal or promises of benefit.”).

As WestRock held the March 22, 2017 meeting for the purpose of promoting the decertification petition, encouraging employees to support the decertification effort, and assisting employees by informing them of how to sign the decertification petition, this meeting was held in violation of Section 8(a)(1) of the Act.

C. Plant Manager Randy Reed Violated Section 8(a)(1) by Telling an Employee that She Would Receive Her Raise when the Union Was Decertified.

Employee Jamie Ford was outspoken that she should receive a pay raise as a result of performing “lead” duties. (Tr. at 608) On March 1, 2017, Ms. Jamie Ford approached Plant Manager Randy Reed and Supervisor Charlie White to tell them about the good work night her team had the night before. (Tr. at 237-239) During the conversation, Supervisor White asked Plant Manager Reed when WestRock was going to “get Ms. Ford paid” for performing those lead duties. (Tr. at 238-239) Plant Manager Reed responded in Ms. Ford’s presence that there was “nothing he can do about it until the contract goes through or the Union is out.” (Tr. at 239) Plant Manager Reed admitted that he made those statements in Ms. Ford’s presence. (Tr. at 608)

Plant Manager Reed told Ms. Ford that her pay raise would be approved once the Union was decertified. It is unlawful for a member of management to promise employees that benefits would be granted as soon as the union is no longer around. *Voca Corp.*, 329 NLRB 591, 592 (1999) (the Board adopted the judge's finding that the employer violated Section 8(a)(1) through a supervisor's statement to a bargaining unit member that the employees would get their VIP checks as soon as the decertification election results were final).

D. Supervisor Sheila Smith Violated the Act by Asking Employee Taylor Walker to Distribute Decertification Cards so She Could Convince Employees to Sign Them.

An employer may not rely upon a decertification petition where it has given assistance to the decertification drive. *Tyson Foods, Inc.*, 311 NLRB 552, 555 (1993). Such unlawful assistance may come about when a statutory supervisor employed by the employer encourages or circulates a decertification petition. *SKC Elec., Inc. & Int'l Bhd. of Elec. Workers, Local Union No. 124 & Int'l Bhd. of Elec. Workers, Local Union No. 257*, 350 NLRB 857, 877 (2007) (citing *Cypress Lawn Cemetery Assn.*, 300 NLRB 609, 617-626, 627-628 (1990)); see also *Times-Herald, Inc.*, 253 NLRB 524, 528 (1980) (the General Counsel establishes a prima facie violation of Section 8(a)(1) of the Act when it proves that a supervisor solicits employee support for a union decertification petition).

In early March while Mr. Pike and Mr. Tucker were struggling to find a sufficient number of co-workers to support their decertification effort, Supervisor Sheila Smith asked employee Taylor Walker to get two blank decertification cards from where Mr. Pike kept them near his press and deliver them to two employees, Ryan Murray and Jeremy Lawrence, for them to sign. (Tr. at 95, 102-103, 115-116, 123-125) Ms. Smith told Mr. Walker that if he delivered blank cards to them, she would do her best to convince them to sign the cards. (Tr. at 116) As part of his job, Mr. Walker travels around the Chattanooga facility and is the only employee on the first shift who does so. (Tr. at 97, 101, 103-104, 110) Such conduct by Sheila Smith, a statutory supervisor at the Chattanooga facility (Tr. at 498), is clearly in violation of the Act.

At the time Ms. Smith asked Mr. Walker to deliver decertification cards to Mr. Murray and Mr. Lawrence, Mr. Walker had already signed a decertification card in front of Mr. Pike and Mr. Tucker, the two employees behind the decertification effort. (Tr. at 114-115, 541) Mr. Walker informed Union Shop Stewards Leah Johnson and Steve Brown of Supervisor Smith's

solicitation of him to provide employees with decertification cards immediately after the event occurred. (Tr. at 93- 97, 116-117, 127, 167-168)

Supervisor Smith was clearly interested in learning how many employees needed to sign the decertification petition in order to proceed with an election. Supervisor Smith became aware of the decertification effort in January or February of 2017. (Tr. at 523) Plant Manager Reed informed Supervisor Smith that there was a decertification petition going around the shop and that the supervisors needed to be aware of it. (Tr. at 524) Although Supervisor Smith testified during her direct testimony, “I have no problem with the Union. Union or not, you know, it don’t matter.” (Tr. at 506), she took the time to research on the Internet, after she became aware of the decertification effort, what percentage of employees in the bargaining unit the Employer needed to sign decertification cards in order to move forward with a decertification election.

Q And you were aware that the – in order to move forward with an election, 30 percent of the members of the bargaining unit had to sign decertification cards?

A I wasn’t aware of that until Randy had a meeting, **and I went on the internet and kind of looked around and see what we needed, what we was going up against.**

(Tr. at 524 (emphasis added))

It is not surprising that a supervisor, who wanted to know “what we needed” and “what we was [sic] going up against” but would not want to be seen taking decertification cards and delivering them to employees, would ask an employee who traveled around the plant and had already expressed support for the decertification effort by signing a decertification card, to bring decertification cards to other employees so that Supervisor Smith could encourage them to sign the cards. Mr. Lawrence was Supervisor Smith’s nephew and Mr. Murray was Mr. Lawrence’s friend and worked on a press with him. (Tr. at 479, 483) While nothing was stopping Supervisor

Smith from going up to Mr. Lawrence directly and asking him to go to Joe Pike, obtain a decertification card and sign it, Mr. Lawrence was a dues paying Union member. (Tr. at 477) It was reasonable for Supervisor Smith to believe that Mr. Lawrence and Mr. Murray would not follow through if she simply asked them to obtain decertification cards from Mr. Pike and sign them. However, if they already had cards in their hand, delivered to them by Mr. Walker, it would be much easier for Supervisor Smith to convince Mr. Lawrence and Mr. Murray to sign the cards in her presence. Supervisor Smith thus violated the Act by directly facilitating and encouraging the signing of Union decertification cards by employees.

E. After the Decertification Petition was Filed with the NLRB, WestRock Violated Section 8(a)(1) by Promising Benefits if the Union was Ousted, Threatening Reprisals if the Union Remained and Baselessly Disparaging the Union.

1. Applicable Law

An employer may inform employees of the wages and benefits its nonunion employees receive and respond to requests for information from employees about such benefits. See *Duo-Fast Corp.*, 278 NLRB 52 (1986). An employer also has the right to compare wages and benefits presently in effect in its unorganized facilities with those enjoyed by employees in a similar facility which has union representation. *Id.* But an employer may not promise, either expressly or implicitly from the surrounding circumstances, that wages and benefits will be adjusted if the union is voted out, because such a promise interferes with employees' free choice in that election. See *Viacom Cablevision*, 267 NLRB 1141 (1983); *Lutheran Retirement Village*, 315 NLRB 103 (1994).

An implied promise of benefits is objectionable conduct that may warrant dismissal of an election petition. *Keystone Auto. Indus., Inc.*, 365 NLRB No. 60 at \*2 (Apr. 13, 2017) (citing

*Etna Equipment & Supply Co.*, 243 NLRB 596 (1979)). “Determining whether a statement is an implied promise of benefit involves consideration of the surrounding circumstances and whether, in light of those circumstances, employees would reasonably interpret the statement as a promise.” *G & K Services*, 357 NLRB 1314, 1315 (2011). It is well established that an employer may lawfully compare union and nonunion wages and benefits, respond to employee requests for information about such wages and benefits, and make statements of historical fact. See, e.g., *Suburban Journals of Greater St. Louis, LLC*, 343 NLRB 157, 159 (2004). But depending on what is said and the context in which it is said, even comparisons and statements of fact may nevertheless convey implied promises of benefits. *Keystone Auto. Indus., Inc.*, 365 NLRB No. 60 at \*2-3 (citing *California Gas Transport*, 347 NLRB 1314, 1318 (2006) (finding implied promise of benefits where drivers at employer's Nogales facility were aware that drivers at San Diego and El Paso facilities had received a 10-percent bonus *after* the representation petition was filed at Nogales, and employer, questioned by Nogales drivers about the possibility of a bonus at Nogales, replied that “what happened in Tijuana [San Diego], happened in Juarez [El Paso]”), *enfd.* 507 F.3d 847 (5th Cir. 2007); *Etna Equipment & Supply Co.*, 243 NLRB at 596-597 (finding implied promise of benefits where employer not only informed employees about pension benefits at a nonunion facility but provided employees examples of what they would receive under the nonunion and union pension plans); *Grede Plastics, A Division of Grede Foundries*, 219 NLRB 592, 592-593 (1975) (factually accurate letter nevertheless “was a clear invitation to the employees to reject the Union and receive benefits for doing so”); *Westminster Community Hospital, Inc.*, 221 NLRB 185, 185 (1975) (considered in context of employer's other statements, wage rate comparison conveyed implied promise to increase wages if employees rejected the union), *enfd. mem.* 566 F.2d 1186 (9th Cir. 1977)); see also *G & K Servs.*,

*Inc.*, 357 NLRB 1314, 1315 (2011) (“[T]he Board has long held that even comparisons and statements of fact may, depending on their precise contents and context, nevertheless convey implied promises of benefits.”).

As the Board has observed, “[i]t is immaterial that an employer professes that he cannot make any promises, if in fact he expressly or impliedly indicates that specific benefits will be granted.” *Keystone Auto. Indus., Inc.*, 365 NLRB No. 60 at \*3 (quoting *Michigan Products*, 236 NLRB 1143, 1146 (1978) (citing *Westminster Community Hospital*, 221 NLRB at 185)); see also *G & K Servs., Inc.*, 357 NLRB at 1316 (“[A]lthough the Employer disclaimed making any promises, it is well settled that such a disclaimer is immaterial ... if in fact [an employer] expressly or impliedly indicates specific benefits will be granted.”). The use of “cautious language or even a refusal to commit ... to specific corrective action, does not cancel the employees' anticipation of improved conditions if the employees oppose or vote against the unions.” *Dyncorp & Grant Turner*, 343 NLRB 1197, 1198 (2004); see also, *Superior Emerald Park Landfill, LLC*, 340 NLRB 449, 460 (2003) (“[T]he fact that an employer couches the promises of benefits in language that does not guarantee anything specific does not remove the taint of illegality”). Thus, the employer's seemingly lawful campaign remarks cannot be examined in isolation. *Keystone Auto. Indus., Inc.*, 365 NLRB No. 60 at \*3. Rather, under the applicable standard, the totality of the employer's relevant statements in the context in which they were made must be considered. *Id.* The employer's unobjectionable statements cannot cure a clear implication that a wage increase or an improvement in benefits for its employees would follow on the heels of a union defeat at the polls. *Id.*

“The relevant inquiry in such cases is not confined to the actual text of an employer's statements. Rather, the Board may draw reasonable inferences regarding the unstated messages

or impressions that the statements convey.” *G & K Servs., Inc.*, 357 NLRB at 1317 (citing *Crown Electrical Contracting*, 338 NLRB 336, 337 (2002); *Grede Plastics*, supra, 219 NLRB at 592-593 (finding that although employer letter did not overtly state joining “team” would result in receiving team benefits, letter nevertheless conveyed that message)). The Administrative Law Judge must consider the inference a reasonable employee would draw from the information provided by the employer, and therefore must consider the cause and effect of a statement. *Id.* The standard for determining whether employer statements violate Section 8(a)(1) is an objective one. *Westwood Health Care Center*, 330 NLRB 935, 940 fn. 17 (2000). The test is whether the employer's statement may reasonably tend to interfere with the employees' exercise of their Section 7 rights. The test does not turn on the employer's motive or on actual effect. *Lee Lumber & Building Material*, 306 NLRB 408, 409 (1992).

In *Keystone Auto. Indus., Inc.*, the Board found that the employer went beyond what is lawfully permitted and “crossed the line” into objectionable conduct by implying that it would reward employees if they voted against the Union. 365 NLRB No. 60 at \*3 (employer made an unlawful promise of benefits by informing its employees that the employees at another facility had recently voted against union representation and had received a 12.45 percent wage increase in the very next pay period after the election there).

In *G & K Services*, the Board held that it was unlawful to link one plant’s benefits to their decertification vote, as employees would reasonably interpret that as a promise that they too would receive the benefit if they similarly voted to decertify the Union. 357 NLRB at 1315-17 (“Indeed, we can fathom no reason for the Employer to juxtapose the Memphis employees' vote to decertify with the receipt of an improved benefit other than to convey the notion that the Portsmouth employees would also receive that benefit if they voted to decertify the Union.”).

Although the statement at issue was unaccompanied by other objectionable conduct and was not individually tailored to the employees at issue, the Board determined that these considerations were not dispositive. *Id.*

Additionally, while employers are permitted to provide employees with accurate information in response to specific questions, vague testimony that information was provided in response to employee questions and the absence of direct evidence that specific employees requested the information provided demonstrates that the employer volunteered unsolicited information, which supports a finding of an implied promise. *G & K Servs., Inc.*, 357 NLRB at 1315–16; *Coca-Cola Bottling Co. of Dubuque*, 325 NLRB at 1275-76, 1276 fn. 4 (finding implied promise where employer offered no direct evidence employees had requested the information, and no indication was given “of the occasion on which questions were asked and of whom”).

2. After the Petition Was Filed, the Employer Held a Series of Captive Audience Meetings in which Employees Were Promised Benefits if They Voted Out the Union.

When viewed in totality, it is beyond a doubt that the message WestRock was communicating to employees at the Chattanooga facility was that their wages and benefits would be improved to the level of wages and benefits WestRock provided to its non-union employees if they voted to decertify the Union.

Less than one week after telling employees in a captive audience meeting that once the decertification petition is filed “WestRock would be able at that time to express our feelings on whether you are better off with or without this union,” and “We would also be able to provide you with all the facts you need to decide whether you should keep the Teamsters here as your

representative,” WestRock held another captive audience meeting on March 27, 2017. (Tr. at 47-49) During the meeting, Plant Manager Reed made the following statements to the employees:

- I believe that you could all be **much better off without** having to pay union dues and without **being held back by a union contract that prevents WestRock from rewarding you** for the great work you do here.
- WestRock believes that you could be **much better off without a union** because our company prefers to work directly with our employees, and not have plants held back due to the cost and disruption of a union.
- We believe that **your quality of life, your financial condition, and your job security could be better if you are union-free.**
- All we want is **one year** to show you that **things can be better here union-free.**

(GC Ex. 5 (italics in original, bold type added))

About a week after the meeting where WestRock told the employees how much better things could be for them at the Chattanooga facility if they only got rid of the Union, WestRock brought in two employees from another facility that had decertified their union to tell the Chattanooga facility employees all of the benefits they received as a result of decertifying their union.

On April 4, 2018, two employees from WestRock’s Conway, Arkansas plant, Earl Johnson and David Brooks, told groups of Chattanooga facility employees in captive audience meetings that the Conway plant employees received a \$2.00 an hour pay increase across the board after their union was decertified and that WestRock increased the Conway employees’ 401(k) matching contribution after they decertified their union. (Tr. at 56, 173, 352-353, 355, 401) It is unlawful for an employer to inform employees that wages and benefits improved after a union was decertified because this links the two events in a cause and effect course of action.

*Keystone Auto. Indus., Inc.*, 365 NLRB No. 60 at \*3.

Additionally, Mr. Johnson told the Chattanooga facility employees that the continued presence of the Union at the Chattanooga facility could jeopardize the future of the plant like it did in Conway. (Tr. at 56, 175, 211-212) They also told Chattanooga employees, without any basis for such statements, that their Union might be financially corrupt and that they should investigate the Union. (Tr. at 57)

Mr. Johnson also told the Chattanooga facility employees that someone from WestRock headquarters, “Norcross,.” would be coming to speak to them and that, although the person from Norcross would not come right out and tell the Chattanooga employees what WestRock would give to them if they decertified the Union, the Chattanooga employees should “listen closely” and “read between the lines” because Norcross would be “telling you what they are going to be able to offer” if the Chattanooga employees decertified the Union. (Tr. at 57, 246-247) As Mr. Brooks and Mr. Johnson were seasoned veterans in the WestRock union decertification campaign, having gone through it in their own plant and assisting WestRock in decertifying both the North Chicago and Fargo plants, they knew exactly how WestRock was going to try to convince employees to decertify the Union with implicit promises of benefits. They knew that their meeting would be shortly followed-up by a meeting with a corporate official who would signal to the employees exactly what improved benefits WestRock would give to them if they decertified the Union if they only “listened closely” and “read between the lines.”

The final piece of the “promise of benefits” chicanery was the April 14, 2017 captive audience meetings that Scott Pulice, WestRock’s Corporate Human Resources Director (the “Norcross” corporate official), held with the Chattanooga facility employees.

During the meeting, Mr. Pulice presented from a number of slides. (Tr. at 60-61 and GC Ex. 6) Mr. Pulice informed the Chattanooga Facility employees that the purpose of the meeting

was to discuss the facts about wages and benefits so that the employees were able to make an informed decision when they had the opportunity to vote. (GC Ex. 6, Slide 2) Mr. Pulice stated that he was there to answer the following questions: “Will I get STD and LTD if our plant is union-free?”; “What health insurance will I get if the plant is union-free?”; “What retirement benefits will I get if the plant is union-free?” and “What about other benefits if we were union-free?” (GC Ex. 6, Slides 4 and 5) Mr. Pulice informed the Chattanooga employees that the information that they would receive from him would be a “TOTAL GAME CHANGER!” (GC Ex. 6, Slide 3) (Emphasis in original.)

Mr. Pulice informed the employees that “Game Changer #1” was annual wage increases that non-union WestRock employees receive (up to 5% or 8% depending on personal performance) versus the annual wage increases that the unionized Chattanooga employees receive (1.5-2.5%). (GC Ex. 6, Slide 22)

Mr. Pulice informed the Chattanooga employees that “GAME CHANGER #2” was the enhanced retirement benefits WestRock’s non-union employees receive. (GC Ex. 6 Slide 30) He informed the employees, “Today, with the GCC-IBT you have a 401(k) Plan that allows you a \$1 for \$1 match up to 1% - that’s all” but that “Non-Union Employees have: \$1 for \$1 match up to 5% AND a 2.5% additional contribution EVEN IF EMPLOYEES DON’T CONTRIBUTE.” *Id.* (Emphasis in original.)

Mr. Pulice then addressed “Game Changer #3 Short Term Disability” by informing employees that at the Chattanooga Facility with the GCC/IBT, they were eligible for short term disability up to a maximum of \$200 per week but that all WestRock non-union employees receive short term disability in the amount of 50% of their weekly wages with no maximum for 26 weeks. (GC Ex. 6, Slide 36)

Mr. Pulice also informed the Chattanooga employees that all hourly employees at WestRock's union-free plants are eligible to participate in a voluntary long-term disability plan, but that this option is not available to employees in Chattanooga because they are in a union, and that WestRock has no plans to change long-term benefits at its union-free plants. (GC Ex. 6, Slide 27)

In concluding his slide presentation, Mr. Pulice asked the Chattanooga employees to think hard about the three "Game Changers" that he had presented when they voted whether to keep the Union or not and that the Employer wanted one year to show the employees how things can change for the better and how much better off they would be without a union. (GC Ex 6, Slide 54)

As Plant Manager Reed testified in response to a question from Judge Ringler:

Judge Ringler:           What does game changer mean to you?

The Witness:            I really don't – if I relate it back to sports, it's a move you make that makes the team better.

(Tr. at 645)

"Game changer" is the cue word that Mr. Pulice used to signal to the Chattanooga facility employees that if they voted out the Union, they would receive the better wages, 401(k) contribution and enhanced disability plans that were in place for WestRock's non-union facilities.

After concluding his slide presentation, Mr. Pulice returned to the 401(k) benefits game changer that WestRock offered to its non-union employees. (Tr. at 62, 183, 250) After obtaining the annual wages of a Chattanooga employee attending the meeting, Mr. Pulice demonstrated how this Chattanooga employee's retirement account would grow significantly more if he was

receiving the non-union 401(k) plan when compared to the Union plan he was currently receiving. (Tr. at 63-64, 89-90, 250, 633) Mr. Pulice indicated that Chattanooga employees could retire as millionaires if they were in the non-union 401(k) plan. *Id.* He told the assembled employees that this information should be a “game changer” and should “blow their minds.” Mr. Pulice concluded by asking employees how they would feel if they could all retire from WestRock as millionaires. (Tr. at 64) This whole exercise went well beyond conveying factual or historical information to the Chattanooga employees. Instead, it was a bald-faced promise that if the Chattanooga employees decertified the Union, they would be placed into WestRock’s non-union pension plan which would allow them all to earn significant sums of retirement savings over and above what they could earn in the Union plan. See *Etna Equipment & Supply Co.*, 243 NLRB at 596-597 (finding implied promise of benefits where employer not only informed employees about pension benefits at a nonunion facility but provided employees with examples showing the exact difference in pension benefits they would receive under the nonunion and union pension plans). This is the inference that a reasonable employee would draw from the information provided by Mr. Pulice about how a Chattanooga employee’s retirement savings would grow in WestRock’s non-union plan. This was not provided for informational purposes. It was provided to show employees what 401(k) plan they would receive, and the associated benefits of that plan compared to the lesser benefits of their current plan, if they voted out the Union. *G & K Services*, 357 NLRB at 1317. Mr. Pulice did not testify and refute any of the testimony with respect to the statements he made during these meetings.<sup>6</sup>

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<sup>6</sup> When a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. *Auto Workers v. NLRB*, 459 F.2d 1329 (D.C. Cir. 1972); *International Automated Machines*, 285 NLRB 1122, 1123 (1987); *Made 4 Film, Inc.* 337 NLRB No. 179 (2002). The adverse inference rule permits an adverse inference to be drawn; it

If WestRock was solely communicating factual information regarding wages and benefits at their non-union facilities, then the information would not be a game changer for the Chattanooga employees, because it would merely be information. The information provided was characterized as a game changer with respect to the employees' support for the Union because WestRock wanted the employees to understand that these would be the benefits they would receive if they voted out the Union and wanted the information to reduce employee support of the Union. The information would reduce an employee's support for the Union only if the employee reasonably believed that he or she was being promised the improved wages and benefits upon decertifying the Union. Thus, by combining the information that WestRock was answering questions as to what benefits would be in place if the Chattanooga facility was union-free with the message that increased wages and benefits in effect at non-union plants were game changers for the Chattanooga facility, WestRock was implicitly promising the employees that these are the improved wages and benefits they would receive upon decertification of the Union. Any employee would reasonably interpret the information presented as promises of benefits if the Union was voted out. *G & K Services*, 357 NLRB at 1315.

In a recent Board decision, the Board found a Section 8(a)(1) violation where there were statements that conditions at the plant will deteriorate if the employees elect the union, a PowerPoint presentation was shown to employees stating that, if they were to elect the Union, "the culture will definitely change," "relationships suffer," and "flexibility is replaced by

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does not, however, create a conclusive presumption against the party. *Rockingham Machine-Lunex v. NLRB*, 665 F.2d 303 (8th Cir. 1981), *cert. denied* 457 U.S. 1107 (1982). The fact that a witness was not present gives rise to an inference that his testimony would have been unfavorable to the Employer. The absence of a witness not only strengthens the probative force of the witnesses for the General Counsel, but is itself is clothed with a certain probative force. *Pur O Sil, Inc.*, 211 NLRB 333, 337 (1974).

inefficiency,” coupled with extolling certain positive aspects of the plant’s then-current work environment, asserting that there is an “easy-going atmosphere,” employees have the “freedom to do [their] job,” and there is “reward/advancement for those that work hard and produce.” The Board held that the employer’s assertions reasonably threatened adverse changes to the existing work culture if employees selected union representation, thereby leading employees to believe that their work environment would deteriorate if they elected the union. *Hendrickson USA, LLC & Gary Pemberton*, 366 NLRB No. 7 at \*1, fn. 2 (Jan. 25, 2018).

Similarly, WestRock’s presentations to Chattanooga facility employees that they were “being held back by a union contract that *prevents* WestRock from rewarding you,” that they “could be much better off without a union,” and that their “quality of life, [their] financial condition, and [their] job security could be better if [they were] union-free,” coupled with extolling the benefits of decertifying the union and the benefits in a non-union environment, explaining that WestRock Conway plant employees received a \$2.00 an hour pay increase across the board and increased employees’ 401(k) match after their union was decertified, asserting that the better wages and benefits at non-union WestRock plants would be “game changers” for the employees at Chattanooga, and showing Chattanooga employees how they would become millionaires if only they were in WestRock’s non-union employee 401(k) plan led these employees to reasonably believe that they would be given the improved wages and benefits WestRock’s non-union employees received. Based on the surrounding circumstances, the type of signaling engaged in by WestRock went beyond the provision of information and interfered with the employees’ free choice on whether to keep the Union and clearly runs afoul of Section 8(a)(1) of the Act.

3. In Addition to Promises of Benefits if the Chattanooga Employees Decertified the Union, WestRock Threatened Employees with Plant Closure if the Union Remained in Place.

The Board's standard in assessing whether a remark constitutes a threat is “whether the remark can reasonably be interpreted by the employee as a threat,” and therefore, is an objective standard or inquiry under Section 8(a)(1) which examines whether the employer's actions would tend to coerce a reasonable employee. *Hendrickson USA, LLC & Gary Pemberton*, 366 NLRB No. 7 at \*5 (Jan. 25, 2018) (quoting *Smithers Tire & Auto Testing of Texas, Inc.*, 308 NLRB 72 (1992)); see also *Wyman-Gordon Co. v. NLRB*, 654 F.2d 134, 145 (1st Cir. 1981). Further, the questionable threats “need not be explicit if the language used by the employer or his representative can reasonably be construed as threatening.” *Id.* (quoting *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49 (9th Cir. 1970)). Therefore, the Board considers the totality of the circumstances in assessing an implicit or ambiguous threat to coerce. *Id.* (citing *KSM Industries, Inc.*, 336 NLRB 133, 133 (2001)).

An employer violates Section 8(a)(1) of the Act by communicating to employees that they will jeopardize their job security, wages or other working conditions if they support the union. *Metro One Loss Prevention Services Group*, 356 NLRB 89, 89-90 (2010) (employer statement that employees should be grateful for their years of service and pay rates and warning that it could get much worse if a union came in constituted unlawful threat). The mere threat of an unspecified reprisal is sufficient to support a finding that the employer has violated Section 8(a)(1). See, e.g., *SDK Jonesville Division, LP*, 340 NLRB 101, 101-102 (2003) (unspecified threat that it was not in employee's best interest to be involved with the union found violative); *Keller Ford, Inc.*, 336 NLRB 722 (2001), *enfd.* 69 Fed. Appx. 672 (6th Cir. 2003) (a supervisor unlawfully advised an employee not to talk to other employees about insurance

copayments, because it could be “hazardous to [his] health”); *Long Island College Hospital*, 327 NLRB 944, 945 (1999) (a supervisor unlawfully told employees to proceed with caution in taking a work-related issue to the union, because one of the employees was getting an unfavorable reputation with management); *Aqua-Aston Hospitality, LLC*, 365 NLRB No. 53 (2017)(where the vice-president of operations told employees that they would lose work, that they were lucky to have jobs, where employees would reasonably understand comments to mean that the employer was angry with their union activities and would feel threatened).

Earl Johnson, one of the employees WestRock brought in from its Conway plant to speak to the Chattanooga employees, told the Chattanooga employees that union/management issues at the Conway plant put the Conway plant at risk of being shut down, if they were not careful, the Chattanooga facility could face the same risk of shut down, and the Chattanooga plant was being watched by corporate headquarters because of the Union. (Tr. at 56, 175, 211-212) Mr. Johnson during his testimony did not deny making these statements to the Chattanooga facility employees. These communications to Chattanooga employees were threats by the Employer that their continued support of the Union could jeopardize their job security in violation of Section 8(a)(1).

4. WestRock Also Disparaged the Union by Implying that It Was Inappropriately Using the Employees’ Dues Money.

During his meetings with the Chattanooga employees, Earl Johnson told the Chattanooga employees that, with respect to the union that had been in place at WestRock’s Conway, Arkansas plant, there were “some shady things going on with their money” that they could not account for. (Tr. at 56-57). Mr. Johnson then told the Chattanooga employees that they “needed

to really look closely at [Local 197-M] to see if the money was being used appropriately.” (Tr. at 57) It is unlawful for the employer to intimate that its employees’ bargaining representative may be engaged in financial malfeasance and doing so reasonably tends to encourage a decertification petition in violation of Section 8(a)(1). See *Rehabilitation & Healthcare Center of Cape Coral v. NLRB*, 178 F.3d 1296 (6th Cir. 1999) (posting of letter suggesting union representative had engaged in criminal conduct would reasonably tend to unlawfully encourage decertification petition); see also *S. Bakeries, LLC & Bakery, Confectionery, Tobacco & Grain Millers Union, Local 111*, 364 NLRB No. 64 (Aug. 4, 2016) (statements must be considered in context, not in isolation, and disparaging statements uttered in the context of other unfair labor practices may rise to the level of unlawful threats); *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 474 (1995) (the Board concluded that the respondent violated the Act by, “making disparaging remarks about the Union in the context of other coercive statements.”), *enfd. in pertinent part* 97 F.3d 65 (4th Cir. 1996); *Al Pfister Truck Serv.*, 236 NLRB 217, 230 (1978) (remarks calculated to undermine and disparage the union in the eyes of the employees are in violation of Section 8(a)(1) of the Act); *Lehigh Lumber Co.*, 230 NLRB 1122, 1125 (1977) (management’s statements intended to denigrate the union in the eyes of the employees is violative of Section 8(a)(1) of the Act). Mr. Johnson’s disparagement of the Union coupled with his and Mr. Brooks’ promises of benefits and threats of reprisals meets the standard for union disparagement in violation of Section 8(a)(1).

F. When Speaking to the Chattanooga Employees, Conway Employees Earl Johnson and David Brooks Were Speaking for WestRock and on Behalf of WestRock and Therefore Were Agents of WestRock Management.

As they asserted throughout the hearing, WestRock will argue that the individuals that they brought in from WestRock's Conway, Arkansas plant to speak with the Chattanooga employees about decertification, Earl Johnson and David Brooks, were mere employees and not agents of WestRock. The evidence, however, establishes beyond any doubt that Mr. Johnson and Mr. Brooks were speaking to the Chattanooga employees on the authority of WestRock management and on behalf of WestRock management. Accordingly, when Mr. Johnson and Mr. Brooks spoke with the Chattanooga employees, they were undeniably agents of the Employer and WestRock is liable for any and all statements they made, including the promises of increased wages and benefits, threats of reprisals, and disparagement of the Union that they communicated to the Chattanooga employees.

1. Applicable Law on Determining whether a Person is Acting as an Agent under the Act.

Section 2(13) of the Act provides that:

In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

The Board has frequently held that an employer may be liable for the statements and acts of nonsupervisory employees who act as its agents. *Waste Stream Mgmt., Inc.*, 315 NLRB 1099, 1121 (1994). In determining whether an employer is responsible for the actions of a rank-and-file employee, the Board has historically applied the general rules of agency and particularly the rules of apparent authority. *Narricot Indus., L.P.*, 353 NLRB 775, 788 (2009) (citing *Corrugated*

*Partitions West*, 275 NLRB 894, 900 (1985)). “The Board has long held that where an employer places a rank-and-file employee in a position where employees could reasonably believe that the employee spoke on behalf of management, the employer has vested the employee with apparent authority to act as the employer's agent, and the employee's conduct is attributable to the employer.” *Id.*; see also, *Waste Stream Mgmt., Inc.*, 315 NLRB at 1121-22. “An agent has apparent authority to speak for a principal when the principal does something or permits the agent to do something, which reasonably leads another to believe that the agent had the authority he purported to have.” *New England Confectionary Co. & Bakery, Confectionary, Tobacco Workers & Grain Millers Int'l Union, Local 348 & Jose E. Pinto, Intervenor.*, 356 NLRB 432, 440 (2010) (quoting *Cablevision Industries*, 283 NLRB 22, 29 (1987) and citing *Massey Energy Co.*, 354 NLRB No. 83, slip op. 78 fn. 11 (2009)). Conduct by an agent of the employer can serve to taint a petition. *Narricot Indus., L.P.*, 353 NLRB at 788-89.

The question is whether, under all the circumstances, employees would reasonably believe that the person spoke for, and acted on behalf of, management. *Id.* at 789 (citing *Futuramik Industries*, 279 NLRB 185 (1986); *Community Cash Stores*, 238 NLRB 265 (1978)); see also *Waste Stream Mgmt., Inc.*, 315 NLRB at 1122. (“The test is whether, under all the circumstances, the employees would reasonably believe that the non-supervisory employee was reflecting company policy and speaking and acting for management.”). Phrased differently, the inquiry is whether the employer has placed the employee in the position of a conduit where employees reasonably believe that he or she speaks for management. *Narricot Indus., L.P.*, 353 NLRB at 789 (citing *Three Sisters Sportswear Co.*, 312 NLRB 853, 865 (1993)). The ultimate test is whether, under all the circumstances, employees would reasonably believe that the purported agent spoke for and acted on behalf of company management. *New England*

*Confectionary Co.*, 356 NLRB at 440 (citing *Zimmerman Plumbing Co.*, 325 NLRB 106, 106 (1997); *Great American Products*, 312 NLRB 962, 962 (1993); *Dentech Corp.*, 294 NLRB 924, 925 (1989)). Moreover, the strict principles of agency are not applied in determining an employer's responsibility under the Act for the conduct of others. *Waste Stream Mgmt., Inc.*, 315 NLRB at 1122.

A person who has no personal interest or motivation to remove the union is presumed to have acted in the interest and at the direction of management. *Narricot Indus., L.P.*, 353 NLRB at 789. The employer providing the persons at issue with the method and means to communicate with the employees is evidence of an agency relationship. *Id.* (employer provided person with information and tools to communicate with employees). An employer can clothe a person with apparent authority to act in its behalf even if the employer did not specifically tell employees that the person spoke for management. *Id.* (citing *Tyson Foods*, 311 NLRB 552, 561(1993)). Apparent authority may be inferred when an employee acts with the cooperation of or in the presence of supervisors. *New England Confectionary Co.*, 356 NLRB at 440 (citing *Dentech*, supra at 926; *Advanced Mining Group*, 260 NLRB 486, 503-504 (1982)). “In analyzing agency, the Board will also consider whether the statements or actions of an alleged employee agent are consistent with statements or actions of the employer. Such consistencies support a finding of apparent authority.” *Narricot Indus., L.P.*, 353 NLRB at 789 (citing *Pan-Oston Co.*, 336 NLRB 305, 306 (2001); *Hausner Hard Chrome of KY, Inc.*, 326 NLRB 426, 428 (1998)).

Persons who are directed by management to speak with employees are acting with management’s actual authority, not just with apparent authority. *Id.* at 790.

2. When Conway Employees Earl Johnson and David Brooks Met with Chattanooga Employees, They Were Acting with WestRock's Actual Authority, or, Alternatively, They Were Acting with Apparent Authority because Employees Reasonably Believed that They Spoke for and Acted on behalf of WestRock Management.

WestRock management directed Conway employees Earl Johnson and David Brooks to meet with and speak to Chattanooga facility employees about their experiences with a union decertification effort. When Mr. Johnson and Mr. Brooks met with and spoke to the Chattanooga facility employees they were acting with WestRock management's actual authority. *Narricot Indus., L.P.*, 353 NLRB at 790. At the very least, based on all of the circumstances leading up to and during their meetings with Chattanooga facility employees, the facts establish that Mr. Johnson and Mr. Brooks were acting with apparent authority from WestRock management as employees would have reasonably believed that Mr. Johnson and Mr. Brooks were speaking for and acting on behalf of WestRock management. *Id.* at 788-89.

At the beginning of April 2017, WestRock brought two employees from its Conway, Arkansas plant for the specific purpose of meeting with and speaking to the Chattanooga facility employees about their experiences with a union decertification effort. (Tr. at 50-52, 319, 323-324) Mr. Johnson testified that he was asked by WestRock management to speak to the Chattanooga facility about his experiences during and after a decertification effort at his plant:

Q Okay. Now, we're not here today really to talk about Conway as much as we are to talk about the Chattanooga plant. How did you come to speak to the folks here in Chattanooga?

A I was approached by the HR lady and my plant manager. And they asked, would we volunteer to come and speak on behalf of what happened to us during -- before the -- I mean, during the Union and after the decertification -- I mean, I was an officer in the Union -- and tell my side of the story. And that's what we did.

(Tr. at 323)

WestRock paid for Mr. Johnson and Mr. Brooks to travel to the Chattanooga facility from the Conway facility and paid all of their related expenses, including flights, hotel, car rental and meals for the purpose of talking to Chattanooga employees during the period April 2, 2017 to April 6, 2017. (Tr. at 335, 336-337, 338-339) Mr. Brooks paid for his and Mr. Johnson's expenses for the Chattanooga trip using a WestRock corporate credit card. (Tr. at 379, 385, 404-405) Further, Mr. Johnson and Mr. Brooks were paid by WestRock for each day, from April 2nd through April 6th, including overtime pay for Mr. Johnson who is an hourly-paid employee. (Tr. at 337-338, 346, 350, 385-386 and GC Ex. 9) Management providing the means for someone to communicate with employees is evidence of an agency relationship. *Narricot Indus., L.P.*, 353 NLRB at 789.

This was not the first time WestRock had enlisted Mr. Johnson and Mr. Brooks to travel the country to visit unionized WestRock plants and authorize them to convince the employees to vote to decertify their union all at the expense of WestRock. (Tr. 325, 349) In each instance, Mr. Johnson and Mr. Brooks were requested by WestRock management to visit a unionized plant, informed about the topic that they should discuss, had their expenses paid by WestRock, were paid wages by WestRock to visit the unionized plants and were prepared for their meetings with employees by WestRock management and attorneys prior to talking to employees about their decertification experiences. (Tr. at 349-350, 384) Prior to speaking to the Chattanooga employees, at the request of WestRock management, Mr. Johnson and Mr. Brooks spoke to employees in the North Chicago, Illinois and in Fargo, North Dakota about their experiences in decertifying the union at the Conway plant and the benefits to them that sprung from that decertification. (Tr. at 325, 349-350, 384-385, 392)

On April 2, 2017, after arriving in Chattanooga, Mr. Johnson and Mr. Brooks went to the Chattanooga facility where they met with Plant Manager Reed for about an hour and then met with a WestRock attorney for about an hour in preparation for their meetings with the Chattanooga facility employees. (Tr. at 338-341, 364) During those meetings with Plant Manager Reed and a WestRock attorney, Mr. Johnson and Mr. Brooks discussed the planned meetings with groups of Chattanooga employees, and were told by Plant Manager Reed and the WestRock attorney what they were allowed to say and were not allowed to say during the employee meetings, and that they could not promise anything to the Chattanooga employees. (Tr. at 341, 387-388, 407, 629) This was because WestRock did not want Mr. Johnson or Mr. Brooks to promise anything on behalf of the Employer. (Tr. at 643)<sup>7</sup>

It is unlawful for an employer to make promises of benefits that would result from the decertification of a union. WestRock management told Mr. Johnson and Mr. Brooks not to make any promises to the Chattanooga employees, because they knew that the Employer could be liable for those statements. If WestRock truly believed that Mr. Johnson and Mr. Brooks were not management's agent, then they would have had no reason to tell Mr. Johnson and Mr. Brooks what statements the Employer was prohibited from making to employees, because nothing Mr. Johnson or Mr. Brooks would have said could have been attributable to WestRock. WestRock management and legal counsel informed Mr. Johnson and Mr. Brooks not to make promises or threats because WestRock knew that when Mr. Johnson and Mr. Brooks were speaking to Chattanooga employees, they were speaking with actual or apparent authority from WestRock management. Plant Manager Reed and WestRock legal counsel did not want Mr.

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<sup>7</sup> Mr. Johnson and Mr. Brooks also met with WestRock's attorney before they left Chattanooga after all of the employee meetings had been completed to provide them with a summary wrap-up of their meetings with employees. (Tr. at 344-345)

Johnson and Mr. Brooks to say anything that would get the Employer into trouble. *Narricot Indus., L.P.*, 353 NLRB at 789 (providing information about how to communicate with employees is evidence of an agency relationship).

Plant Manager Reed then took Mr. Johnson and Mr. Brooks on a tour of the Chattanooga facility, and Plant Manager introduced them to virtually every one of the Chattanooga employees. (Tr. at 340, 357) Mr. Johnson and Mr. Brooks were wearing black WestRock button down shirts, with the WestRock logo on one side and their name on the other side, when they toured the facility with Plant Manager Reed and when they met with the employees in the meetings. (Tr. at 357, 379-380) Chattanooga facility employees do not wear WestRock shirts or uniforms while working. (Tr. at 414, 624-625)

Plant Manager Randy Reed also gave Mr. Johnson and Mr. Brooks free rein to move around the Chattanooga facility to talk to employees about their decertification experiences and how their wages and benefits changed after they decertified the union at their facility. (Tr. at 409) At other times, Plant Manager Randy Reed set up Mr. Johnson and Mr. Brooks in the Chattanooga facility breakroom and told employees to go see them and ask them any questions about decertifying the Union at Chattanooga. (Tr. at 409-411) See *New England Confectionary Co.*, 356 NLRB at 440 (apparent authority inferred when persons act with the cooperation or in the presence of management).

Over the course of the three full days in which they were in Chattanooga, Mr. Johnson and Mr. Brooks held ten meetings with groups of Chattanooga employees which lasted on average about an hour and fifteen minutes to an hour and thirty minutes each. (Tr. at 342, 390, 629-630) These meetings were mandatory for the employees to attend. (Tr. at 641)

At the beginning of each meeting, Plant Manager Reed introduced Mr. Johnson and Mr. Brooks to the assembled Chattanooga employees. (Tr. at 51, 172, 243) During each of these meetings, Mr. Johnson and Mr. Brooks were wearing their WestRock shirts. (Tr. at 357) The employees perceived Mr. Johnson and Mr. Brooks to be members of management. (Tr. at 80, 245) At the conclusion of each of the meetings, Plant Manager Reed or another member of management came into the meeting to dismiss the assembled employees. (Tr. at 358, 390)

These undisputed facts undeniably establish that Mr. Johnson and Mr. Brooks were speaking and acting with actual or apparent authority of WestRock management. Management asked them to speak, provided the parameters for their speech, and provided them the means and venue to speak to the Chattanooga employees. Further, Mr. Johnson and Mr. Brooks were placed in a position by management where employees would reasonably believe that they spoke on behalf of management, from Mr. Johnson and Mr. Brooks being introduced around the plant by the Plant Manager, to having special times and places established by management for employees to meet with them, to employees being sent by management to meetings scheduled during working time to hear them speak, to having management start and end those meetings, and to having them speak to employees on a topic that was of critical importance to management and in a manner that was consistent with the statements and actions of management. *New England Confectionary Co.*, 356 NLRB at 440; *Narricot Indus., L.P.*, 353 NLRB at 788; *Waste Stream Mgmt., Inc.*, 315 NLRB at 1121-22.

Mr. Johnson and Mr. Brooks, who worked at the Conway plant, had no personal interest or motivation to remove the Union from Chattanooga, and therefore are presumed to have acted in the interest and at the direction of management. *Narricot Indus., L.P.*, 353 NLRB at 789. Furthermore, WestRock providing Mr. Johnson and Mr. Brooks with the method and means to

communicate with the Chattanooga employees is evidence of an agency relationship. *Id.* That WestRock did not specifically tell the employees that Mr. Johnson and Mr. Brooks spoke for management is irrelevant. *Id.* (citing *Tyson Foods*, 311 NLRB 552, 561(1993)). Their apparent authority may be inferred because they acted with the cooperation of, and in the presence of, supervisors. *New England Confectionary Co.*, 356 NLRB at 440 (citing *Dentech*, *supra* at 926; *Advanced Mining Group*, 260 NLRB 486, 503-504 (1982)). And, an agency relationship between WestRock and Mr. Johnson and Mr. Brooks is demonstrated by the consistency between their statements and those of the employer on the decertification issues. *Narricot Indus., L.P.*, 353 NLRB at 789 (citing *Pan-Oston*, 336 NLRB at 306; *Hausner Hard Chrome of KY, Inc.*, 326 NLRB 426, 428 (1998)).

Thus, under all circumstances, employees would reasonably believe that Mr. Johnson and Mr. Brooks spoke with actual or apparent authority from WestRock management. Therefore, their statements are attributable to the WestRock management and can serve as the basis for tainting the petition.

G. WestRock's Remaining Arguments that the Employer Did Not Make Promises of Benefits or Threats of Reprisals Are Similarly Unavailing.

Throughout the hearing, WestRock posited a number of reasons as to why the statements that they made during these four employee meetings, March 22, March 27, April 4 and April 18, should not be deemed in violation of Section 8(a)(1) of the Act. None of these arguments have any merit.

WestRock asserts that the information that they were providing to employees was in response to their questions, and, therefore, was protected by Section 8(c) and could not serve as

the basis of Section 8(a)(1) violations. However, WestRock never provided any testimony or evidence that any specific employee or employees asked the myriad questions that WestRock answered for the employees as to why their lives would be so much better without the Union. All WestRock offered were assertions that all of the information they were putting out was in response to questions raised by unidentified employees. *G & K Servs., Inc.*, 357 NLRB at 1315–16 (vague testimony that information provided by the employer was in response to employee questions supports a finding that the employer volunteered unsolicited information, which, in turn, supports a finding of an implied promise); *Coca-Cola Bottling Co. of Dubuque*, 325 NLRB at 1276 fn. 4 (1995) (finding implied promise where employer offered no direct evidence employees had requested the information, and no indication was given “of the occasion on which questions were asked and of whom”).

The claim that they brought employees from the Conway plant to tell employees about their decertification experiences in response to employees’ request for such meetings is particularly specious. Given that this was Mr. Johnson’s and Mr. Brooks’ third time coming to unionized plants to tell employees why they should decertify, it is hardly credible that their road show in Chattanooga was the result of employee inquiries as opposed to part of a well-developed corporate plan to convince employees to rid themselves of the union. Even Joe Pike, who was the driving force behind the decertification effort, admitted that no other employee asked management if people from other plants could come and talk and answer questions about their experience with decertifying a union. (Tr. at 560-61)

WestRock also will likely argue that they qualified all of their communications with employees with statements that they were not allowed to make promises of benefits and that nothing that they were stating should be construed as a promise of benefits if the Union was

decertified. However, the Board has long acknowledged that disclaimers on the making of promises coming out of one side of the Employer's mouth is meaningless when coupled with implicit or explicit promises coming out of the other side of the Employer's mouth. *Keystone Auto. Indus., Inc.*, 365 NLRB No. 60 at \*3 (“It is immaterial that an employer professes that he cannot make any promises, if in fact he expressly or impliedly indicates that specific benefits will be granted.”) (quoting *Michigan Products*, 236 NLRB 1143, 1146 (1978) (citing *Westminster Community Hospital*, 221 NLRB at 185)); see also *G & K Servs., Inc.*, 357 NLRB at 1316 (“[A]lthough the Employer disclaimed making any promises, it is well settled that such a disclaimer is immaterial ... if in fact [an employer] expressly or impliedly indicates specific benefits will be granted.”).

The employer's campaign remarks regarding promises cannot be examined in isolation. *Keystone Auto. Indus., Inc.*, 365 NLRB No. 60 at \*3. Rather, under the applicable standard, the totality of the employer's relevant statements in the context in which they were made must be considered. *Id.* The employer's unobjectionable statements cannot cure a clear implication that a wage increase or an improvement in benefits for its employees would follow on the heels of a union defeat at the polls. *Id.* Despite WestRock's disclaimers on the making of promises, WestRock's signaling of the wages and benefits that would be implemented if the Union was voted out was unmistakable. From the initial promises that as soon as the decertification petition was filed WestRock would tell the Chattanooga employees what they would be able to offer them if they decertified the Union, to the promises from Plant Manager Reed that life would be better for the employees without the Union, to the stories from the Conway employees as to how their wages and benefits were improved immediately after they voted out the Union, to the “game changers” WestRock's Human Resources Director presented about non-union wages and

benefits along with an example of how WestRock employees would benefit by being in WestRock's non-union pension plan, WestRock had a plan to ensure that employees knew that specific benefits would be granted if they voted out the Union and no amount of disclaimers could cure those violations of the law.

WestRock will likely argue that the Charging Party's witnesses did not perceive the Employer's statements as promises. (Tr. at 610-611, 615) However, the standard is not a subjective one as to whether any particular employee perceived management statements to be promises of benefits or threats of reprisals. The standard is an objective one as to whether the statements made by the employer would reasonably be interpreted by employees as a promise in light of the surrounding circumstances. *G & K Services*, 357 NLRB at 1315.<sup>8</sup>

Furthermore, WestRock's observational employee witness, Patricia Steinaway, who testified as to what occurred during all of WestRock's meetings with employees, was an extremely dubious witness. In addition to her utter contempt for the Union manifested by many of her statements (Tr. at 429-430, 460-461), on cross-examination, Ms. Steinaway could not remember any of the details of the meetings that she so confidently testified about on direct examination. For instance, after testifying with certainty that WestRock Corporate Human Resources Director Scott Pulice had not made any promises of benefits during his presentation to employees on April 14, 2017, Ms. Steinaway could not remember whether Mr. Pulice used the term "Game Changer," which was highlighted in large, bold text at least four times throughout

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<sup>8</sup> Employee Jamie Ford testified that there were not any promises of wage or benefit increases. (Tr. at 260) But, Ms. Ford was referring the pre-petition meeting held on March 22, 2017 (Tr. 259-60 and GC Ex. 4) There were no specific promises of benefits made at this March 22<sup>nd</sup> meeting, only assurances that WestRock would tell the employees why they should not keep the Union around after the petition had enough signatures and was filed. (GC Ex. 4)

Mr. Pulice's presentation. (Tr. at 461). Additionally, Ms. Steinaway, who was so certain on direct testimony that Mr. Pulice's written example of the 401(k) plan benefits for WestRock non-union employees was not a promise of benefits, conceded during her cross-examination testimony that she could not remember any of the numbers that Mr. Pulice used in his example and that she "do[es]n't understand that much about the 401(k)s." (Tr. at 463-464)

With respect to the meeting with Mr. Johnson and Mr. Brooks from Conway, Arkansas, Ms. Steinaway testified that the meeting was only 15 or 20 minutes long (Tr. at 465), when both Mr. Johnson and Mr. Brooks testified that each meeting was an hour to an hour and a half long. (Tr. at 342, 390) The length of the meeting being at least an hour long was also established by Leah Johnson's notes of the meeting. (R. Ex. 62)

Finally, Ms. Steinaway was certain that Larry Fortner was conducting union business on the clock two years ago, but had no idea whether Joe Pike was soliciting for his decertification petition on the clock, because, as she stated, "I can't tell you whether [Joe Pike] was clocked out or not; I don't have access to those records." (Tr. at 466-467)

Consequently, Ms. Steinaway's testimony on direct was not credible.

WestRock may also argue that the meetings where wages and benefits were discussed were not captive audience meetings. This claim is without merit. Meetings were scheduled for the employees during working hours. (Tr. at 239-40, 242-23, 248) Employees were told that there was a meeting for them at a particular time. (Tr. at 641) Employees were not told that they were able to opt-out of the meetings. *Id.* Employees were not told that the meetings were voluntary. *Id.* Employees had no reason to believe that a scheduled work meeting during working time that was not announced to be voluntary was anything other than a mandatory

meeting. The fact that a couple of employees may have taken it upon themselves to approach management and receive permission to opt-out of attending the meetings does not make them any less captive.

WestRock may argue that Union steward Leah Johnson was acting as a stenographer and therefore, anything that was not in her notes was not said during a meeting in which she was a participant. Although no one disputes that Ms. Johnson was taking notes during the meetings that she attended, there was no evidence that Ms. Johnson took down everything that everyone said or acted as a stenographer during the meetings other than WestRock's counsel's assertion that this is what she did. In fact, the evidence directly contradicts that Ms. Johnson wrote down what everyone said during a meeting. The meetings that Mr. Johnson and Mr. Earl conducted with Chattanooga employees lasted an hour to an hour and a half. (Tr. at 342, 390) Ms. Johnson's notes of the meeting, which indicated that the meeting lasted one hour, were not even two typed pages. (R. Ex. 62) If Ms. Johnson had been transcribing every word said, as alleged by WestRock, her notes of the meeting would have been considerably longer.

H. Plant Manager Randy Reed Violated Section 8(a)(1) by Implicitly Promising Employees the Benefits of WestRock's 401(k) Plan for Non-Union Employees and by Soliciting a Decertification Card from an Employee.

On March 27, 2017, Plant Manager Randy Reed spoke to employees Bill Bearden and Ken Frost while they were working on their press about the large amount of money that his son was able to amass in his 401(k) account (\$19,000.00) because he transferred from WestRock's unionized Chattanooga facility to WestRock's non-union Kimball plant. (Tr. at 139-142, 282-285). Plant Manager Reed admitted to explaining to Mr. Bearden and Mr. Frost how much

money his son would be able to retire with as a result of him participating in WestRock's non-union 401(k) plan. (Tr. at 614)

The only purpose Plant Manager Reed could have had to discuss with Chattanooga employees how much 401(k) money his son was receiving at one of WestRock's non-union plants was to entice those employees into believing that they would receive the same 401(k) contributions if they decertified the Union at Chattanooga. *G & K Services*, 357 NLRB at 1315.

Immediately after extolling the virtues of WestRock's 401(k) plan for non-union employees, Plant Manager Reed collected a decertification card from Mr. Frost and delivered it to Joe Pike. (Tr. at 143-144) A supervisor's action in circulating a decertification petition is in violation of Section 8(a)(1) of the Act. *Arcadia Foods, Inc.*, 254 NLRB 1012, 1017 (1981).

I. Plant Manager Reed Interrogated an Employee Over His Facebook Post in Violation of Section 8(a)(1).

An interrogation is unlawful if, in light of the totality of the circumstances, it reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Mathews Readymix, Inc.*, 324 NLRB 1005, 1007 (1997), *enfd. in part* 165 F.3d 74 (D.C. Cir. 1999); *Emery Worldwide*, 309 NLRB 185, 186 (1992); *Liquitane Corp.*, 298 NLRB 292, 292-93 (1990). Relevant factors include, whether the interrogated employee was an open or active union supporter, whether proper assurances were given concerning the questioning, the background and timing of the interrogation, the nature of the information sought, the identity of the questioner, and the place and method of the interrogation. *Stoody Co.*, 320 NLRB 18, 18-19 (1995); *Rossmore House Hotel*, 269 NLRB 1176, 1177-1178 (1984), *affd. sub nom. Hotel Employees Union Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). The Board has viewed the

fact that an interrogator is a high-level supervisor as one factor supporting a conclusion that the questioning was coercive. See, e.g., *Stoody*, supra.

A direct or high-level supervisor asking an employee why he exercised his statutory right is unlawful, especially if the supervisor never gives a legitimate reason for the inquiry and never assures the employee that no reprisals would follow based upon his answers. *Kalthia Grp. Hotels, Inc. & Manas Hosp. LLC d/b/a Holiday Inn Express Sacramento A Single &/or Joint Employer & Unite Here! Local 49*, 20-CA-176428, 2017 WL 3977469 (Sept. 8, 2017) (direct supervisor asking an employee why she exercised her statutory right to cancel her signature from the decertification petition was unlawful) (quoting *NLRB v. Champion Labs, Inc.*, 99 F.3d 223, 230 (7th Cir. 1996)).

Employee Steve Brown posted on Facebook to his co-workers stating in part: “To my brothers and sisters throughout the plant there is something Randy Reed is not trying to tell everyone for him to want to try to get rid of our Union we work so hard to keep . . . .” (GC Ex. 7)

This Facebook posting was protected, concerted activity. *Triple Play Sports Bar and Grille*, 361 NLRB No. 31 (2014) (employees have a right under Section 7 to use social media to communicate with each other and with the public), *affirmed*, 629 Fed. Appx. 33 (2d Cir. 2015); *Purple Commc'ns, Inc.*, 361 NLRB No. 126 (Dec. 11, 2014) (Johnson dissent) (“The Board has created strong protections to ensure that employers may not attempt to limit employee use of social media for Section 7 purposes.”)<sup>9</sup>

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<sup>9</sup> See, e.g., *Triple Play Sports Bar and Grille*, 361 NLRB No. 31 (2014) (employees engaged in protected concerted activity using Facebook to complain about employer's treatment of State income tax withholding, among other things); *Laurus Technical Institute*, 360 NLRB No. 133 (2014) (employee sent coworker protected text messages regarding employer favoritism in assigning leads); *Salon/Spa at Boro, Inc.*, 356 NLRB No. 69 (2010) (employees exchanged

Shortly thereafter, Plant Manager Reed called Mr. Brown into a meeting to interrogate him about his Facebook post. (Tr. at 178-179). Plant Manager Reed asked Mr. Brown if he had a problem with the plant. (Tr. at 179) Then, Plant Manager Reed asked Mr. Brown if he had a problem with him. *Id.* He then asked Mr. Brown why he would say the things he said in his Facebook post. (Tr. at 180) Plant Manager Reed did not provide Mr. Brown with a legitimate reason for the inquiries and never assured Mr. Brown that no reprisals would follow based upon his answers.

In the midst of a decertification campaign, Plant Manager Reed calling an employee into his office to question him about why he had posted certain statements about him in a protected Facebook post without providing proper assurances concerning the questioning reasonably tended to interfere with, restrain, or coerce the exercise of Mr. Brown's Section 7 rights in violation of Section 8(a)(1) of the Act. In fact, Mr. Brown had deleted the post at the time Plant Manager Reed interrogated him, and he did not repost it after the interrogation. (Tr. at 219)

J. The Decertification Petition Was Tainted by Pre-Petition and Post-Petition Unfair Labor Practices and Its Dismissal Must Be Affirmed.

1. WestRock's Promotion of the Decertification Petition to Employees, Assistance Afforded to the Employees, and Encouragement of Those Employees to Sign the Petition Prior to the Petition Being Filed Is Sufficient Justification for Dismissal of the Petition.

WestRock's promotion, assistance, and encouragement of the decertification petition by disparately enforcing the Employer's No Solicitation and Distribution Policy in favor of the

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protected text messages concerning plan to complain to management about conduct of supervisors); *Design Tech. Grp., LLC*, 361 NLRB No. 79 (Oct. 31, 2014) (employees exchanged protected messages on Facebook expressing concern about working late in unsafe neighborhood); *Hispanics United of Buffalo, Inc.*, 359 NLRB 368 (2012) (employees exchanged protected messages on Facebook responding to criticism of their job performance).

employees supporting the decertification effort, paying employees to solicit for the decertification effort, and holding a meeting whereby WestRock signaled to employees that they would be told the benefits of voting out the Union once a sufficient number of employees signed decertification cards, in and of itself, is sufficient grounds to affirm the Regional Director's dismissal of the decertification petition in Case No. 10-RD-195447.

A case is controlled by *Hearst Corp.*, 281 NLRB 764, 764 (1986), *enfd. mem.* 837 F.3d 1088 (5th Cir. 1988) when an employer has unlawfully assisted, supported, or otherwise unlawfully encouraged a decertification petition, even absent specific proof of the misconduct's effect on employee choice. When an employer has engaged in unfair labor practices directly related to an employee decertification effort, such as actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining representative, the employer's unfair labor practices are not merely coincident with the decertification effort; rather, they directly instigate or propel it. *SFO Good-Nite Inn*, 357 NLRB 79, 80 (2011) (citing *Hearst Corp.*, 281 NLRB 764, 764 (1986) (where employer seeks to solicit employee repudiation of union as representative, decertification petition is tainted), *enfd. mem.* 837 F.3d 1088 (5th Cir. 1988)). Under *Hearst*, the Board therefore presumes that the employer's unlawful meddling tainted any resulting expression of employee disaffection, without specific proof of causation, and precludes the employer from relying on that expressed disaffection to overcome the union's continuing presumption of majority support. *Id.* (citations omitted).

The Board in *SFO Good-Nite Inn* stated that in *Hearst* the Board made clear that where an employer engages in unlawful activity aimed specifically at causing employee disaffection its misconduct will bar any reliance on an expression of disaffection by its employees,

notwithstanding that some employees may profess ignorance of their employer's misconduct. *SFO Good-Nite Inn*, 357 NLRB at 81. The Board explained in *SFO Good-Nite Inn*, citing *Hearst*, that the rule is justified because “when an employer unlawfully foists itself into an employee decertification campaign, it ‘cannot expect to take advantage of the chance occurrence that some of its employees may be unaware of its actions,’ but rather ‘must be held responsible for the foreseeable consequence of its conduct.’” *Id.*

The Board stated in *SFO Good-Nite Inn* that:

*Hearst* thus creates a conclusive presumption that an employer's commission of unfair labor practices assisting, supporting, encouraging, or otherwise directly advancing an employee decertification effort taints a resulting petition. As described, this presumption is based on the predictable result of an employer's unlawful, direct participation in an employee decertification effort--a petition plagued with uncertainty because of the very nature of the employer's unfair labor practices, which is *per se* insufficient to rebut the presumption of continuing majority status. We reaffirm the *Hearst* presumption today for the reasons given in *Hearst* itself, described above, and for those that follow.

357 NLRB at 81.

As the Board stated, “we are unwilling to allow [the employer] to enjoy the fruits of its violations by asserting that certain of its employees did not know of its unlawful behavior.” *Id.* at 82 (quoting *Hearst*, 281 NLRB at 765). “[W]hen an employer unlawfully thrusts itself into its employees' decertification debate there is little need for extended analysis of the likely impact of the employer's misconduct. As recognized in *Hearst* and in other cases, the objective ‘foreseeable consequence’ of such misconduct—and frequently its purpose—is ‘an inherent tendency to contribute to the union's loss of majority status.’ Thus, no direct proof of the unfair labor practices' effect on petition signers is necessary to conclude that the violations likely interfered with their choice.” *Id.*; see also *Ron Tirapelli Ford, Inc.*, 304 NLRB 576, 579-580 (1991), *enfd. in rel. part* 987 F.2d 433 (7th Cir. 1993) (affirming the judge's nullification of

election results and dismissal of the RM petition where the judge determined that the RM petition was tainted because of the employer's "unlawful conduct and coercive role in its solicitation and support for the employee petition" that was used to support its RM petition).

WestRock's violation of Section 8(a)(1) by promoting the decertification effort engaged in by Mr. Pike and Mr. Tucker by allowing them free reign to solicit and distribute for the decertification petition in violation of the Employer's No Solicitation and Distribution Policy and in a manner that was not afforded to Union supporters, the assistance that they offered by instructing employees who to see to obtain decertification cards, and the mandatory meeting whereby the Employer encouraged employees to sign the decertification petition by telling them that once a sufficient number of them did, WestRock would inform them of the reasons why they should cease their support of the Union, is conclusive proof of the tainting of the resulting petition. As the petition in Case No. 10-RD-195447 was tainted prior to it being filed, it was properly dismissed by the Regional Director, and his decision must be affirmed.

2. WestRock's Promises of Benefits and Threats of Reprisals After the Decertification Petition Was Filed Is Also Sufficient Justification for Dismissal of the Petition.

The Board will also dismiss a decertification petition where the petition is tainted by an employer's unfair labor practices. See, *Overnight Transportation Co.*, 333 NLRB 1392 (2001); and *Mercy, Inc.*, 346 NLRB 1004, 1006 (2006). Where an unfair labor practice is not related to an allegation that an employer has unlawfully assisted, supported, or otherwise unlawfully encouraged a decertification petition, there must be a causal connection between the unfair labor practices and the subsequent employee disaffection with the union in order to find that a decertification petition is tainted, thereby requiring that it be dismissed. *Overnite Transp. Co.*,

333 NLRB at 1393 (2001) (citing *Lee Lumber*, 322 NLRB at 177; *Williams Enterprises*, 312 NLRB 937, 939 (1993), *enfd.* 50 F.3d 1280 (4th Cir. 1995)).

To determine whether a causal relationship exists between unfair labor practices and employee disaffection with an incumbent union, the Board has identified the following relevant factors, known as the *Master Slack* factors: (1) the length of time between the unfair labor practices and the withdrawal of recognition or filing of the petition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union. *Id.* (citing *Master Slack Corp.*, 271 NLRB 78, 84 (1984); *Lee Lumber*, 322 NLRB at 177 fn. 16; *Williams Enterprises*, 312 NLRB at 939).

The *Master Slack* factors are used primarily to determine whether there is a tendency of the conduct to interfere with the free exercise of employees' Section 7 rights, and is not predicated on a finding of actual coercive effect. *Regency House of Wallingford, Inc. & Int'l Chem. Workers Union Council/UFCW, Local 560C*, 347 NLRB 173, 187–88 (2006) (citing *Hearst Corp.*, 281 NLRB 764 (1986), *enfd.* 837 F.2d 1088 (4<sup>th</sup> Cir. 1988)). Moreover, individual employee sentiments cannot negate those findings of a causal relationship between the unlawful conduct and employee disaffection. *Id.* at 188 (citing *Hillhaven Rehabilitation Center*, 325 NLRB 202 (1997) (evidence of individuals' reasons for signing of decertification did not negate other factors which, under *Master Slack*, established a causal relationship between unlawful conduct and disaffection), *enf. denied in part mem. sub nom. Rehabilitation & Healthcare Center of Cape Coral v. NLRB*, 178 F.3d 1296 (6th Cir. 1999); *Wire Products Mfg. Corp.*, 326 NLRB 625, 626 at fn. 13 (1998) (“in assessing the tendency of unlawful action to cause employee

disaffection, the Board applies an objective, rather than a subjective test”); *Hearst Corp.*, supra at 765 (where employer engaged in unlawful activity aimed specifically at causing employee disaffection with their union, its misconduct, we find, will bar any reliance on an expression of disaffection by its employees, notwithstanding that some employees may profess ignorance of their employer's misconduct)); see also *Comau, Inc. & Automated Sys. Workers Local 1123*, 357 NLRB 2294, 2321 (2012) (“The *Master Slack* test is an objective test . . . .”) *Saint Gobain Abrasives*, 342 NLRB 434, 434 fn. 2 (2000) (“The *Master Slack* test is an objective one . . . [t]he relevant inquiry at the hearing does not ask employees why they chose to reject the Union.”); *AT Systems West*, 341 NLRB 57, 60 (2004) (subjective state of mind of the employees is not relevant). “The subjective views of employees about a past unfair labor practice and its effects are not relevant to the *Master Slack* inquiry.” *Comau, Inc.*, 357 NLRB at 2321.

With respect to the first factor, the length of time between the unfair labor practices and the withdrawal of recognition or filing of the petition, the close temporal proximity of these events increases the likelihood of a causal relationship between them. *Laneko Eng'g Co., Inc.*, Case 4-CA-31660, 2004 WL 393228 (ALJ Gontram Feb. 26, 2004) (citing *Jano Graphics*, 339 NLRB 251 (2003)).

The final two *Master Slack* factors focus on the reasonable tendency of the conduct to affect employees’ protected activities. *Regency House of Wallingford*, 347 NLRB at 189 (citing *RTP Co.*, 334 NLRB 466, 469 (2001)). The Board has considered the tendency of the ULPs to alienate employees from the union and undermine employee confidence in their representative, as well as the tendency to have a negative effect on union membership. *Id.* (citing *RTP Co.*, supra; *Penn Tank Lines*, 336 NLRB 1066, 1068 (2001)).

“Promises of enhanced benefits in the absence of a union tend to discourage union activity because such promises send the unmistakable message that union representation is not only unnecessary, but that it is an obstacle, as opposed to a means, to achieving higher wages and benefits.” *Wyndham Palmas Del Mar Resort & Villas*, 334 NLRB 514, 518 (2001) (quoting *Bridgestone/Firestone, Inc.*, 332 NLRB 575 (2000)). Promises of enhanced benefits clearly are of a type that also tend to have a lasting effect on employees, cause employee disaffection from a union, and have a negative effect on organizational activities and union membership. *Bridgestone/Firestone, Inc.*, 332 NLRB at 576 (finding promises of benefits unfair labor practices tainted a decertification petition).

With respect to WestRock’s post-petition violations of Section 8(a)(1) by promising benefits if the Union was voted out, threatening reprisals if the Union remained in place and baselessly alleging that the Union may be involved in financial misconduct, the *Master Slack* factors are easily met.

The unlawful promises of benefits, threats of reprisals and baseless allegations of financial improprieties, on March 30, April 4 and April 14, came on the heels of the filing of the decertification petition on March 24, 2017. And, the Board has repeatedly held that promises of benefits and threats of reprisals are the types of illegal acts that have a detrimental and lasting effect on employees, tend to cause employee disaffection from the union, and have a negative effect on employee morale, organizational activities, and membership in the union. If employees see the union as a hurdle to better terms and conditions of employment or a harbinger of doom as a result of unlawful promises or threats from the employer, there is likely to be a significant increase in employee disaffection with the union. *Wyndham Palmas Del Mar Resort & Villas*, 334 NLRB at 518; *Bridgestone/Firestone, Inc.*, 332 NLRB at 576. Thus, there is a causal

connection between WestRock's unlawful promises of benefits, threats of reprisals and baseless allegations of Union financial improprieties and employee support for the Union under the *Master Slack* factors. Accordingly, the decertification petition in Case No. 10-RD-195447 was tainted and was properly dismissed by the Regional Director. The petition's dismissal, therefore, must be affirmed.

### CONCLUSION

For the above stated reasons, the Administrative Law Judge should find that WestRock Services, Inc. violated Section 8(a)(1) of the Act and that the petition filed in Case No. 10-RD-195447 was tainted and properly dismissed.

Dated: March 23, 2018

Respectfully submitted,

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## Certificate of Service

The undersigned hereby certifies that on this 23<sup>rd</sup> day of March, 2018, the Charging Party's Post-Hearing Brief to the Administrative Law Judge was filed electronically with the National Labor Relations Board and served upon the following individuals via email and U.S. Mail:

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