

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6**

In the Matter of)	
)	
VT HACKNEY, INC.,)	
)	Case No. 06-CA-199799
Employer,)	Case No. 06- CA-200380
)	Case No. 06-RC-198567
)	
and)	
)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER,)	
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL)	
AND SERVICE WORKERS INTERNATIONAL UNION)	
AFL-CIO, CLC)	
)	
Charging Party,)	
_____)	

**CHARGING PARTY'S BRIEF IN RESPONSE TO THE RESPONDENT'S
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Respectfully submitted on this 7th day of
June, 2018

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INTRODUCTION

On or about May 11, 2017, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC (“Union”) filed a petition for a representation election among all of the production and maintenance employees at VT Hackney Inc.’s (“Employer”) facility located in Montgomery, PA. The National Labor Relations Board (“Board”) conducted a representation election on or about June 1, 2017 to see if the employees wished to be represented by the Union. The election results were 83 in support of Union representation and 113 opposed.

The Employer engaged in an anti-union campaign leading up to the election. Their campaign included removing Union literature and buttons from tool boxes while allowing anti-union literature to remain; interrogating employees; and unlawfully soliciting employee grievances with an implied promise to improved terms and conditions of employment. These actions violated the National Labor Relations Act (“Act”) and were aimed at unlawfully influencing the outcome of the representation election.

On or about June 8, 2017 the Union filed timely objections and on multiple grounds to Employer conduct during the critical period leading up to the election. The Union also filed matching Unfair Labor Practice (“ULP”) charges.

The Regional Director (“RD”) for Region 6 of the Board issued a Complaint against the Employer and directed that the Election Objections and ULPs be resolved in a Consolidated Hearing. The Hearing was held on February 21, 2018, in Williamsport, PA before Administrative Law Judge Robert Ringler (“ALJ”). On April 19, 2018, the ALJ issued a decision upholding the Union’s objections and the allegations in the Board’s Complaint. On

May 17, 2018, the Employer filed Exceptions to the ALJ's decision. The Union offers this brief in support of the ALJ's Decision and in opposition to the Employer's Exceptions.

ISSUES PRESENTED

1. The ALJ's findings of fact and law that the Employer violated Section 8(a)(1) of the Act and committed objectionable conduct during the critical period before the election by removing pro-Union literature and buttons from employee tool boxes while allowing anti-union literature to remain in place were valid and based upon the evidentiary record and Board law.
2. The ALJ's findings of fact and law that the Employer violated Section 8(a)(1) of the Act and committed objectionable conduct during the critical period before the election by soliciting grievances from employees with implied promises of improved terms and conditions of employment were valid and based upon the evidentiary record and Board law.
3. The ALJ's findings of fact and law that the Employer violated Section 8(a)(1) of the Act during the critical period before the election by unlawful interrogation of an employee were valid and based upon the evidentiary record and Board law.

4. The Employer's argument that the impact of its conduct was de minimus in nature is frivolous and illogical on its face and must be rejected.
5. The Employer's request for oral arguments before the Board is frivolous and should be denied.

1. THE ALJ'S FINDINGS OF FACT AND LAW THAT THE EMPLOYER VIOLATED SECTION 8(A)(1) OF THE ACT AND COMMITTED OBJECTIONABLE CONDUCT DURING THE CRITICAL PERIOD BEFORE THE ELECTION BY REMOVING PRO-UNION LITERATURE AND BUTTONS FROM EMPLOYEE TOOL BOXES WHILE ALLOWING ANTI-UNION LITERATURE TO REMAIN IN PLACE WERE VALID AND BASED UPON THE EVIDENTIARY RECORD AND BOARD LAW.

FACTS

During the election campaign prior to mid-May, 2017, employees in the finishing area of The Employer's facility placed pro-Union flyers and pro-Union buttons on their work place tool boxes and on tables near them. [Tr. p. 29-30 (Schutt); p. 63-65 (Trojan); p. 92-93 (Sees)] The flyers and buttons were visible to other workers. [Tr. p. 29-30 (Schutt); p. 63-65 (Trojan); p. 92-93 (Sees)]

On or about mid-May, 2017, supervisor Dave Bohannon removed all of the pro-Union literature and threw it away in front of employees and told employees they could not be displayed on at least one and based on the record evidence, likely on multiple occasions. [Tr. p. 30-33 (Schutt); p. 67-70 (Trojan); p. 93-94, 98-99 (Sees)] He also removed all of the pro-Union buttons and gave them back to employees informing them they could only where the buttons on

their person. [Tr. p. 30-32 (Schutt); p. 67-70 (Trojan); p. 92-93 (Sees)] Bohannon removed the literature and buttons shortly after his supervisor had seen them displayed and apparently gone and informed Bohannon. [Tr. p. 65-67, 72 (Trojan)]

The Employer allowed other non-work related items to remain in or on the toolboxes visible to other employees. [Tr. p. 34-36, 40-41 (Schutt); p. 67-71 (Trojan); p. 96-97 (Sees)] In fact, around the same day Bohannon removed the pro-Union literature he handed employees anti-Union literature and let them display it on their tool boxes. [Tr. p. 36-39 (Schutt); p. 70-71 (Trojan); p. 94-96 (Sees)] When handing out the anti-Union literature, Bohannon actually told employees they could display it and distribute it, but could not do the same with the pro-Union literature because they were being paid by the Employer and not by the Union. [Tr. p. 94-96 (Sees)]

Prior to mid-May 11, 2017, the Employer never maintained any policy of displaying non-work materials on tool boxes or keeping non-work materials on or around them. [Tr. p. 33-34 (Schutt); p. 67-71 (Trojan); p. 96-97 (Sees)] The Employer had never said anything to employees indicating any restriction prior to mid-May, 2017. [Tr. p. 33-34 (Schutt); p. 67-71 (Trojan); p. 96-97 (Sees)]

After the literature and buttons were removed, the employees did not display them again and believed they were not allowed to despite the anti-Union literature being allowed. [Tr. p. 31-32 (Schutt); p. 69 (Trojan); p. 95-97 (Sees)]

It is hard to imagine how the Employer could be any more blatant in the way it removed pro-Union literature and buttons, informed employees they could not display them, and then distributed anti-Union literature and told employees they could display it because the Company

and not the Union pays them. This openly disparate prevention of employees from showing support and sharing information about the Union had a lasting impact on the campaign in its final weeks. As Board law makes clear, this prevented employees from exercising their rights under the Act and from engaging in a free and uncoerced election.

ARGUMENT

The ALJ's findings of fact and law that the Employer violated the law in its removal of Union literature are brief because the issue is so clear cut. [JD 27-18, p. 5-6] The Employer did not deny that it took away the pro-union material while leaving other personal items in place in employee tool boxes.

Under Board law, it is a violation of the Act makes for an employer to confiscate union literature from its employees. *Romar Refuse Removal*, 314 NLRB 658, 665. (1994) The Employer only became interested in removing literature from the tool boxes when it was advised there was a pro-Union message on them. Its belated arguments that it was removing them as litter are obvious pretext; especially since it the unrebutted record establishes the Employer distributed anti-Union literature and then allowed it to remain in the same tool boxes it removed the pro-Union literature from. See *Hanson Aggregates Central*, 337 NLRB 870, 875-876 (2002); *Manor Care of Easton*, 356 NLRB 202, 204-205 (2010).

Here, the Employer also disparately enforced its policies of the removal of the pro-Union literature and the Employer's instructions that employees could not display them or leave them out while it allowed anti-Union literature to remain and supplied employees with it and encouraged them to display it. Even if the Employer could somehow argue it had a valid policy

of removing the literature, the fact that other items and anti-Union literature were allowed to remain was textbook disparate or discriminatory enforcement. See *St. Vincent's Hospital*, 265 NLRB 57 (1982); *Grenada Stamping & Assembly*, 351 NLRB 1152 (2007); *Emergency One, Inc.*, 306 NLRB 800 (1992) (Employer found to violate the Act by allowing non-work communications during work time and in work areas, but specifically prohibiting pro-union discussion. The Employer provided no evidence to contradict this.

Furthermore, the Employer did not previously maintain a rule prohibiting the display or possession of literature in the tool box area. When an employer changes its work rules or changes their enforcement during the height of an organizing plan, it is generally seen as being done so to unlawfully interfere with employees' rights to organize and communicate.

Cannondale Corp., 310 NLRB 845, 849 (1993); See also *La Film Sch, LLC*, 358 NLRB 130 (2012); *Sears Roebuck & Co.*, 305 NLRB 193, 198-199 (1991) (prohibition on wearing hats after union organizing had begun was unlawful as the timing implied anti-union purpose and no legitimate business concern was present). Again, the Employer presented no evidence to rebut this.

The Employer's removal of the Union buttons from the tool boxes was just as clearly unlawful. *Republic Aviation Corp v. NLRB.*, 324 U.S. 793 (1945); *Sunland Construction Co.*, 307 NLRB 1036, 1040. Again, the fact that the Employer allowed anti-Union literature to be displayed and did not remove other personal items only strengthens the unlawfulness of the policy.

The Employer put forth the ridiculous argument that it removed the literature for fear it would blow around the shop floor. This was despite the fact that testimony made clear other

papers and light items were allowed to remain in the area and there was no evidence there had never been an incident of it blowing around.

The conduct described by employees Schutt, Trojan and Sees would clearly be objectionable and unlawful. The Employer essentially provides no evidence to counter what the employees say. Therefore, the ALJ did not need to engage in detailed analysis to find the Employer violated the law by confiscating literature and doing so in a clearly disparate fashion.

2. THE ALJ'S FINDINGS OF FACT AND LAW THAT THE EMPLOYER VIOLATED SECTION 8(A)(1) OF THE ACT AND COMMITTED OBJECTIONABLE CONDUCT DURING THE CRITICAL PERIOD BEFORE THE ELECTION BY SOLICITING GRIEVANCES FROM EMPLOYEES WITH IMPLIED PROMISES OF IMPROVED TERMS AND CONDITIONS OF EMPLOYMENT WERE VALID AND BASED UPON THE EVIDENTIARY RECORD AND BOARD LAW.

FACTS

During the weeks leading up to the representation election, the Employer held a number of captive audience meetings where an outside labor consultant or 'union-buster' spoke. During one of these captive audience meetings held about a week before the election, labor consultant Charles Stephenson spoke before a group of around 20 employees and asked them if they had any concerns and why they wanted a union. [Tr. p. 28-29 (Schutt); p. 63 (Trojan)] Stephenson added that he would take these issues to management to get them fixed or addressed. [Tr. p 63 (Trojan)] Employees responded to Stephenson's solicitation by raising issues such as problems with supervisors. [Tr. p. 29 (Schutt)]

To the extent that Stephenson claims he did not make these statements, his credibility should come under question given his claims he has no vested interest in the outcome of the election or in campaigning against Union representation, but was only there to ‘educate’ employees. [Tr. p. 149-150 (Stephenson)]

Such solicitations with implied promises of benefits are unlawful and should be grounds for setting aside the election.

ARGUMENT

The ALJ correctly found that the factual record supported a finding that the Employer had engaged in unlawful and objectionable conduct when labor consultant Charles Stephenson solicited employee grievances with the direct or implicit promise of remedying them. [JD 27-18, p. 7]

“The Board has consistently held that an employer’s solicitation of employee grievances and promises to remedy those grievances during an organizational campaign or pre-election period is objectionable conduct which interferes with the free choice of employees in an election.” *Carbonneau Industries*, 228 NLRB 597, 599 (1977). Furthermore, the Board has made it clear that the promises do not have to be directly stated if they are implied. *Reliance Electric Co.* 191 NLRB 44, 46 (1971); *Kmart Corp.* 316 NLRB 1175, 1177 (1995).

The Board has found that “The solicitation of grievances in the midst of a union campaign inherently constitutes an implied promise to remedy the grievances. Furthermore, the fact that an employer’s representative does not make a commitment to specifically take corrective action does not abrogate the anticipation of improved conditions expectable for the employees

involved.” *Brook Meade Health Care Acquirers, Inc.*, 330 NLRB 775 (2000).

In the case at hand, multiple employee witnesses established that labor consultant, Stephenson, hired by the Employer asked employees what their issues were and why they wanted union representation. He then told employees he would take these issues to management to get them addressed. Employees then raised their issues. In fact, it would appear a supervisor may have been fired in response to the employees’ concerns.

The Employer provided no real legal defense other than arguing that even if Stephenson had solicited grievances, without an explicit promise of remedy it would not be unlawful. This is simply wrong.

The Board has found that,

“The solicitation of grievances in the midst of a union campaign inherently constitutes an implied promise to remedy the grievances. Furthermore, the fact that an employer’s representative does not make a commitment to specifically take corrective action or explain what it would be does not abrogate the anticipation of improved conditions expectable for the employees involved.” *Brook Meade Health Care Acquirers, Inc.*, 330 NLRB 775 (2000).

Furthermore, when specific issues are raised and there is any kind of implied promise of trying to correct them then employer solicitations are unlawful and objectionable. See *The Majestic Star Casino, LLC*, 335 NLRB 407, 408 (2001).

Under Board law then, the Employer can really only offer one defense to the objection that Stephenson solicited grievances during the critical pre-election period. It could argue that it was simply continuing a past practice of soliciting employee grievances. The Board does allow an employer to continue to solicit grievances from employees if it is done in a manner consistent with past practice. See *TNT Logistics North America, Inc.*, 345 NLRB 290, 292 (2005).

On the other hand, the Board has held,

“Where there is no past practice of soliciting employee grievances and the solicitations are in response to the union’s organizational activities, there is a presumption that such solicitations carry with them the implied promise such grievances will be remedied.”
Uarco Inc., 216 NLRB 1, 4 (1974).

The problem for the Employer is that there is no evidence the Employer ever had this practice in the past and it certainly never had meeting where a paid labor consultant asked for grievances and told employees management would address them.

Given this, it is clear that the Employer’s solicitation of grievances was prompted by the pending USW representation election. See *Alamo Rent-a-Car*, 336 NLRB 1155, 1175-76 (2001); *Gold Kist, Inc.*, 341 NLRB 1040, 1047 (2004); *Ichikoh Mfg.*, 312 NLRB 1022, 1024 (1993) (Employer violated law where lack of any past practice of soliciting grievances prior to promises to ‘take care of’ employment at will and break time policies); *Matheson Fast Freight*, 297 NLRB 63, 69 (1989) (Manager’s request for employees to present gripes and general statement of trying to address concerns is unlawful when no evidence of past practice).

This leaves the Employer with only one defense, which is to claim the ALJ was wrong in crediting the testimony of the employee witnesses over the denials of Stephenson.

The Credibility Issue – The Board’s long established policy is to defer to an ALJ’s credibility findings unless there is a clear preponderance of evidence their findings are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950). The Board has very sound reasoning for this policy. It is the ALJ who observes and listens to witnesses while they testify in person, generally much closer to the occurrences they are testifying about. *Id.* at 545.

The Employer's primary argument attempting to support its exceptions to the ALJ's findings of fact on this issue are that the ALJ erred in his credibility findings. Employee witnesses Schutt and Trojan both credibly testified that Stephenson had asked employees what their issues were and why they wanted a union after telling them they did not need one. Trojan also credibly testified that Stephenson told employees he would take the concerns back to management who would fix or address them.

Stephenson, on the other hand, testified that he simply 'educated' employees about their rights by presenting information found on the NLRB website and that he had no concern over the decision employees made about unionization. The ALJ was left to determine which testimony was more truthful.

The ALJ noted that the employee witnesses appeared credible with solid demeanors. [JD 27-18, p. 4, fn. 9]. The ALJ also found Stephenson to be slick in his demeanor and deceitful and preposterous in his testimony. [JD 27-18, p. 5] This was a well-reasoned finding given Stephenson's absurd claim that the Employer had hired him so that he could be a neutral educator about employees' rights regarding unionization and that he gave no particular opinion and had 'no dog in the fight.'

The fact that the Employer simply does not like that Stephenson's ridiculous assertions undercut his credibility and that the ALJ found his demeanor to be slick is not grounds for overturning the ALJ's credibility findings. If it were, the Board would be left second-guessing every ALJ decision based on nothing more than transcribed words on a page or somehow redoing every ALJ trial with contested witness statements.

There is simply no 'clear preponderance' of evidence for the Employer to even attempt to

point to for a basis for the Board to consider overturning the ALJ's credibility findings. Instead, they are left scrambling to argue the ALJ did not sufficiently reference movements or facial expressions or some other physical character in assessing Stephenson's demeanor with little more to point to and no defense for Stephenson's incredulous testimony about being a neutral steward of employees' rights paid for, but somehow not speaking on behalf of the Employer.

With the facts presented at the Hearing and the ALJ's reasoned and appropriate credibility findings, the legal outcome was inevitable. There is no basis for overturning the ALJ's findings that the Employer engaged in objectionable and unlawful conduct when its agent solicited employee grievances with implied or direct promises of remedying them.

3. THE ALJ'S FINDINGS OF FACT AND LAW THAT THE EMPLOYER VIOLATED SECTION 8(A)(1) OF THE ACT DURING THE CRITICAL PERIOD BEFORE THE ELECTION BY UNLAWFUL INTERROGATION OF AN EMPLOYEE WERE VALID AND BASED UPON THE EVIDENTIARY RECORD AND BOARD LAW.

FACTS

On or about May 20, 2017, supervisor Judy Ross interrogated an employee about his union sympathies. [Tr. p. 13-15 (Wise)] She asked him what he thought about the Union in a production area near another supervisor's desk. [Tr. p. 14-15 (Wise)] Immediately after the employee responded indicating they had not made up their mind yet, she said "We are counting on you." [Tr. p. 15 (Wise)]

Wise had never previously given any indication of his Union support or lack of it.

ARGUMENT

It is unlawful for an employer to ask probing questions to find out an employee's union sympathies. *Pleasant Manor Living Center*, 324 NLRB 368 (1997). This is especially true in situations where an employee is not an open union supporter. See *Structural Industries*, 304 NLRB 729 (1991); *Metalite Corp.*, 308 NLRB 266, 272 (1992).

Once again, there was competing testimony between employee Wise and HR Manager Judy Ross. The ALJ found Wise to be more credible, especially given Ross's admission that she had so many meetings with employees it would be difficult to remember all of the specific conversations. This conversation clearly stood out to Wise. The ALJ's credibility findings were again well-reasoned and there is no basis for them being overturned. The ALJ correctly found the Employer engaged in an unlawful interrogation. [JD 28-17, p. 6]

4. THE EMPLOYER'S ARGUMENT THAT THE IMPACT OF ITS CONDUCT WAS DE MINIMUS IN NATURE IS FRIVOLOUS AND ILLOGICAL ON ITS FACE AND MUST BE REJECTED.

The Employer also excepted to the ALJ's finding that the Employers unlawful removal of Union literature, unlawful solicitation of employee grievances and unlawful interrogation were objectionable and grounds for setting aside the election results and directing a new election. [JD 28-17, p 7-8] The Employer contends that, even assuming the ALJ was correct in his findings of fact and law regarding all three issues, it would be de minimus conduct and not grounds for setting aside the election results.

The Employer cites no case law in their excpetions so we are left to examine their

reasoning in their post-Hearing brief. There, the Employer cites *Cambridge Tool & Mfg. Co.* where the Board defines the test for determining whether conduct is objectionable as an objective one as to whether or not the conduct as a whole has “the tendency to interfere with the employees’ freedom of choice.” 316 NLRB 716 (1995) The key word here is that it is an objective test. There is no requirement that evidence of subjective reactions be present. Could it reasonably be expected that the conduct would interfere with the laboratory conditions of the election.

As the Employer cites, the Board also looks at other factors in determining whether pre-election conduct should lead to setting aside the results. These factors include the number of incidents and their severity; how many bargaining unit members were exposed to the conduct; how likely the conduct was to cause fear among bargaining unit members; how soon the conduct occurred before the election; and the degree to which the conduct persists or sticks out in the minds of bargaining unit employees. *Bon Appetit Mgmt. Co.*, 334 NLRB 1042, 1044 (2001); See also *Avis Rent-a-Car System*, 280 NLRB 580, 581 (1986).

The Employer does not deny the conduct involved a labor consultant serving as a lead Company spokesperson before the Plant Manager and an HR Manager along with another production supervisor. The Employer also cannot deny that all of the conduct occurred in the final days leading up to the election.

Instead, the Employer cites case law where the Board found conduct to be de minimus in nature when it is “virtually impossible” to determine the violations could have affected the results of the election. *Bon Appetit Mgmt. Co.*, 334 NLRB 1042, 1044 (2001); *Super Thrift Markets*, 233 NLRB 409 (1977). The Employer attempts to then apply its conduct to that case

law with its own conservative admission that all of the conduct combined would have only directly impacted around 25 employees out of a bargaining unit of over 200. The Employer then argues that since the difference in the vote total was 30 that conduct directly impacting 25 employees would not possibly be enough to effect the results. [Employer Post=Hearing Brief p. 23-25]

There are several fatal flaws in the Employer logic. First of all, as the very cases they cite indicate, the de minimus exception to conduct being found objectionable applies to isolated incidents typically affecting 1 or 2 employees where the vote difference was substantially larger. See *Bon Appetit Mgmt. Co.*, 334 NLRB 1042, 1044 (2001)

The basis for this is clear. When conduct is very isolated it does not have a clear tendency to impact a significantly wider group of employees than those directly exposed. If the only conduct in question was the HR Manager's isolated interrogation of employee Wise, this logic might apply even given the relatively close vote for a bargaining unit of 215 employees.

The other two sets of incidents, however, cannot be presumed to have such isolated impact. In the case of the removal of Union literature, the evidence indicates this involved multiple occurrences. Even if it did not, it still had a clear tendency to have a chilling impact on several of the most supportive employees including Schutt, Trojan, and Sees. Trojan was the Union's election observer and the others were lead, outspoken supporters. By chilling their open expression of support for the Union through the disparate removal of openly visible literature and buttons more employees would almost certainly be impacted than those in a single department.

Even more so, by unlawfully soliciting employee grievances with promises of remedies at a meeting the Employer concedes had more than 20 employees, there would almost certainly be a

tendency towards broader impact. This is especially true given the fact that Stephenson had access to all of the employees during the weeks leading up to the election.

Finally, the Employer's attempt to argue the impact of its conduct must be seen as de minimus if flawed because the Employer's basic mathematical reasoning is flawed. Even if, as the Employer argues, it is assumed only 25 employees were directly impacted by the Employer's unlawful conduct, this would be more than enough to potentially influence the outcome of an election with a 30 vote difference.

The Employer is failing to recognize the very basic mathematical fact that every vote coerced from a 'yes' to a 'no' leads not only to one fewer vote for Union representation, but also to one more opposed to Union representation. Therefore if the vote tally was 113 no and 83 yes and only 10 voters were coerced into switching it would drop the vote difference to 103 no and 93 yes or a 10 vote difference. One need only change the match to account for 25 voters being coerced into switching their votes to see that the outcome without the conduct would be 88 no votes and 108 yes votes.

By the Employer's own argument then, there is no possible basis for determining it is "virtually impossible" the violations could have affected the results of the election. The de minimus argument must be dismissed which means that the ALJ's finding that the unlawful conduct occurred is the basis for the conduct be objectionable and for the election results to be overturned.

5. THE EMPLOYER'S REQUEST FOR ORAL ARGUMENTS BEFORE THE BOARD IS FRIVOLOUS AND SHOULD BE DENIED.

In addition to its other Exceptions, the Employer has also requested oral arguments before the Board. First, the Employer contends it is necessary because of the 'voluminous nature of the record.' The so-called voluminous record involved a Hearing that lasted less than a full day with a transcript totaling less than 200 pages and little more than a handful of exhibits. If the record in this case is so voluminous that it requires oral arguments before the Board then virtually every ALJ hearing that has ever been held would require such arguments. It can safely be said that almost every other ALJ hearing would have a more voluminous record.

Secondly, the Employer argues that the ALJ came out with his decision too soon and that he only had 4 days to review the parties' briefs. The Employer further contends that because of this, it is evident that the ALJ did not consider the arguments of the parties, the factual evidence presented at the Hearing, or applicable legal precedent.

The ALJ had two months from the date of the Hearing to review a record with a handful of exhibits and less than one day of transcripts. The ALJ needed only have 4 days to review the applicable legal precedent and the arguments of the parties because there was nothing complex or novel. Once the ALJ had made his credibility determinations there was little else to consider given an ALJ familiarity with general Board law. The most novel argument presented by any party was the Employer's argument that the conduct was de minimus in nature and could not possibly have impacted the outcome of the election. As described above, 15 minutes of thought would allow one to see the fatal flaws and absurd reasoning with that argument. The ALJ had more than enough time to consider all of the arguments, all of the record and all of the applicable

case law.

Finally, the Employer argues that oral argument will assist the Board with understanding the broader context in which the evidence should be viewed. What party has ever received an ALJ decision it did not like and did not feel that the ALJ somehow misunderstood something about the case? Again, this case involved conduct that all of the parties could complete a record on in less than a day. It involved straightforward arguments about three common violations of the Act. There is no hidden context. Again, if this case requires oral arguments, than there almost every case that has ever been held before an ALJ or will ever be held before on in the future would require oral arguments.

This is nothing more than an effort by the Employer to further delay a process that has taken over a year. The request for an oral argument must be flatly denied.

CONCLUSION

For the foregoing reasons, the Union requests that the Employer's Exceptions to the Administrative Law Judge findings of fact and law be dismissed in their entirety and his decision be adopted along with the remedy sought by Counsel for the General Counsel. The Union further requests that the ALJ's decision on the objections be upheld and that the June 1, 2017 election results be set aside and a new election directed for all of the production and maintenance employees at VT Hackney's facility located in Montgomery, Pennsylvania.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on the 7th day of June, 2018, I caused the foregoing to be filed electronically with the National Labor Relations Board and a copy of the same to be served by email on the following parties of record:

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