

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

G.R.P. MECHANICAL COMPANY, INC.

and

Case 14-CA-211817

GEORGE O. SUGGS, An Individual

Rochelle K. Balentine, Esq., for the General Counsel.

Corey Franklin, Esq. and *Robert Seigel, Esq.*
(*Jackson Lewis*), of St. Louis, Missouri,
for the Respondent.

George O. Suggs, Esq., pro se, for the Charging Party.

DECISION

CHARLES J. MUHL, Administrative Law Judge. The General Counsel's complaint in this case alleges the Respondent, G.R.P. Mechanical Company, Inc., refused to hire Mike Hamilton in 2017, due to union and protected concerted activity he engaged in during his prior employment with the company. The complaint also alleges the Respondent contemporaneously refused to hire Mike Hamilton's brother, Bob, because of the same protected activity. In 2004, Mike Hamilton was working as a driver for the Respondent and serving as a union steward for Teamsters Local 525. In the latter capacity, Mike Hamilton twice loudly argued with different supervisors, including then General Manager Tom DeClue III, concerning work jurisdiction. He complained that other crafts were moving equipment the Teamsters were supposed to haul. Shortly thereafter, DeClue III laid him off. As discussed fully herein, I conclude that Mike Hamilton's 2004 assertion of work jurisdiction claims was protected conduct and he did not lose the protection of the National Labor Relations Act by the manner in which he made those claims. I also find that the Respondent refused to hire him in 2017, because of his protected conduct. Finally, I conclude that the Respondent refused to hire Bob Hamilton, because he was Mike Hamilton's brother and because of Mike Hamilton's union and protected concerted activity in 2004. As a result, the Respondent's refusals to hire the Hamiltons were unlawful.

STATEMENT OF THE CASE

On December 18, 2017, George O. Suggs (the Charging Party) initiated this case by filing the original unfair labor practice charge in Case 14-CA-211817 against G.R.P. Mechanical Company, Inc. (the Respondent). On February 16, 2018, the Charging Party filed an amended charge. On March 29, 2018, the General Counsel, through the Regional Director for Region 14 of the National Labor Relations Board (the Board), issued a complaint against the Respondent. The complaint alleges the Respondent violated Section 8(a)(3) and (1) the National Labor Relations Act (the Act) by refusing to hire Michael (Mike) Hamilton, due to his union and protected concerted activity. The complaint also alleges the Respondent unlawfully refused to hire Mike Hamilton's brother, Robert (Bob) J. Hamilton, due to the same protected activity. On April 11, 2018, the Respondent filed an answer to the complaint, denying the substantive allegations and asserting numerous affirmative defenses. On May 10, 2018, the Respondent filed an amended answer, adding an additional affirmative defense. On May 15-16 and June 8, 2018, in St. Louis, Missouri, I conducted a trial on the complaint. On July 27, 2018, the General Counsel and the Respondent filed posthearing briefs.

On the entire record and after considering the briefs filed by the General Counsel and the Respondent, I make the following findings of fact and conclusions of law.¹

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is a contractor in the construction industry engaged in the business of the fabrication of piping and the installation, service, and repair of industrial and commercial mechanical systems. The Respondent operates its business from a facility located in Bethalto, Illinois. In conducting its business operations during the 12 calendar months ending February 28, 2018, the Respondent performed services valued in excess of \$50,000 in States other than the State of Illinois. Accordingly, and at all material times, I find that the Respondent, as it admits in its answer, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and is subject to the Board's jurisdiction. I also find, as the Respondent admits, that Teamsters Local 525 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

¹ In order to aid review, I have included citations to the record in my findings of fact. The citations are not necessarily exclusive or exhaustive. In assessing witnesses' credibility, I have considered their demeanors, the context of the testimony, the quality of the witness' recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), *enfd. sub nom.*, 56 Fed. Appx. 516 (D.C. Cir. 2003). Where needed, I discuss specific credibility resolutions in my findings of fact.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Factual Background*

5 The Respondent principally serves as a general maintenance contractor in the
petrochemical industry, providing service and repair to equipment at oil refineries. At the time
of the hearing, the Respondent employed 550 to 600 people. Thomas DeClue III is the
Respondent's president, a position he has helmed since 2008. DeClue III began his employment
there as general manager in January 2003. His father, Tom DeClue Jr., was the president back
10 then and also apparently is the owner and founder of the company. The Respondent has an
agreement with Teamsters Local 525, pursuant to which the Union provides drivers through a
hiring hall for the company's operations. DeClue III is the Respondent's representative for
interactions with the Teamsters' business agents. Those agents include Kevin Engelke,
currently the secretary/treasurer, and Brett Wessel, an assistant business representative and vice
15 president. Although he is a supervisor of the Respondent, DeClue III is a member of Pipefitters
Local 553. His father is a member of Teamsters Local 525.

 Phillips 66 operates its largest oil refinery in the world, the Wood River Refinery, in
South Roxana, Illinois. The work at the refinery is governed by the General President's Project
20 Maintenance Agreement (GPPMA). The GPPMA eliminates craft distinctions, meaning any
craft can perform the work of a particular tradesperson, even if the work is not in the
employee's normal jurisdiction. The agreement also mandates a single union "bull steward" for
the refinery. For many years, the Union, through its hiring hall, has referred drivers with the
proper qualifications to contractors operating at the refinery. The drivers deliver supplies
25 needed for the refinery's operations. Those drivers included Bob Hamilton, who worked at the
refinery since 2002, and his brother, Mike Hamilton, who worked there since around the end of
2012. Both Hamiltons have been employed as Teamster-represented drivers for over 30 years.

 At the beginning of November 2017, the Respondent learned it had been awarded the
30 Phillips 66 maintenance contract at the refinery.² Prior to then, DeClue III had met with the
business agents for all of the unions which represented refinery workers, including Engelke of
Teamsters Local 525. DeClue III asked them to sign off on a letter saying there would be
absolutely no jurisdictional issues going forward, if the Respondent became the maintenance
contractor at the refinery. Engelke and all the other business agents signed the letter, which
35 DeClue III then submitted to Phillips 66.

B. *The Respondent's Refusal to Hire Mike Hamilton in 2017*

 Historically, when a new maintenance contractor took over, the existing refinery
employees were rolled over to the new contractor because of their job experience. However, the
40 new contractor retained an unfettered right to refuse to take on any existing employee. Thus,
after being awarded the contract, the Respondent obtained a list of the current Teamster drivers

² All dates hereinafter are in 2017, unless otherwise specified.

working at the refinery. The list included Mike and Bob Hamilton. At some point during or after his review of employee names, DeClue III created an internal document he entitled "Start of Bad List." He stated therein: "These are just bad actors..." and included Mike Hamilton's name on the list. Next to Mike Hamilton's name, DeClue III wrote "to[o] worried about everyone else." He did so because, when Mike Hamilton worked for the Respondent back in 2004, he was involved in multiple jurisdictional disputes.³

On November 6, DeClue III met with Engelke and Wessel to discuss the transition. They talked about the Teamsters who were currently on the jobsite. DeClue III told them that there are some people you just do not get along with and Mike Hamilton was one of those people. DeClue III said he did not want to employ him. The union representatives told him to put it in writing.⁴ On November 30, DeClue III emailed two letters to the Union. In the first, he specifically requested five employees be retained at the refinery. The list included Bob Hamilton. In the second, DeClue III stated: "Considering our past with Mr. Mike Hamilton, GRP is not willing to hire him at this time."

³ Tr. 155-162, 186-187; GC Exh. 16. As to the "bad" list, DeClue III specifically testified, with a demeanor reflecting reluctance:

Q: What is this?

A: It's -- as we were identifying the 100 people that were going to come over from AECOM to G.R.P. inside Phillips 66 Refinery, we were asked to look at all the people on the list and identify people that we didn't feel would benefit Phillips 66 or us moving forward. That is the start of the people that would not make the list.

Q: And Mike Hamilton's on this list?

A: Yes, ma'am.

Q: He's on the bad list?

A: Yes, ma'am.

Q: Next to his name, it says, "Too worried about everyone else."

A: Yes, ma'am.

Q: That refers to the jurisdictional disputes that he had when working for you previously?

A: Can you restate that for me? Are you saying too worried about everyone else?

Q: Does that mean -- are you referring to the jurisdictional disputes that he had when working for you in 2004?

A: I would say that for that particular thing that it's not -- I'd say yes to that.

Q: Okay.

A: That's correct.

⁴ I credit Engelke's uncontroverted testimony in this regard. (Tr. 28; see also GC Exh. 3.) DeClue III testified, but did not deny Engelke's account of his comments concerning Mike Hamilton during the November 6 meeting.

C. The Respondent's Layoff of Mike Hamilton in 2004

The past to which DeClue III referred were incidents occurring during Mike Hamilton's prior employment some 13 years earlier that resulted in DeClue III laying him off. The Respondent hired Mike Hamilton through the Union's hiring hall as a part-time employee in 1998. In 2000, he became a full-time employee and remained one until September 2004.⁵ Hamilton drove a variety of vehicles and delivered supplies to the Respondent's jobsites. On November 22, 2000, he became a union steward and remained in that position until his employment ended. His duties as steward included trying to resolve any issues arising on a jobsite, including jurisdictional disputes that were governed by the local labor agreement between the Respondent and the Union.⁶

The first incident involved Hamilton and Ray Wesley, then a project manager for the Respondent. It occurred 1 to 3 weeks before the Respondent laid Hamilton off on September 3. The two were working at a Premcor/Clark Oil refinery wastewater treatment plant. Hamilton was on a run to fuel equipment and, when he arrived at the plant, went to see Wesley. With a loud tone of voice, Hamilton told Wesley he had seen someone other than a Teamster moving a piece of equipment from one location to another at the facility. He told Wesley that no one else should be doing that work but him. Wesley told him it was Wesley's decision as the project manager as to how he was going to get equipment from one location to another at the jobsite. Wesley added that he did not feel it was necessary to call a Teamster every time he wanted to move that piece of equipment. Wesley told Hamilton he would continue to move the equipment with the interplant personnel he had there and he was not going to wait on somebody to come down and move the equipment if he needed it. Hamilton said it was his work, he would take it up with union leadership, and he would get back to Wesley. Thereafter, Wesley informed DeClue III of the conversation and said he did not feel Hamilton handled the situation in the correct manner.

The second incident involved a confrontation between DeClue III and Hamilton. Sometime just prior to September 3, Hamilton walked into DeClue III's office and stood at the front of DeClue III's desk. DeClue III remained sitting at the desk. Hamilton told DeClue III that the Respondent was improperly moving a pump on a job. The two yelled loudly back and forth at each other. Such yelling was uncommon at the Respondent's office. This conversation lasted 3 to 5 minutes.

Then on September 3, DeClue III and Wesley went to a jobsite at the Southern Illinois University. DeClue III told Hamilton he was going to be laid off, because he was "just too union." Hamilton asked him to repeat it and DeClue III said he was going to lay Hamilton off because he was too union and DeClue III could not use him.

⁵ All remaining dates in this section are in 2004. All references to "Hamilton" in this section are to Mike Hamilton.

⁶ Tr. 80-82, 114-115, 116-118, 200-201; GC Exh. 12.

On September 7, after the layoff, Hamilton went to the union hall and wrote up a grievance. However, it appears the Union never formally filed it. Instead, on September 9, Dale Stuart, then the Union's business agent, called Hamilton, told him he spoke to DeClue Jr. about the situation, and Hamilton should return to work the following Monday, September 13. Hamilton did so and began working directly for DeClue Jr. When DeClue III encountered Hamilton that week, he did not speak with him. Upon his return, Hamilton was uncomfortable with his working environment. On September 16, Stuart called Hamilton again and said he was going to move him, because Stuart did not think the revised set up would work.

The findings of fact in this section required several credibility determinations. First, regarding the conversation between Hamilton and Wesley in 2004, I credit Wesley's uncontroverted testimony. (Tr. 220-224.) Hamilton stated only that he did not remember having any conversations with Wesley on that jobsite. (Tr. 246.) In any event, Wesley's demeanor when testifying in this regard was trustworthy and his recall was vivid and specific. Wesley also readily acknowledged other areas where his recall was limited, enhancing his testimony's reliability. Wesley was not certain as to the exact timing of his discussion with Hamilton, but stated it was 1 to 3 weeks prior to the Respondent laying him off. (Tr. 225.) I likewise credit this testimony, which contradicts DeClue III's testimony that Hamilton's argument with Wesley immediately preceded his layoff.

Regarding the discussion between DeClue III and Hamilton just prior to September 3, I credit DeClue III's testimony as to what Hamilton said to him about work jurisdiction and the tones of their voices while speaking to each other. (Tr. 159-160.) Hamilton alternated between stating he did not recall any yelling matches and denying ever having yelled at DeClue III. (Tr. 96-97, 111, 244.) I find this inconsistency indicative of unreliable testimony. However, even though I credit DeClue III on those two points, I note the lack of specificity in his testimony concerning what was said during the conversation. In addition, I do not credit his testimony that Hamilton used profanity. On direct examination, DeClue III made no mention of this alleged fact. During cross examination, DeClue III twice gave nonresponsive answers to questions where he referenced Hamilton "yelling obscenities" in his office. (Tr. 191, 201.) But he did not later elaborate, including by offering any specific statements Hamilton made that included profanity. Moreover, the Respondent does not argue in its brief that Hamilton used obscenities. I also do not credit DeClue III's further testimony that Stuart, the Union's business agent, happened to be at the Respondent's facility at the same time of this abbreviated argument, spontaneously walked into DeClue III's office, spoke to DeClue III about Hamilton, and subsequently moved or pulled Hamilton from the Respondent's employ. (Tr. 160-162.) I find the testimony implausible. In any event, the Respondent did not offer this further testimony for the truth of the matters asserted.

As to DeClue III telling Hamilton he was "too union" when he laid him off on September 3, I credit Hamilton's testimony over DeClue III's denial. (Tr. 83-85, 163-164.) Hamilton's demeanor when testifying about this conversation was calm and assured, indicating trustworthiness. Furthermore, DeClue III's comment is a logical culmination of the events leading up to it, providing context to why it was made. In DeClue III's mind, Hamilton had

used an inappropriate manner with him and another supervisor to assert a jurisdictional right to driving work. The subsequent “too union” comment fits with DeClue III’s characterization of Hamilton’s behavior. Beyond that, I reject the Respondent’s assertion in its brief that Wesley “vigorously denied” DeClue III made the “too union” comment. Wesley actually had no recall of what DeClue III said in this conversation; instead, he offered his own speculation about whether DeClue III would have made such a comment. (Tr. 226–227, 230.) The testimony has no probative value and does not corroborate DeClue III’s denial. Finally, the fact that DeClue III was and is a union member does not, ipso facto, warrant the conclusion that he did not make the “too union” comment.

I also credit Hamilton’s testimony concerning what occurred after he was briefly reinstated by DeClue Jr. following his layoff. (Tr. 86–89, 95–99.) His recall on these events was specific and his demeanor confident when testifying about them. In contrast, DeClue III appeared to confuse the sequence of events in 2004. (Tr. 159–164.) DeClue III testified that the Union, through Stuart, first removed Hamilton from the Respondent’s employ, after DeClue III and Hamilton had the shouting match in DeClue III’s office. Then, even though Stuart had pulled Hamilton off the job, he called DeClue Jr. and asked him to reinstate Hamilton, which DeClue Jr. did. At that point, Hamilton was working directly for DeClue Jr. But then DeClue III further testified he made the decision to lay off Hamilton, after Wesley reported to him the confrontation that Wesley and Hamilton had at Premcor. In contrast, Wesley testified that his argument with Hamilton occurred 1 to 3 weeks before the layoff. Furthermore, despite his acknowledgment that Hamilton was directly working for his father at the time, DeClue III stated that he personally laid off Hamilton at the Southern Illinois University jobsite. This order of events is contradictory and illogical. I find the sequence of events as I have found them to be inherently more probable, in particular that Hamilton’s argument with DeClue III himself precipitated DeClue III’s decision to lay him off.

Finally, I credit Hamilton’s denial of a contemporaneous work jurisdiction dispute with DeClue III’s brother, Mike DeClue. (Tr. 243–244.) DeClue III provided double hearsay testimony concerning what his brother told him about a conversation his brother had with Hamilton. (Tr. 158–159.) DeClue III stated that, at the time, Mike DeClue was working as an operator for the Respondent and operators typically claimed the movement of pumps as being within their work jurisdiction. Mike DeClue told DeClue III that Hamilton came up to him on a jobsite when Mike DeClue had a pump in the back of his truck, then told him hauling the pump was Hamilton’s work and DeClue could not be doing it. Mike DeClue also told his brother that Hamilton removed the pump from his truck. However, Hamilton testified that he had no such conversation with Mike DeClue. He also stated he did not take a pump out of Mike DeClue’s truck and could not have, given the pump’s 80 to 100 pound weight. Critically, Mike DeClue did not testify at the hearing. Absent his corroboration of DeClue III’s testimony, I cannot rely on that testimony for the truth of the matters asserted and I afford it no weight. See *T.L.C. St. Petersburg*, 307 NLRB 605 (1992), *affd.* mem. 985 F.2d 579 (11th Cir. 1993).

D. The Respondent's Refusal to Hire Bob Hamilton in 2017

Jumping back to 2017, the Respondent notified the Union via letter on November 30 that Bob Hamilton was one of the Teamsters-represented employees who would be retained at the refinery.⁷ At the time, Hamilton worked as a foreman, a position DeClue III acknowledged at the hearing was one of the hardest jobs at the refinery. He also was the lead Teamster on site. On the very next day, December 1, at 8:15 a.m., DeClue III's brother, Chris DeClue, sent him a text message. At that time, Chris DeClue was the general foreman for the Respondent's operators working at the Phillips 66 refinery. Chris DeClue stated that a "little birdy" told him:

I know u don't know much about what is going on but the Hamilton's are up all pissed off about Mike they arent going to show anyone how to do what we do Bob said if they think Dave is going to be a foreman he is just going to drive the boom trk and thats it. Let the fun begin. Mike is already talking lawyers. Have fun wit these two they make us guys want to go back to the hall just for we dont have to listen to them.

Chris DeClue would not tell his brother who the little birdy was. Only 12 minutes later at 8:27 a.m., DeClue III sent an email to the union representatives stating:

Out of respect to the individual that told me, I cannot reveal where I heard this information, but the Hamilton's are very pissed about GRP's decision to not request on Mike Hamilton. Mike H. is already talking to lawyers. Bob H. is saying that Dave Edler will not be foreman and Bob is not going to show anyone how to do any of the work. I think it may be better to rid ourselves of these trouble makers and not request Bob specifically as well.

DeClue III made the "troublemakers" comment based upon his interaction with Mike Hamilton in his office back in 2004.⁸ When Engelke received this email, he immediately called Bob Hamilton and asked if there was a problem out at the refinery. Hamilton said no, that he would train everyone, and everything would be fine. Engelke then called DeClue III, relayed that information, and told him Hamilton was a good worker.⁹

⁷ All references to "Hamilton" in this section are to Bob Hamilton, unless otherwise specified.

⁸ Tr. 191.

⁹ Tr. 31, 168-170; GC Exhs. 4, 17. After his conversation with Engelke, DeClue III sent an internal email at 8:39 a.m. to, among others, Chris Hamann, the Respondent's site manager at the refinery. He told Hamann he had spoken to Engelke and Bob Hamilton would be fine, so Hamann should not change the plan and Hamilton would be brought on. However, at some point after this email, DeClue III must have reverted to his earlier position that Hamilton should not be retained. At the hearing, DeClue III did not explain his email to Hamann or his change of heart on Hamilton.

At some point thereafter, DeClue III spoke to representatives of Phillips 66 and advised them the Respondent did not want to retain either Mike or Bob Hamilton. DeClue III told them he had past conflicts with Mike Hamilton. He also said Bob Hamilton was “his brother, he’s the lead guy out here and he may not be good either.” Following the Union’s lobbying for Bob Hamilton, DeClue III went back to Phillips 66 and requested that Hamilton be retained, but Phillips 66 refused the request.¹⁰

On December 5, Bob Hamilton called Engelke and asked him to set up a meeting with DeClue III to put by the wayside “all this rumor and all this baloney.” Wessel then sent an email to DeClue III asking if he would be willing to talk to Hamilton. Wessel said that Hamilton wanted to explain what he said and why he said it, believing some things were taken out of context. He also wanted to squash any assumptions about his behavior. DeClue III responded the same day, offering dates and times for a meeting. He added: “For Bobs benefit I think the easy button right now is that he comes here to GRP. He can’t stay at the refinery for GRP relative to everything they are hearing.” Wessel responded that he would see when Hamilton was available and that he thought “this will be best for the future to get these issues out there and take care of it.” DeClue III sent a final email that night stating:

I understand, but you know its people coming to me wanting us to take care of the issue as they perceive it with Bob. We had things calm and reset for Bob last week until it seems mike starting talking in the plant early on friday morning. It seems mikes lawyer up talk did not do Bob any favors. That is hard for me to manage. If I had more time at this point I could work it out but we are stretched thin. I was at office tonight until 730 I know we will work it out, but recognize it is not because of lack of effort on you, kevins or my part. I'm trying just like you guys are doing for your members, but they are making it tough. I can't handel much more, so I hope we can calm things down soon.¹¹

On December 6 at the Respondent’s facility in Bethalto, Bob Hamilton and DeClue III met. Also in attendance were Wessel, Engelke, and Dan Dotson, the Respondent’s executive vice president. The meeting began with Hamilton reading a letter he had written out loud. He said he wanted to do a good job, did not want to be a troublemaker, and wanted to get everything out in the open. He also discussed the good team they had at the refinery and what needed to be done to get ready for the spring turnaround. DeClue III responded that the lead Teamster job at the Respondent’s facility was going to be vacant soon and that he would like Hamilton for the job there. He explained what the lead Teamster job entailed. DeClue III also said that a Phillips 66 employee did not want Hamilton at the refinery, so it would be best if

¹⁰ Tr. 170–172. The timing of DeClue III’s discussions with representatives of Phillips 66 is not clear from this testimony, but it must have occurred after he heard the rumors about Mike and Bob Hamilton on December 1. Prior to then, the Respondent intended to retain Bob Hamilton.

¹¹ Tr. 32, 122; GC Exh. 5.

they put him in the Respondent's shop. Hamilton asked who the person was, but DeClue III told him he could not say out of respect for the individual. Hamilton then asked if he could work at the refinery on weekends, if he took the shop position. DeClue III said they needed to focus on the shop. DeClue III then explained the pay for the lead Teamster position, which was \$4 per hour more than Hamilton would make at the refinery. Hamilton said he did not want to miss any worktime, asking to start the Monday after he left the refinery. At that point, everyone got up and shook hands. Hamilton and the union representatives exited the facility and spoke in the parking lot. Engelke asked Hamilton if working in the shop was really what he wanted. When he responded yes, Engelke suggested they go back in and tell DeClue III, because it may not have been clear from their earlier discussion. In the meantime inside the shop, DeClue III and Dotson met with Denny Tolbert, the employee who was retiring and whom Hamilton would replace. DeClue III stated that Hamilton seemed like a really good guy, but it appeared he wanted to work at the refinery. Tolbert told them Hamilton was a great guy and they ought to take him. DeClue III responded that they did not think Hamilton wanted to be at the Respondent's facility. After Hamilton and the union representatives came back inside, Hamilton told DeClue III that he would like to take the shop job, but then asked again if he could work weekends at the refinery. DeClue III responded that he would discuss it with Dotson and let them know. After the meeting ended, DeClue III and Dotson spoke and agreed that Hamilton wanted to work at the refinery, not at the shop, and they would not hire him to replace Tolbert.¹²

On December 15, DeClue III advised the Union in writing of his decision not to hire Bob Hamilton to replace Tolbert. DeClue III stated the Respondent was "not in need of a replacement for Mr. Tolbert until just before his retirement allowing enough time for a 'shadowing' process as well." The Union referred a different member, Brad Boone, to the position. On December 18, the Respondent confirmed in writing to the Union that its final decision on staffing at the refinery was that it was unwilling to hire either Mike or Bob Hamilton. On February 9, 2018, the Respondent again refused to hire Mike Hamilton for its refinery work, when his name came to the top of the Union's hiring hall referral list.¹³ At some point thereafter, a different contractor hired Bob Hamilton to work at the refinery.¹⁴

¹² Tr. 34-37, 69-71, 122-126, 173-176. Witness testimony concerning what was said at this meeting was consistent and without material conflicts.

¹³ GC Exhs. 7-10.

¹⁴ In reaching my findings of fact contained in this decision, I decline the General Counsel's request that I draw adverse inferences, due to the Respondent's failure to call DeClue Jr., Mike DeClue, and Chris DeClue to testify at the hearing. I likewise decline the Respondent's request that I draw an adverse inference, due to the General Counsel's failure to call Stuart. However, I have considered the witnesses' lack of testimony in reaching my credibility determinations described above.

ANALYSIS

I. DID THE RESPONDENT VIOLATE SECTION 8(A)(3)
AND (1) BY REFUSING TO HIRE MIKE HAMILTON?

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The General Counsel's complaint alleges the Respondent violated Section 8(a)(3) and (1) in November and December 2017, by refusing to hire Mike Hamilton to work at the Wood River Refinery because of his union and protected concerted activity.

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In *FES*, 331 NLRB 9 (2000), supplemented 333 NLRB 66 (2001), enfd. 301 F.3d 83 (3d Cir. 2002), the Board set forth its framework for analyzing refusal-to-hire allegations. Pursuant to that framework, the General Counsel must, under the allocation of burdens set forth in *Wright Line*, 251 NLRB 1083, enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), first show that: (1) the Respondent was hiring or had concrete plans to hire; (2) applicants had the experience or training relevant to the announced or generally known requirements of the positions for hire; and (3) animus towards protected activity contributed to the decision not to hire the applicants. If the General Counsel makes this initial showing, the burden shifts to the Respondent to demonstrate that it would not have hired the applicants even in the absence of their protected activity. However, if an employer refuses to hire an applicant due to conduct which is protected activity, a *Wright Line* analysis is not appropriate and the General Counsel is not required to demonstrate animus. *Gross Electric, Inc.*, 366 NLRB No. 81, slip op. at 2 (2018); *Phoenix Transit System*, 337 NLRB 510, 510 (2002), enfd. 63 Fed. Appx. 524 (D.C. Cir. 2003).

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The first two elements of the General Counsel's initial *FES* burden are not in dispute. The Respondent admits in its answer that the Company hired five employees to perform driving and hauling work at the Wood River Refinery in December 2017, pursuant to its maintenance contract with Phillips 66. Mike and Bob Hamilton performed such driving and hauling work for over three decades, including for years at that refinery. Thus, they had the requisite experience to perform the work in the positions for which the Respondent was hiring.

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As to the third element, the threshold issue to resolve is whether Mike Hamilton engaged in protected activity in 2004 and, if so, whether the Respondent's reasons for not hiring him in 2017 were a part of the *res gestae* of that activity. *Roemer Industries, Inc.*, 362 NLRB No. 96, slip op. at 6 (2015). Here, Mike Hamilton served as a union steward while previously employed by the Respondent. One of his duties was to effectively police the Union's work jurisdiction, which was governed by the collective-bargaining agreement between the Respondent and the Union. On two occasions in that representational capacity, Mike Hamilton complained to supervisors about Teamster work being performed by other crafts. These complaints effectively amounted to the presentation of a grievance, because he was raising a concern with the Respondent about an employment-related issue affecting all Teamster drivers there. Accordingly, Mike Hamilton's assertion of work jurisdiction claims to DeClue III and Wesley constituted union activity. *Gross Electric*, supra (union president who discussed at a grievance meeting a supervisor's unfair treatment and selection of workers at a job site was engaged in union activity); *Broyles & Broyles Mechanical Contractors, Inc.*, 166 NLRB 834, 835-836

(1967) (steward's complaint to a different contractor's foreman on a construction jobsite that laborers were performing operating engineers' work was union activity). Because Hamilton's work jurisdiction complaints were tantamount to the presentation of a grievance, his conduct also was protected concerted activity. See, e.g., *U.S. Postal Service*, 252 NLRB 624, 624-625 (1980) (steward's investigation of employee grievances was both union and protected concerted activity); *Clara Barton Terrace Convalescent Center*, 225 NLRB 1028, 1033 (1976) ("It is axiomatic that the processing of a grievance by a steward or a grievant is protected concerted activity. If done pursuant to union responsibilities, it also amounts to union activity.").

The Respondent contends that it did not refuse to hire Mike Hamilton because he made work jurisdiction complaints, but rather due to a "personality conflict" or "personal animosity" between him and DeClue III arising from how Mike Hamilton expressed himself when making those complaints. I find this to be splitting hairs, because the manner in which Hamilton asserted his claims is part of the *res gestae* of his protected activity. In addition, the cases the Respondent relies on do not support drawing such a distinction. In *Graham Ford, Inc.*, 179 NLRB 617, 619-620 (1969), the Board upheld a judge's decision finding lawful the discharge of an employee for personal animosity between the employee and the employer's general manager. But the employee there, during an unprotected conversation addressing discrepancies in the number of sales the employee made in a given month, accused the general manager of being a liar and a cheat, juggling figures, and stealing from him. Mike Hamilton's conduct here is incomparable, because the discussions were protected and no record exists of him making any specific, derogatory comments to his supervisors. In *National Mattress Co.*, 111 NLRB 890, 905 (1955), the Board adopted a judge's conclusion that the mass discharge of 17 out of 19 employees was lawful, due to a supervisor's "personal difficulties" with the employees. However, the only credited difficulties described in that case were the employees' lack of cooperation and team work on the job, not difficulties arising during the course of any protected conduct. Again, Mike Hamilton's activity is incomparable. The personal animosity DeClue III has towards Mike Hamilton originated from the latter's protected conduct.

That leaves the question of whether Mike Hamilton lost the protection of the Act by the manner in which he made the work jurisdiction claims. When an adverse action is taken against an employee or job applicant for conduct that is part of the *res gestae* of statutorily protected activity, the pertinent question is whether the conduct is sufficiently egregious to remove it from the protection of the Act. *Public Service Co. of New Mexico*, 364 NLRB No. 86, slip op. at 7 (2016), citing to *Beverly Health & Rehabilitation Services*, 346 NLRB 1319, 1322 (2006); *Aluminum Co. of America*, 338 NLRB 20, 21 (2002). When a union steward has engaged in alleged misconduct towards a supervisor in grievance-related discussions, the Board utilizes the framework set forth in *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979), to determine if the conduct is egregious. See, e.g., *Battle's Transportation, Inc.*, 362 NLRB No. 17, slip op. at 9-10 (2015); *U.S. Postal Service*, 360 NLRB 677, 677 fn. 2, 682-684 (2014); *Overnite Transportation Co.*, 343 NLRB 1431, 1437-1438 (2004). To determine if Mike Hamilton's protected conduct was removed from the Act's protection, four factors are considered: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst

was, in any way, provoked by an employer's unfair labor practice.¹⁵

The Respondent argues that Mike Hamilton lost the protection of the Act when making the work jurisdiction claims, because he was yelling at DeClue III and was loud with Wesley. Thus, its defense falls into the nature of the outburst category. When union stewards are presenting or processing grievances, their conduct will lose protection only where it is extraordinary, obnoxious, wholly unjustified, and departs from the *res gestae* of the grievance procedure. *Clara Barton Terrace*, 225 NLRB at 1034. Moreover, stewards are protected by the Act when processing grievances, unless the steward “exceed[s] the line...[in a manner] in which the misconduct is so violent or of such character as to render the employee unfit for further service.” *Union Fork & Hoe Co.*, 241 NLRB 907, 908 (1979). The Board recognizes that employees are permitted some leeway for impulsive behavior when engaged in protected activity, because the “protections Section 7 afford would be meaningless were we not to take into account the realities of industrial life and the fact that disputes over wages, hours, and working conditions are among the disputes most likely to engender ill feelings and strong responses.” *Consumer Power Co.*, 282 NLRB 130, 132 (1986); see also *NLRB v. Thor Power Tool Co.*, 351 F.2d 584, 587 (7th Cir. 1965), *enfg.* 148 NLRB 1379 (1964).

Although I have concluded that Mike Hamilton was loud and yelled when asserting work jurisdiction claims, I reject the Respondent’s contention that he lost the Act’s protection as a result and find the nature of the outburst factor favors protection. Yelling or speaking loudly during a labor dispute, as Mike Hamilton did here, does not cause a steward or employee to lose the Act’s protection, especially when the yelling is not one sided. *U.S. Postal Service*, 360 NLRB at 683 (steward did not lose protection for speaking loudly and pointing figure at supervisor when presenting grievances, where supervisor spoke at least as loudly); *Goya Foods, Inc.*, 356 NLRB 476, 481 (2011) (employee did not lose protection by loudly telling supervisor to “come and take me out,” when supervisor, also speaking loudly, told the employee to leave a union meeting); *Air Contact Transport, Inc.*, 340 NLRB 688, 690 (2003), *enfd.* 403 F.3d 206 (4th Cir. 2005) (employee’s loud and boisterous tone when questioning supervisor about benefits at luncheon attended by other employees did not cause loss of protection). The remaining context of the two conversations further supports this conclusion. Neither supervisor testified that any other employees were present for the arguments or that the discussions interfered with the Respondent’s operations. While he testified that yelling was uncommon in the office, DeClue

¹⁵ In their briefs, neither the General Counsel nor the Respondent evaluated the question of whether Mike Hamilton lost the Act’s protection under *Atlantic Steel*, instead using a totality-of-the-circumstances test. But the Board has repeatedly stated that the *Atlantic Steel* factors apply when analyzing whether direct communications, face-to-face in the workplace, between an employee and a manager or supervisor constituted conduct so opprobrious that the employee lost the protection of the Act. See, e.g., *Desert Springs Hospital Medical Center*, 363 NLRB No. 185, slip op. at 1 fn. 3 (2016); *Triple Play Sports Bar & Grille*, 361 NLRB 308, 310–311 (2014). The Board has applied the totality-of-the-circumstances test to conversations between employees, as well as to employees’ off-duty, offsite use of social media to communicate with other employees or with third parties. *Ibid.* I conclude *Atlantic Steel* is the proper framework, because the conduct resulting in the Respondent’s refusal to hire Mike Hamilton is the conversations he had with his supervisors while in the workplace.

III also conceded that he was yelling back at Mike Hamilton. Mike Hamilton did not threaten either supervisor during the discussions. That he was standing and DeClue III was sitting during their conversation does not, objectively, amount to a threat. *Plaza Auto Center, Inc.*, 355 NLRB 493, 496 (2010) (no threat where employee stood up and pushed a chair aside while
 5 telling employer he would regret firing another employee). Both conversations were brief in duration. Finally, Mike Hamilton did not use profanity when speaking.¹⁶ In sum, Mike Hamilton's conduct falls well short of being egregious.

In making its argument that Mike Hamilton's conduct was opprobrious and lost
 10 protection, the Respondent relies on cases readily distinguishable from this one. In *SSA Pacific, Inc.*, 366 NLRB No. 51 (2018), the Board affirmed a judge's finding that an employee did not engage in protected activity, when she repeatedly disrupted the operation of a hiring hall. In contrast here, the record evidence fails to establish that Mike Hamilton's arguments with
 15 DeClue III and Wesley over work jurisdiction impacted the Respondent's operations or interfered with the work of others. In *American Steel Erectors, Inc.*, 339 NLRB 1315, 1316-1317 (2003), the Board found a job applicant lost the protection of the Act by making a deliberate and outrageous comment when speaking at a public meeting concerning the employer's safety practices. The individual there stated "putting ironworkers up on steel is like throwing babies
 20 into the Merrimack River if they worked for [the employer.]" The Board found the statement to be "sufficiently extreme" to warrant loss of protection, because it portrayed the employer as having a "callous indifference" to the safety of employees. In this case, neither DeClue III nor Wesley ascribed any specific, allegedly extreme statement to Mike Hamilton during his assertion of work jurisdiction claims. Moreover, his conversations with the supervisors
 25 occurred one-on-one, not in a public meeting or in front of other employees. Finally, in *Hoboken Shipyards, Inc.*, 275 NLRB 1507, 1517 (1985), the Board upheld a judge's conclusion that the employer established it would not have hired a job applicant based upon business considerations. In addressing the employer's defense, the judge found that the applicant had, when working for the employer in the past, frequently berated and used vulgar language when
 30 speaking to the hiring supervisor in front of employees. On one occasion, the individual, in a loud and angry voice, went so far as to threaten to give the supervisor a "blow job" in order to get hired. The notion that Mike Hamilton's 2004 conduct falls into this category is absurd.

Two of the three remaining *Atlantic Steel* factors also favor protection. As to the place of
 35 the discussion, Mike Hamilton's conversation with DeClue III was in DeClue III's office. His conversation with Wesley occurred when Wesley was in his truck, in an unspecified location.

¹⁶ Even if I had found that Mike Hamilton used "obscenities" with DeClue III, the combination of yelling and profanity would remain insufficient to lose the Act's protection, given the context of their conversation. *Acme-Arsena Co.*, 276 NLRB 1291, 1295 (1985) (use of profane or obscene language when making work jurisdiction complaints was protected by the Act); see also *Tillford Contractors*, 317 NLRB 68, 69 (1995) (noting that some profanity and even defiance must be tolerated during labor confrontations); *Great Dane Trailers*, 293 NLRB 384, 384, 393 (2005) (employee did not lose protection by yelling at supervisor that he was a "fucked up foreman" on the shop floor after employee's requests for assistance were denied); *Severance Tool Industries*, 301 NLRB 1166, 1170 (1991) (employee who raised his voice at employer's president and called him a "son of a bitch" did not lose the Act's protection).

In neither instance were other employees present or were the Respondent's operations disrupted. Accordingly, the place of discussion factor favors protection. *Overnite Transportation*, 343 NLRB at 1437; *Beverly Health & Rehabilitation Services*, 346 NLRB at 1322 fn. 20 (2006). The subject matter of the discussion was Mike Hamilton's contention that other crafts were improperly performing Teamster work. Protection of a craft's work is a core workplace matter and goes to the heart of the Act's concerns, meaning this factor likewise favors protection. Finally, the fourth *Atlantic Steel* factor does not favor protection, because Mike Hamilton's arguments with DeClue III and Wesley were not prompted by the Respondent's unfair labor practices. Even so, that lone factor is insufficient to warrant a loss of protection, given the evidentiary showings for the other three.

In conclusion, I hold that Mike Hamilton was engaged in union and protected concerted activity when raising jurisdictional disputes with DeClue III and Wesley in 2004. Moreover, he did not engage in egregious conduct and lose the Act's protection under *Atlantic Steel* by speaking loudly with both individuals. The Respondent refused to hire Mike Hamilton at the refinery in 2017, because of his conduct when asserting the work jurisdiction claims in 2004. Because that conduct was part of the *res gestae* of activity I have found to be protected, a *Wright Line* analysis is not appropriate and the General Counsel is not required to demonstrate animus.¹⁷ The Respondent's refusal to hire Mike Hamilton because of his prior union and protected concerted activity violates Section 8(a)(3) and (1).

II. DID THE RESPONDENT VIOLATE SECTION 8(A)(3) AND (1) BY REFUSING TO HIRE BOB HAMILTON?

The General Counsel's complaint also alleges the Respondent violated Section 8(a)(3) and (1) in December 2017, by refusing to hire Bob Hamilton to work at the Wood River Refinery because he was Mike Hamilton's brother and Mike Hamilton engaged in the protected activity described above. The *FES/Wright Line* legal framework applies to the evaluation of this allegation as well.

The Board has long held that discrimination predicated on the protected activity of other family members is as much a violation of the Act as discrimination against the individual who engaged in the activity. See, e.g., *Keller Construction, Inc.*, 362 NLRB No. 153, slip op. at 10 (2015) (unlawful layoff of husband due, in part, to wife's dissident union activity); *T.M.I.*, 306 NLRB 499, 502-505 (1992) (unlawful discharges of two brothers due to the strong union support and

¹⁷ In any event, the record evidence amply demonstrates the Respondent's animus towards Mike Hamilton's protected activity. Without question, DeClue III's testimony establishes that he did not like the manner in which Mike Hamilton asserted his work jurisdiction claims, characterizing him as a "bully" and a "juggernaut." (Tr. 157-160, 166-167, 203-206.) Moreover, just prior to his refusal to hire Mike Hamilton, DeClue III put him on his "bad list." DeClue III wrote that Mike Hamilton was "too worried about everyone else," a reference admittedly made to the prior work jurisdiction claims Mike Hamilton made. Finally, at the time of his layoff in 2004 and in response to his work jurisdiction complaints, DeClue III laid Mike Hamilton off and told him the reason was he was "too union."

activities of their other brother); *PJAX*, 307 NLRB 1201, 1203-1205 (1992) (unlawful discharge of an employee whose brother encouraged union organizing). As the Court of Appeals for the 7th Circuit has stated: “To retaliate against a man by hurting a member of his family is an ancient method of revenge, and is not unknown in the field of labor relations.” *NLRB v. Advertisers Manufacturing Co.*, 823 F.2d 1086, 1088 (7th Cir. 1987).

Thus, the motivation for the Respondent’s refusal to hire Bob Hamilton at the refinery must be determined. DeClue III’s contemporaneous statements illuminate what that motivation was. To begin, Bob Hamilton worked for years at the refinery as a foreman and was the lead Teamster prior to the Respondent taking over the maintenance contract. DeClue III admitted that foreman was one of the hardest jobs there. Not surprisingly, then, the Respondent initially decided to retain Bob Hamilton at Wood River. Then DeClue III got a short text from his own brother indicating that the Hamiltons were “pissed” the Respondent (unlawfully) refused to hire Mike Hamilton. Only 12 minutes later, DeClue III passed the information on to the Union, concluding that he thought “it may be better to rid ourselves of these trouble makers and not request Bob specifically as well.” He conceded at the hearing that he made this comment as a result of his yelling match with Mike Hamilton over work jurisdiction back in 2004. When DeClue III subsequently informed Phillips 66 that he did not want to retain Bob Hamilton, he told them it was due to “past conflicts” DeClue III had with Mike Hamilton and because Bob Hamilton was “his brother, he’s the lead guy out there and may not be good either.” DeClue III decided not to hire Bob Hamilton at the refinery before he even met or spoke to him. Taken as a whole, these circumstances definitively establish that DeClue III’s animus towards Mike Hamilton’s protected activity contributed to his decision not to hire Bob Hamilton.

The Respondent’s animus defense focuses on its actions after deciding not to retain Bob Hamilton at the refinery and advising Phillips 66 of that decision. In particular, the Respondent points to its “offer” of the lead Teamster driver job at its facility to Bob Hamilton and claimed lawful refusal ultimately to hire him for that position.¹⁸ But the General Counsel’s complaint allegation is premised on the Respondent’s refusal to hire Bob Hamilton for job openings at the refinery, not for a job at the Respondent’s facility. The only relevant question is whether animus towards Mike Hamilton’s protected activity contributed to the Respondent’s initial decision not to retain Bob Hamilton at the refinery. I find that it did and that the General Counsel has met the initial *FES/Wright Line* burden.

As a result, the burden shifts to the Respondent to prove it would not have hired Bob Hamilton, even absent his brother’s protected activity. The Respondent advances multiple justifications for why it did not retain Bob Hamilton. The first was fear that his and his brother’s personalities were similar. The second was worry that Bob Hamilton would have an adverse reaction, after learning of the Respondent’s refusal to hire his brother. The third was that Bob Hamilton would be unable to effectively manage his brother at the refinery, given

¹⁸ For purposes of evaluating this argument, I will presume that the Respondent did offer him that job at the meeting on December 6, although the record does not unequivocally establish that fact.

Mike Hamilton's history with DeClue III.¹⁹ The final justification was the rumors about Bob and Mike Hamilton reported to DeClue III by his brother Chris. Those rumors prompted DeClue III to send the "troublemakers" email to the union representatives stating he no longer wanted to retain Bob Hamilton. That decision was based upon Mike Hamilton having yelled at DeClue III when making work jurisdiction complaints back in 2004. As this recitation makes clear, every justification asserted by the Respondent is enmeshed in Mike Hamilton's protected conduct. Rather than serving as a defense, they are tacit admissions that Bob Hamilton was not retained because of his brother. Thus, the Respondent has not met its shifting *FES/Wright Line* burden.

Accordingly, I conclude the Respondent's refusal to hire Bob Hamilton at the Wood River Refinery in December 2017 likewise violates Section 8(a)(3) and (1).²⁰

CONCLUSIONS OF LAW

1. The Respondent, G.R.P. Mechanical Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Teamsters Local 525 is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(3) and (1) of the Act by:
 - (a) On or about November 28, 2017, and again on or about December 18, 2017, refusing to hire applicant Mike Hamilton because of his union and protected concerted activity;
 - (b) On or about December 18, 2017, refusing to hire applicant Bob Hamilton because

¹⁹ This claim is nonsensical, since the Respondent never intended to hire Mike Hamilton at the refinery.

²⁰ In its amended answer to the General Counsel's complaint, the Respondent asserted an affirmative defense that this case should be deferred to the grievance and arbitration procedure in the GPPMA agreement. The burden is on the moving party, here the Respondent, to prove that prearbitral deferral is warranted. *King Soopers*, 364 NLRB No. 93, slip op. at 22-23 (2016), *enfd.* in relevant part 859 F.3d 23, 30 (D.C. Cir. 2017). Prearbitral deferral is appropriate when the dispute arises within the confines of a long and productive bargaining relationship; there is no claim of animosity to the exercise of employee statutory rights; the parties' agreement provides for arbitration of a very broad range of disputes; the arbitration clause clearly encompasses the dispute; the employer has asserted its willingness to arbitrate the dispute; and the dispute is eminently well suited to resolution through arbitration. *United Technologies Corp.*, 268 NLRB 557 (1984); *Collyer Insulated Wire*, 192 NLRB 837 (1971). In addition, in cases like this one involving 8(a)(3) allegations, the parties must have explicitly authorized the arbitrator to decide the unfair labor practice issue, either in the collective-bargaining agreement or by agreement in the particular case. *Babcock & Wilcox Construction Co.*, 361 NLRB 1127 (2014). At the hearing, the Respondent failed to introduce the GPPMA agreement into evidence. As a result, it is not possible to evaluate any of the deferral factors involving that agreement and its grievance and arbitration language. Accordingly, the Respondent has not met its deferral burden.

he is the brother of Mike Hamilton and because Mike Hamilton engaged in union and protected concerted activity.

4. The above unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular and to remedy the unlawful refusals to hire, I shall order the Respondent to offer Mike Hamilton and Bob Hamilton reinstatement to the positions for which they were not retained or, if the positions no longer exist, to substantially equivalent positions, without prejudice to seniority or other rights and privileges they would have enjoyed absent the discrimination against them. Further, I shall order the Respondent to make Mike Hamilton and Bob Hamilton whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. The duration of the backpay period shall be determined in accordance with *Oil Capitol Sheet Metal, Inc.*, 349 NLRB 1348 (2007), pet. for review dismissed 561 F.3d 497 (D.C. Cir. 2009). Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *Tortillas Don Chavas*, 361 NLRB 101 (2014), the Respondent shall compensate Mike Hamilton and Bob Hamilton for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), the Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 14 a report allocating the employees' backpay to the appropriate calendar years for each employee. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. The Respondent also shall be required to remove from its files any and all references to its unlawful refusal to hire Mike Hamilton and Bob Hamilton and to notify both applicants in writing that this has been done and these actions will not be used against them in any way. Although this order provides for reinstatement, the reinstatement award is subject to defeasance if, at the compliance stage, the General Counsel fails to carry his burden of establishing that the discriminatee would still be employed if he had not been a victim of discrimination. *Oil Capitol Sheet Metal*, 349 NLRB at 1354.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²¹

²¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, G.R.P. Mechanical Company, Inc., Bethalto, Illinois, its officers, agents, successors, and assigns, shall

- 5 1. Cease and desist from
- (a) Refusing to hire job applicants due to their union and protected concerted activity or due to the union and protected concerted activity of their family members.
- 10 (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- 15 (a) Within 14 days from the date of this Order, offer to hire Mike Hamilton and Bob Hamilton to the positions for which they were not retained or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
- 20 (b) Make Mike Hamilton and Bob Hamilton whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.
- 25 (c) Compensate Mike Hamilton and Bob Hamilton for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, allocating the backpay award to the appropriate calendar years for each employee.
- 30 (d) Within 14 days from the date of this Order, remove from its files any references to the unlawful refusals to hire Mike Hamilton and Bob Hamilton and, within 3 days thereafter, notify them in writing that this has been done and that these unlawful acts will not be used against them in any way.
- 35 (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records,
- 40 including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

5 (f) Within 14 days after service by the Region, post at its Bethalto, Illinois facility
copies of the attached notice marked "Appendix."²² Copies of the notice, on
forms provided by the Regional Director for Region 14, after being signed by the
Respondent's authorized representatives, shall be posted by the Respondent and
maintained for 60 consecutive days in conspicuous places including all places
where notices to employees are customarily posted. In addition to physical
posting of paper notices, the notices shall be distributed electronically, such as by
email, posting on an intranet or an internet site, and/or other electronic means, if
the Respondent customarily communicates with their employees by such means.
10 Reasonable steps shall be taken by the Respondent to ensure that the notices are
not altered, defaced, or covered by any other material. In the event that, during
the pendency of these proceedings, the Respondent has gone out of business or
closed the facilities involved in these proceedings, the Respondent shall
duplicate and mail, at its own expense, a copy of the notice to all current
15 employees and former employees employed by the Respondent at any time since
November 28, 2017.

20 (g) Within 21 days after service by the Region, file with the Regional Director a
sworn certification of a responsible official on a form provided by the
Regional Director attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C., September 24, 2018



Charles J. Muhl
Administrative Law Judge

²² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to hire job applicants due to their union and protected concerted activity or the union and protected concerted activity of their family members.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer to hire Mike Hamilton and Bob Hamilton to the positions for which they were not retained or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they previously enjoyed.

WE WILL make Mike Hamilton and Bob Hamilton whole for any loss of earnings and other benefits resulting from our unlawful refusals to hire them.

WE WILL compensate Mike Hamilton and Bob Hamilton for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

WE WILL, within 14 days from the date of this Order, remove from our files any references to our unlawful refusals to hire Mike Hamilton and Bob Hamilton, and WE WILL, within 3 days thereafter, notify them in writing that this had been done and that these unlawful actions will not be used against them in any way.

G.R.P. MECHANICAL COMPANY, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website:

www.nlr.gov.

1222 Spruce Street, Room 8.302, St. Louis, MO 63103-2829
(314) 539-7770, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/14-CA-211817 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (314) 449-7493.