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

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| VALMET, INC. | * | |
| and | * | Cases 15-CA-206655<br>15-RC-204708 |
| UNITED STEEL, PAPER AND FORESTRY RUBBER, MANUFACTURING, ENERGY ALLIED & INDUSTRIAL SERVICE WORKERS INTERNATIONAL UNION AFL-CIO, CLC | * | |

# COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF IN SUPPORT OF THE GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

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**REPLY BRIEF IN SUPPORT OF THE GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Andrew Miragliotta, Counsel for the General Counsel (General Counsel) in the above-captioned case, submits this Reply Brief in support of the General Counsel's Cross-Exceptions. On April 17, 2018, the Honorable Administrative Law Judge Arthur Amchan (ALJ) issued his Decision and Order (ALJD) in this matter in which he concluded Valmet, Inc., (Respondent), violated Section 8(a)(1) of the Act and engaged in objectionable conduct during the critical period between the filing of the representation petition and the election. On May 22, 2018, Respondent filed Exceptions to the ALJD excepting to the ALJ's findings of fact, inferences, and conclusions of law. On June 18, 2018, the General Counsel filed Cross-Exceptions to the ALJD excepting to the ALJ's failure to make certain conclusions of law. On July 10, 2018, Respondent filed an Answering Brief to the General Counsel's Cross-Exceptions (Answering Brief). The General Counsel now files this Reply Brief pursuant to Section 102.46(e) of the National Labor Relations Board (the Board)'s Rules and Regulations.

## I. Respondent's raffle contest unlawfully promised employees a benefit in the form of a cash raffle prize if employees participated in Respondent's anti-Union campaign.

In its Answering Brief, Respondent goes to great lengths in an attempt to distinguish its unlawful promise of benefits to employees from longstanding Board precedent in which the Board determined various employers violated the Act by promising benefits to employees in advance of representation elections. However, Respondent's own argument demonstrates the fact pattern here closely follows the cases relied upon by the General Counsel and Respondent's arguments should be rejected.

Respondent's raffle *promised* a benefit to employees in the form of a cash prize before the election took place, even if the benefit was not conferred until after the election. Respondent claims the cash prize awarded to employees does not violate the Act because it was not awarded to employees until over a week after the election, but the Board has long held that promising benefits in advance of an election constitutes interference within the meaning of Section 8(a)(1) of the Act. *20th Century Glove Co., Inc.*, 165 NLRB 781, 782 (1967). Accepting Respondent's untenable position, for instance, would allow an employer to lawfully promise future raises to employees on the day before a union election because the actual benefit would not be conferred until after the election took place, but under actual Board precedent, this constitutes a hallmark violation of the Act. *Angelica Corp.*, 276 NLRB 617, 617 (1985). Here, Respondent's promise to employees before the election that participation in Respondent's anti-Union campaign granted them a chance to win $900 similarly unlawfully promised employees a benefit the day before the representation election.

Respondent's own argument and presentation of facts further shows how Respondent's raffle was analogous to other raffles which the Board found to be violations of the Act or objectionable conduct. Respondent's Answering Brief notes that in *BFI Waste Systems*, the employer's raffle interfered with the election because the prizes were awarded in conjunction with a cookout connected to an inspection that had never previously involved rewards. 334 NLRB 934 (2001). Similarly, here, Respondent explicitly admits it has never conducted any kind of raffle for employees before. GC-2, at Joint Exhibit 3.[1] This is a critical part of the analysis of the raffle because "[e]mployees are not likely to miss the inference that the source of benefits

[1] References to the Exhibits of the General Counsel and Respondent will be designated as "GC- #" and "R- #," respectively, with the appropriate number or numbers for those exhibits. References to the transcript in this matter are designated as "Tr. at." An Arabic numeral(s) after "Tr. at" is a reference to a specific page of the transcript, and Arabic numerals following page citations reference specific lines of the page cited.

now conferred [or promised] is also the source from which benefits must flow and which may dry up if it is not obliged." *Bakersfield Mem'l Hosp.*, 315 NLRB 596, 600 (1994) (citing *NLRB v. Exch. Parts Co.*, 375 U.S. 405, 409 (1964)).

Respondent's Answering Brief also explains that in *Recycling Industries*, the employer's raffle concluded "slightly more than 24 hours before the election," a fact which the ALJ found "telling" concerning the coercive nature of the raffle. 20-CA-29897-1, 2001 WL 1635471 (NLRB Div. of Judges, Nov. 20, 2001). Here, Respondent also ended its raffle contest at noon on September 13, 2017, "slightly more than 24 hours before the election" commenced at 2:00pm on September 14, 2017. GC-2, at 1, 2, and Joint Exhibit. This close proximity of the end of the contest to the election itself only further adds to the coercive nature of Respondent's conduct.[2]

Despite Respondent's efforts to distinguish its unlawful tactics from Board precedent, Respondent's unlawful promise of benefits in the form of a cash prize prior to the election fits squarely into the Board's analysis in *B&D Plastics*, 302 NLRB 245 (1991). While Respondent suggests that because *B&D Plastics* did not involve a contest or raffle it is inapplicable here, the Board in *BFI Waste Systems* specifically relied on *B&D Plastics* to analyze whether an employer's raffle constituted unlawful interference with an election. 334 NLRB at 936. Respondent argues the Board in *B&D Plastics* found the employer's benefit to be unlawful because "the purpose of the benefit could easily be viewed as to impact how employees voted." Answering Brief, at 2-3. Respondent's own supervisor Chris Cliett "easily viewed" Respondent's raffle as impacting employee votes when he candidly told employee Casey Nail he could not directly give Nail a raffle entry quiz because "it would look like a bribe." Tr. at 85, 6-11. For all the reasons above, because Respondent promised a benefit to employees in the form

[2] Respondent's announcement fliers also lacked any information about when the winners would be chosen, leaving employees to reasonably believe the benefit might actually be conferred prior to the election. GC-2.

of a cash prize that it knew looked like a bribe, that it had never before promised to employees, Respondent's raffle violated Section 8(a)(1) of the Act by unlawfully interfering with the representation election and employees' Section 7 rights. *Bakersfield Mem'l Hosp.*, 315 NLRB at 600; *B&D Plastics*, 302 NLRB at 246.

## II. Respondent, via Doug Scheaffer, solicited grievances from employees and unlawfully promised to remedy employee grievances.

Respondent admits the undisputed evidence from the hearing shows Respondent's Vice President of Global Human Resources Operations Doug Scheaffer stated in a captive audience speech to employees on September 13, 2017, the day prior to the Union election: "If you have a problem, put it out there, let's talk about it, and let's resolve it and let's agree." ALJD at 12, 34-36; GC-3(b), at 55:09 to 55:14.[3] Respondent's legal argument that implicitly soliciting grievances during an organizing campaign is only unlawful when an employer accompanies solicitations with promises and actions indicating a change in company policy flies in the face of the actual Board precedent which has found "unlawful interference with employee rights by an employer's solicitation of grievances during an organizational campaign although the employer merely stated it would look into or review the problem but did not commit itself to specific corrective action." *Uarco Inc.*, 216 NLRB 1, 1-2 (1974).

Respondent's entire argument is premised on the notion that Schaeffer's eventual statement that says something to the effect of "if we're not gonna agree then we're gonna go on" absolves Respondent from its earlier unlawful solicitation of grievances and explicit promise to resolve them. However, this ambiguous statement is so vague that it is meaningless and fails to negate the far more explicit statement of "If you have a problem, put it out there, let's talk about

[3] GC-3(b) was entered into evidence as an electronic audio file. The exhibit presents the audio of a captive audience meeting, in its entirety. In referencing this exhibit, "at" followed by two sets of Arabic numerals represents the beginning and ending time stamps of the recording within the exhibit.

it and let's resolve it and let's agree." The Board has held that "[i]n order to effectively negate a prior unlawful statement, a subsequent clarification must, *inter alia*, be timely and unambiguous, must specifically disavow the prior coercive statement, and must be accompanied by assurances against future interference with employees' Section 7 rights." *President Riverboat Casinos of Missouri, Inc.*, 329 NLRB 77, 78 (1999) (citations omitted). Here, Schaeffer's comment that "we're gonna go on" is ambiguous and does not explicitly state Respondent will not actually resolve the grievances Scheaffer solicited from employees. Accordingly, because Schaeffer unlawfully solicited grievances during an organizing campaign, promised to remedy those grievances, and failed to clearly disavow his solicitation, Schaeffer's speech violated Section 8(a)(1) of the Act. *Uarco Inc.*, 216 NLRB at 2.

## CONCLUSION

Based on the forgoing, Counsel submits the ALJ erred in failing to reach the legal conclusions described in its Cross-Exceptions and Respondent failed in its attempt to rebut the Cross Exceptions. Counsel therefore respectfully urges the Board to adopt the General Counsel's Cross-Exceptions as submitted.

Dated at New Orleans, Louisiana, this 23rd Day of July, 2018.

**Respectfully Submitted,**

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