

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

VALMET, INC.)
)
 and) CASE NO. 15-CA-206655
) CASE NO. 15-RC-204708
 UNITED STEEL PAPER AND FORESTRY,)
 RUBBER, MANUFACTURING, ENERGY,)
 ALLIED-INDUSTRIAL AND SERVICE)
 WORKERS INTERNATIONAL UNION,)
 AFL-CIO, CLC)
 _____)

**RESPONDENT VALMET, INC.'S ANSWERING BRIEF TO THE GENERAL
COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE
LAW JUDGE**

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Respondent Valmet, Inc. (“Valmet”), pursuant to the Board’s Rules and Regulations § 102.46(d)(1), submits this Answering Brief to the General Counsel’s (“GC”) Cross-Exceptions to the Decision of the Administrative Law Judge (“ALJD”) in the above-captioned case.

GC Cross-Exception 1: Counsel excepts to the ALJ’s failure to conclude Valmet unlawfully promised employees a benefit in the form of a cash raffle prize if employees participated in Valmet’s anti-Union campaign.

Answer 1: The ALJ properly determined that Valmet did not unlawfully promise or grant employees a benefit in the form of a cash raffle prize.

The ALJD correctly found that Valmet’s quiz contest, which granted first and second prizes of \$900 and \$450 to only 2 of the eighty-six employees eligible to vote in the election, did not constitute an unlawful promise of benefits. In addition to the benign number of employees eligible to receive the prizes, the contest was not tied to voting in the election, and it was completely voluntary and anonymous. Furthermore, the winners were not identified until after the election, were never identified to the workforce by anything other than an anonymous ticket number, and did not receive their prize money until weeks after the election. All of these factors support the ALJD’s finding that the quiz contest was not an unlawful promise or grant of benefits.

As the ALJD properly found, Valmet’s quiz contest “clearly falls outside of the bright line rule enunciated in *Atlantic Limousine*.” (ALJD, p. 11.) In *Atlantic Limousine, Inc.*, 331 NLRB 1025 (2000), the Board set forth the standard under which pre-election prizes might be deemed to violate the Act as unlawful promises or conferrals of benefits: “[I]f (1) eligibility to participate in the raffle or win prizes is in any way tied to voting in the election or being at the election site on election day or (2) the raffle [or contest] is conducted at any time during a period beginning 24 hours before the scheduled opening of the polls and ending with the closing of the polls.” *Id.*

Here, Valmet went to great lengths to ensure that participation in the quiz contest was not conditioned on voting in the election or related to a participant’s presence at the election site.

Indeed, participation could not have been so conditioned because the Company required that voluntary participants submit their quizzes more than twenty-four (24) hours prior to the scheduled election. (ALJD, p. 4 at 35-37.) There was no connection whatsoever between eligibility for the two prizes offered – gained by submitting answers to the quiz prior to the election – and actually voting in or being present for the election. (GC Ex. 2; Jt. Exs. 1-4.)

Likewise, the Company did not take any actions concerning the quiz contest between 2:00 p.m. on September 13 (24 hours prior to the scheduled opening of the polls) and 7:00 a.m. on September 15 (the closing of the polls). (GC Ex. 2, ¶¶ 6(e), 8, 9; ALJD, p. 4 at 35-37.) The contest was announced two (2) weeks prior to the election, on August 30. (GC Ex. 2, ¶ 2, Jt. Ex. 1; ALJD, p. 3 at 16.) The quiz was available for pick-up and submission only from September 12 at 5:30am until noon on September 13. (Jt. Ex. 3; ALJD, p. 3 at 40-42, p. 4 at 35-36.) Contest winners were not identified until after the election closed on September 15, and the prizes were not awarded until the regularly scheduled payday after the election. (GC Ex. 2, 5; Tr. 71; ALJD, p. 4 at 35-42.) The ALJD correctly found that the contest was therefore entirely permissible under the Board's bright line test in *Atlantic Limousine* (ALJD, p. 11 at 7-8).

GC did not, however, specifically allege that Valmet's contest expressly violated the test enunciated in *Atlantic Limousine*, but instead that it violated a more general prohibition on unlawful benefits prior to an election designed to essentially bribe voters into rejecting union representation. The seminal case initially relied on by GC, *B&D Plastics*, 302 NLRB 245 (1991), did not even involve a contest or raffle prize, but the employer in that case provided employees with paid days off before the election. The Board in *B&D Plastics* found the benefit to be unlawful because (1) all of the employees received the benefit, which was substantial, (2) the purpose of the

benefit could easily be viewed as to impact how employees voted, and (3) the benefit was granted before the election. *Id.* at 245-46.

None of the factors present in *B&D Plastics* are present here. To the contrary, the benefit was relatively small, was paid to only 2 employees, and the recipients of the benefit were announced and paid after the election.

In its cross-exceptions, the GC cites to three cases that are similarly inapplicable here. For instance, the benefits that the ALJ in *Shamrock Foods Co.* found unlawful were exponentially greater than Valmet's two prizes, which totaled just \$1,350.00. *Shamrock Foods Co.*, 2017 WL 1488999 (Apr. 25, 2017) (employer unlawfully granted employees benefits where it raffled prizes worth more than \$14,000 – including a \$5,000 vacation package – and provided employees a banquet valued at more than \$140,000). The pertinent facts in *BFI Waste Systems and Recycling Industries* are also distinguishable from Valmet's quiz contest because, among other things, the employers in those cases announced and paid raffle winners immediately prior to the election and the prizes were awarded in conjunction with a cookout connected to an inspection that had never previously involved rewards. *BFI Waste Sys.*, 334 NLRB 934 (2001). Furthermore, the raffle was for 5 television sets, not a cash prize linked to any specific legal message to employees (like the amount of dues they would pay). *Id.* (“Given the proximity of the Employer's conferral of benefit to the election, the inference that benefits granted during the critical period are coercive is especially strong under the facts here.”).

Similarly, the employer in *Recycling Indus., Inc.*, 20-CA-29897-1, 2001 WL 1635471 (NLRB Div. of Judges, Nov. 20, 2001) held a raffle and distributed cash prizes “slightly more than 24 hours before the election,” a fact that the ALJ found “telling” with respect to the coercive nature of the raffle. In contrast, Valmet waited until days after the election to announce winners, and did

not pay the winners until weeks after the election. This fact alone prevents any influence that payments were made to influence votes.

Based on the foregoing, the ALJD properly found that Valmet's quiz contest did not constitute an unlawful promise or grant of benefits. (ALJD, p. 11 at 7-8.)

GC Exception 2: Counsel excepts to the ALJ's finding "I conclude that Scheaffer did not implicitly promise to remedy employee grievances. The speech in toto rebuts the presumption that [Respondent] would remedy all or even any employee grievances." ALJD at 12, 37-39.

General Counsel Exception 3: Counsel excepts to the ALJ's dismissal of Paragraph 11(b) of the Complaint and Notice of Hearing and failure to conclude Doug Scheaffer unlawfully explicitly or implicitly solicited employee grievances and promised Respondent would remedy them.

Answer 2 and 3: The ALJD properly found that Sheaffer's September 13 speech did not unlawfully solicit or implicitly promise to remedy employee grievances.

As the ALJD properly determined, grievance solicitation during a pre-election period is not a per se violation of section 8(a)(1). *NLRB v. Arrow Molded Plastics, Inc.*, 633 F.2d 280, 283, (6th Cir. 1981); *Idaho Falls Consol. Hospitals, Inc. v. NLRB*, 731 F.2d 1384, 1386 (9th Cir. 1984).

As the Board itself held in *Uarco, Inc.*, 216 NLRB 1 (1974):

[I]t is not the solicitation of grievances itself that is coercive and violative of Section 8(a)(1), but the promise to correct grievances or a concurrent interrogation or polling about union sympathies that is unlawful; the solicitation of grievances merely raises an inference that the employer is making such a promise, which inference is rebuttable by the employer.

Id. at 1-2. *See also Airport 2000 Concessions*, 346 NLRB 958, 960 (2006) (no unlawful solicitation of grievances where supervisor made no promise to remedy any issues raised by employees, and did not in fact remedy any of the problems employees raised); *Wal-Mart Stores, Inc.*, 340 NLRB 637, 640 (2003) (noting "well-established" Board precedent "that it is not the solicitation of grievances itself that violates the Act, but rather the employer's explicit or implicit promise to remedy the solicited grievances that impresses upon employees the notion that union representation is unnecessary").

As set forth below, nothing included on the September 13 meeting recording can be construed as solicitation of grievances or promises to employees. The only comments that by any stretch could be construed as a solicitation of grievances occurred towards the end of Sheaffer's comments when he said the following:

Yeah, we have some internal problems. We don't always get along, but let's be men. Let's put the fish on the table as they say in Finland. If you have a problem, put it out there let's talk about it and let's resolve it and let's agree. If we're not going to agree we are going to go on with our ways.

(GC Ex. 3B at 55:49.) The GC's cross-exceptions tellingly cut off the passage before the final sentence, in which Sheaffer immediately and unambiguously confirms that he is not making any promise to resolve any employee grievances. These statements do not meet the definition of "solicitation" to start with, much less an "explicit" promise as claimed by GC in its cross-exceptions.

A. The ALJD properly found that Sheaffer's statement was not an implicit promise to remedy employee grievances. (ALJD, p. 12.)

The Board has regularly found that innocuous comments such as Sheaffer's are not unlawful implicit promises to remedy employee grievances. *See, e.g., Williams Enterprises*, 301 NLRB 167 (1991) (no violation when supervisor referred to union as "fence between us," and said employee could "come to him" with problems since remarks did not constitute solicitation of grievances); *Columbian Rope Co.*, 299 NLRB 1198 (1990) (finding no violation when supervisor told employee he was available if employee wanted to talk since statement does not constitute solicitation of grievances); *Craft Maid Kitchens*, 284 NLRB 1042 (1987) (finding employer's president's telling employees not to be misled and to direct any questions to him did not constitute solicitation of grievances); *Burns Int'l Security Servs.*, 216 NLRB 11 (1975) (request for questions

or comments at meeting did not constitute solicitation calculated to induce employees to forsake the Union).

Even if Sheaffer's comments could be construed as an implicit solicitation, the Board has found solicitation to be unlawful only when an employer accompanies solicitations with promises and actions that would indicate to employees a change of company policy as a substitution for union representation. Compare *Center Constr. Co.*, 345 NLRB 729 (2005) (although employer had a prior policy of allowing employees to present grievances to their immediate supervisor, employer's direction to individual employee to bring his grievances to the employer's president was a significant change in policy and constituted an unlawful solicitation of grievances) and *House of Raeford Farms*, 308 NLRB 568 (1992) (unlawful solicitation of grievances found where employer implemented program to solicit grievances prior to beginning of union organizing activity but significantly altered its method of grievance solicitation after union organizing campaign began), with *Longview Fibre Paper & Packaging, Inc.*, 356 NLRB 796 (2011) (no unlawful solicitation where employer implemented a change to workplace schedules as a result of a brainstorming meeting consistent with past practice); *TNT Logistics N. Am., Inc.*, 345 NLRB 290 (2005) (no violation during ongoing union organizing campaign where employer had past practice of soliciting grievances through an "open door" policy). Typical Board cases finding unlawful solicitations involve conduct along the lines of changing the way employers receive and address complaints. See, e.g., *Center Constr. Co.*, 345 NLRB 729 (2005) (employer's direction to individual employee to bring his grievances to the employer's president was a significant change in prior policy and constituted an unlawful solicitation of grievances).

Here, the GC never presented any evidence that Valmet expressly conditioned any promise of benefits upon withdrawal from union activity or votes against the Union. Indeed, Sheaffer was

very careful to state that no promises could be made: “if we can’t agree, we’ll move on.” (GC Ex. 3.B at 15:00; ALJD, p. 12 at 36-37.) Additionally, the GC never alleged or present any evidence that Sheaffer or any other Valmet officials announced a change from its consistent open door policy. To the contrary, Sheaffer’s reference to the Finish saying of “put the fish on the table” infers that having open discussions has been a long-standing tenant of the Company’s employee relations philosophy. The Board should therefore adopt the ALJD’s finding that Sheaffer did not implicitly promise to remedy employee grievances.

B. Sheaffer did not explicitly promise to remedy employee grievances.

Even in the face of the overwhelming precedent supporting the ALJD’s finding that Sheaffer’s comments are not implicit solicitations, the GC boldly argues that the Board should not consider whether promises were made because he explicitly promised to remedy grievances. (GC Brief in Support of Cross-Exceptions, pp. 6-7.) This argument fails because Sheaffer did not explicitly promise to remedy any specific employee grievances. Sheaffer specifically cautioned that no promises could be made, and that “if we can’t agree, we’ll move on.” (GC Ex. 3.B at 15:00; ALJD, p. 12 at 36-37.) More importantly, Sheaffer’s exhortation to working together (i.e., “let’s resolve it” and “let’s agree”) is categorically different than explicit promises to resolve employee grievances, where an employer unequivocally states that it will remedy a grievance.

Sheaffer’s vague exhortation was even less explicit than the statements in *Maple Grove Health Care*, cited by GC, which the Board analyzed as implicit promises. In *Maple Grove Health Care*, the employer’s manager solicited grievances in an employee meeting. 330 NLRB 775, 785 (2000). When employees expressed concern that an annual Christmas party would be cancelled, the manager responded by directing the employees “to determine whether they would rather have an inside facility party or an outside party,” effectively confirming not only that he would ensure

that the employees a Christmas party, but also that the party would be held in their preferred venue. *Id.* The Board analyzed the manager’s statements as implicit promises to remedy grievances – not as explicit promises. Here, Sheaffer’s general exhortation to working together, devoid of any certainty that Valmet would in fact remedy any grievances, cannot form the basis for a violation of the Act as an implicit *or* explicit promise to remedy employee grievances. This conclusion is inescapable given Sheaffer’s qualifying statement that “if we can’t agree, we’ll move on,” which immediately followed his exhortation to working together. *See Airport 2000 Concessions, LLC*, 346 NLRB 958, 960 (2006) (no unlawful implicit or explicit promise to remedy grievances where employer’s officer’s response to employee questions about health insurance was conditional – “‘maybe’ it could” provide better benefits at a later date – and because officer did not offer any concrete steps that he would take to remedy other grievances).

Sheaffer’s comments constitute a legally permissible statement regarding the realities of collective bargaining and his opinion that sometimes, in his own experience, unionization had the effect of making communications between management and employees more cumbersome. This does not constitute an unlawful solicitation with an implied or express promise to remedy employee grievances. Accordingly, the ALJD properly dismissed these allegations.

Respectfully submitted this 10th day of July, 2018,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that *Respondent Valmet, Inc.’s Answering Brief to the General Counsel’s Cross-Exceptions to Decision of the Administrative Law Judge* in the above case has been served on the following by electronic mail:

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Dated this 10th day of July, 2018.