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

In the Matter of:	:	
GRAPHIC COMMUNICATIONS CONFERENCE/INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 735-S,	:	CASE NO. 4-CB-215127
Respondent,	:	David I. Goldman, Administrative Law Judge
and	:	
BEMIS COMPANY, INC.,	:	
Charging Party.	:	

BRIEF IN SUPPORT OF RESPONDENT

AND NOW, comes the Respondent, by and through its attorneys, Ira H. Weinstock, P.C., and, in support of its position, sets forth the following:

STATEMENT OF FACTS

The General Counsel claims that the Union engaged in unlawful threats to employees in violation of Sections 8(b)(1)(A) and 8(b)(2).

The General Counsel first asserts that Dominic Despirito, the President of the Local Union, subjected Joseph Stasko to lewd and sexually explicit harassment. Mr. DeSpirito was discharged on January 18, 2018. However, the General Counsel claims that what is at issue is Respondent's response, and not Mr. Despirito's termination. According to the General Counsel, the Respondent's Secretary-Treasurer confronted the employee who had participated in the

investigation and made an implied threat that reporting harassment by a union official would lead to "unspecified consequences." (N.T. 11).

The General Counsel further claims that the Union posted a notice that states that turning in fellow union members is a violation of Union Bylaws. (Id.).

The General Counsel also claims that the Respondent's Vice President, Kevin Davidovich, threatened an employee with physical violence and property damage for participating in the investigation.

Incredibly, the General Counsel then claims that the Secretary-Treasurer also retaliated against Mr. Stasko for cooperating in the investigation by reporting him for safety violations intending to have him disciplined. The General Counsel does not credibly claim that the safety violations did not occur.

Respondent noted that the charge and complaint are frivolous, and the complaint should never have been issued. The General Counsel *Collyerized* companion cases, which allege associated violations in conjunction with these incidents by the Company, and announced an intent to use affidavits from those cases in the instant case. In light of the Company's own misconduct, the entire complaint should be dismissed. The General Counsel further had altered a directly quoted statement made contemporaneously with the event to embellish it and omit the most important part from the quote itself. (Complaint at 6(c)). The Communicator article that was posted was removed in response to the Company's statement that the employees should get together and resolve their problems internally.

Respondent further notes that the allegations in Paragraph 7 of the Complaint do not amount to a violation in that the employee did commit numerous safety infractions, and flaunted

the fact that he could do so and get away with it because he is a Company supporter and do whatever he wants. There is no dispute that he was, in fact, not wearing ear protection as every other employee is required to do, and that the Company has had to pay out numerous claims due to past failure to require ear protection and diligently enforces the rule relative to other employees as a result. Moreover, use of the knife in question was clearly a violation, not only of safety protocols, but of federal law by using a knife that is also used on a product for consumption.

Leslie Pienkowski, Human Resources Manager for the Company in Hazleton, testified on behalf of the General Counsel. (N.T. 25). The Union has represented the employees since acquisition by Bemis in 1993. (N.T. 26). She did not know which years Mr. Despirito had been President of the Union. She did state that he worked for the Company for thirty years. (Id. at 28). She stated that Kevin Davidovich is the Vice President and Lynn Andrews is the Secretary-Treasurer. (Id.). Each of them works as employees for the Company. She claimed that she received two complaints from Lynn Andrews, first about seeing Joe Stasko in the parking lot staring at her as she was leaving work, which she disregarded with little investigation, and incredibly claimed the cameras happened to not be working (Id. at 33-34), and second about safety issues and preferential treatment with regard to them being received by Mr. Stasko. (Id. at 35).

She admitted that she did not know how long Lynn Andrews had worked for the Company and incredibly as HR Manager claimed a lack of knowledge of the seniority list. (Id. at 46). She admitted that when Ms. Andrews came to her about being harassed in the parking lot she was shaken up and concerned for her safety. (Id. at 47). She claimed a lack of knowledge of

an entire line of questioning about the incident, demonstrating the lack of an actual investigation on her part into the facts. (Id. at 47-48). She claimed not to even be aware that Ms. Andrews was on the Safety Committee. (Id. at 49). She admitted that employees who committed similar safety violations, including one bargaining unit member who forgot to wear safety glasses, were disciplined. (Id. at 50). At the time of the events in question, she was with the Company less than two years total. (Id. at 51).

The witness admitted that Mr. Stasko admitted to the safety violations and did not receive discipline. (Id. at 52). She even admitted that the violation was a violation of the Food and Drug Act. (Id. at 55). She also admitted that other employees received discipline for not wearing earplugs. (Id.). She admitted that the Company has paid out hundreds of thousands of dollars for hearing loss cases. (Id. at 56). She admitted that prior incidents involving disputes between other employees and Mr. Despirito resulted in discipline only of Mr. Despirito, a Union official. (Id. at 59).

Joe Sasko testified on behalf of the General Counsel. He has only worked with the Company less than three years. (Id. at 62). He claimed to be harassed by Mr. Despirito. (Id. at 68). His involvement with a company investigation did not occur until the tail end of his allegation. (Id. at 69). He admitted that he removes his hearing protection. (Id. at 79). He acknowledged that there was, in fact, a tape from the camera in the parking lot, and that he was told the Company looked at it, contradicting the testimony of the prior witness who claimed the camera was not working and there was no evidence. (Id. at 85). He admitted that he knew that earplugs were to be worn at all times on the floor. (Id. at 86). He admitted to violating this rule

on a daily basis. (Id. at 87). Despite these daily violations, he admitted he was never disciplined. (Id. at 88).

He claimed that Ms. Andrews informed him that he was part of an investigation, and claimed incredibly that he did not know that she investigates grievances as part of the duties of her position. (Id. at 89). He claimed to not know that union officials investigate grievances. (Id. at 90).

Lynn Andrews testified on behalf of the General Counsel. (Id. at 93). She has been Secretary-Treasurer of the Union for about twelve years. (Id. at 95). She noted that she received employee complaints about Mr. Stasko and that the employees will write them out and she would relay them.

Carl Passler testified on behalf of the General Counsel. He is an Environmental Compliance Manager. (Id. at 108). Safety complaints are rarely made directly to him. (Id. at 110). A voice mail was played, in which Ms. Andrews noted that she had heard at a safety meeting of several violations, not mentioning the violator, but mentioning that she was surprised that he said nothing about it in the safety meeting. (Id. at 121). He admitted that he even saw Mr. Stasko committing the knife violation. (Id. at 126). He did not discipline the employee for using a blade without a glove. (Id. at 131). He did not utilize progressive discipline with respect to the PPE violations by Mr. Stasko despite his admitting to using progressive discipline at the plant. (Id. at 132). Despite Mr. Stasko's admission that he violated the policy every day, Mr. Passler refused to call him a habitual violator. (Id. at 134).

He admitted that other employees have been disciplined for failing to wear protective equipment. (Id. at 135-136). He admitted that complaints about safety equipment violations are

made to supervisors on a regular basis, and that sometimes supervisors will talk to the employees about them. (Id. at 138). He admitted to himself talking to employees about them. (Id. at 138). He claims to investigate all incidents. (Id. at 138). He admitted that Mr. Sasko, despite numerous violations, including one resulting in injury and lost time, never received discipline from him. (Id. at 139). He admitted that ear protection is required due to the significant hearing loss liability of the Company. (Id. at 141).

He admitted that someone at the safety meeting told him about the pizza cutting violation before Ms. Andrews did. (Id. at 146). He knew it was a food safety violation and claimed that it wasn't important to him at the time. (Id. at 146-147). He admitted that Stasko received no discipline at all. (Id. at 147). He admitted that Ms. Andrews did not even mention Stasko's name in her own complaint about it. (Id. at 147). He admitted that Ms. Andrews had made other safety complaints as part of her job on prior occasions. (Id. at 148). He admitted that employees have been terminated for not wearing safety equipment. (Id. at 150).

Michael Samsel testified on behalf of the General Counsel. He is a press assistant. (Id. at 159). He was called into HR to give statements in investigations concerning Mr. Despirito. (Id. at 160). He described events that there was no evidence the Union was involved with. (Id. at 170). He contradicted himself several times as to how many statements he gave the NLRB. (Id. at 171).

He admitted to be known as a clown at the plant. (Id. at 172). He admitted that he has no evidence at all that any of the things he testified to seeing involved the Union. (Id. at 176-177). It was stipulated that what was said about no one being safe when Mr. Despirito gets back was not even in his NLRB affidavit. (Id. at 180). He admitted that the event he described regarding

Lynn Andrews was not in the affidavit, and further, essentially all that was said was that she will do her own investigation. (Id. at 182). His statement was introduced as Respondent's Exhibit 1 and demonstrates massive inconsistencies with his testimony.

At the close of the General Counsel's case, the Respondent made a motion to dismiss the complaint. It noted there was no evidence to support 6(a), the allegation of implicit threat by Lynn Andrews. It noted that the allegation in 6(b) was stipulated to being less than 24 hours and, therefore, not a violation of the Act. It further noted that the items in 6(c) were not substantiated with any credible evidence and that none of the items in 7(a), 7(b), 7(c), or 7(d) were violations of the Act. Moreover, taken as a whole, anything there is that would constitute a violation is *de minimus.*

Kevin Davidovich, the Vice President of the Union and Bemis employee for 17 years, testified on behalf of the Respondent. (Id. at 202-203). He related that Mr. Samsel approached him and told him that he was finding some things that were offensive. He did not state who was offended or what they were. (Id. at 203). He said the Company is collecting them. (Id.). The witness told him that that is a good thing and it's not like in the old days where peoples' things were vandalized and cars were being keyed. (Id. at 204). He never told him that he or anyone else would engage in such activity and had no involvement in the claimed offenses. (Id.).

Michelle Hernandez testified on behalf of the Union. She has been an employee with Bemis for 20 years. (Id. at 205). He is on the safety committee and saw Stasko take the razor blade out of the knife and slice the pizza. Mr. Prassler said that he saw nothing, put his hand up to his face, and turned away. (Id. at 206-207). Mr. Samsel said nothing about his failure to have a cutting glove. (Id. at 207). He noted that Mr. Stasko probably should have been fired for such

blade violations, and could not believe the audacity and blatant disregard for the policy on open blades. She complained to Ms. Andrews about it. (Id. at 207). She noted that the knife is normally used for cutting film for bread bags. (Id. at 208).

Denise Eisley testified on behalf of the Respondent. She has been employed with Bemis for 18 years, and is the Environmental Health and Safety Advocate. (Id. at 211). She has told Mr. Stasko about safety violations half a dozen times and has never been aware that he has received any discipline for safety equipment violations. (Id. at 212). She was present when the pizza violation took place and Mr. Stasko took the blade out if his hook knife and cut the crust on the pizza. (Id.). She saw him put the blade back into his knife. (Id. at 213). She was told to talk to Mr. Stasko about it by her boss, Mr. Prassler, and have him discard the blade because it is a food safety violation.

Lynn Andrews testified on behalf of the Respondent. She discussed the allegation in 6(a). She was asked to investigate the allegations against Mr. Despirito on behalf of the Union. She asked to speak with Joe Sasko, and was told he was in the break room with his earmuffs off. (Id. at 215). She asked Mr. Sasko if she could speak with him tomorrow, and he never replied. Gary Persavage asked her some questions. She was not in the break room even a minute. (Id. at 216). She never waved her finger at Mr. Sasko. She did not mention his name in the ear protection complaint. (Id. at 216). The complaint was the day after the parking lot incident and she just said that he doesn't have earmuffs on and nobody says anything. (Id. at 217). She described the incident in the parking lot. She was so shaken up that she had to be walked in to work and they never even marked her off for being late that day. (Id. at 218). She was given

three different contradictory stories about the cameras. She had reported numerous safety violations in the past. (Id. at 220).

STATEMENT OF ISSUE INVOLVED

Whether the Union engaged in unlawful threats to employees in violation of Section 8(b)(1)(A)?

Suggested Answer: In the Negative.

ARGUMENT

THE UNION ACTORS DID NOT ENGAGE IN UNLAWFUL THREATS TO EMPLOYEES IN VIOLATION OF SECTIONS 8(B)(1)(A) AND 8(B)(2).

Section 8(b)(1)(A) states that "it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in [Section 7]." The subsequent proviso states that nothing in Section 8(b)(1)(A) shall "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." 29 U.S.C. § 158(b)(1)(A).

Section 8(b)(1)(A) and its proviso envision a balancing of the rights of the union against the rights of employees and members on a case-by-case basis. Some union practices which are inherently coercive under Section 8(b)(1)(A) such as fining or expulsion, are permissible under the proviso if they are within the legitimate interests of the union and do not contravene any other public policy enunciated in the Act. *Scofield v. N.L.R.B.*, 394 U.S. 423, 89 S.Ct. 1154, 22

L.Ed.2d 385 (1969); *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 87 S.Ct. 2001, 18 L.Ed.2d 1123 (1967).

Section 8(b)(1)(A) parallels 8(a)(1), which makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees" in the exercise of rights guaranteed in Section 7 of the Act. *Lee v. N.L.R.B.*, 393 F.3d 491, 494 (fn.1) (4th Cir. 2005).

The propriety or impropriety of conduct alleged must be judged in the light of all the circumstances of the case to ascertain whether it was, in fact, coercive or otherwise in violation of the law. Such conduct "must be of such a nature as to indicate a realistic possibility that employee coercion thereby is likely to result." *N.L.R.B. v. Monroe Tube Co.*, 545 F.2d 1320, 1327 (2nd Cir. 1976). Relief may be denied where a violation is found to be *de minimus* in nature. *N.L.R.B. v. Copes-Vulcan, Inc.*, 611 F.2d 440, 443 (3rd Cir. 1979) (citing 29 U.S.C. § 158(c) (1973); *N.L.R.B. v. McCormick Steel Co.*, 381 F.2d 88, 91 (5th Cir. 1967); *Firestone Synthetic Fibers Company v. N.L.R.B.*, 374 F.2d 211, 213-215 (4th Cir. 1967).

Here, the witnesses for the General Counsel were by and large not credible in that they contradicted their own statements to the NLRB, and were refuted by the credible and concise testimony of other witnesses. In fact, "Shrek's" testimony was embellished far beyond his statement to create an entirely different meaning. The embellished claims were refuted by credible testimony of Mr. Davidovich.

Ms. Andrews' reporting of Mr. Stasko was precipitated by complaints by another witness, and were in keeping with Ms. Andrews' reporting of safety violations numerous times in different circumstances related to her position. The Company has paid out hundreds of thousands of dollars in hearing loss claims and yet refused to discipline Mr. Stasko for his

admitted daily violations of the policy, while other employees were warned or disciplined. The knife incident was a serious food safety violation. There was no question it was being intentionally ignored by Mr. Prassler, who dramatically covered his face claiming he was seeing nothing.

The Communicator posting was for less than 24 hours and the issue involved was resolved with the Company. It was not threatening and, in any event, constituted a *de minimus* situation.

A union can avoid liability for the acts of its agents if it effectively repudiates their conduct. *Communications Workers of America, Local 9431*, 304 N.L.R.B. No. 54, 138 L.R.R.M.(BNA) 1483 (1991); *East Texas Motor Freight*, 262 N.L.R.B. No. 101, 110 L.R.R.M.(BNA) 1547 (1982). Assuming *arguendo* that any threat was made, the Union would have effectively repudiated any conduct indicating the opposite.

Outside of the five allegations remaining in the Complaint, the additional filings or allegations should be disregarded. The Respondent renews and preserves its objections to evidence outside those allegations, as well as its motion to dismiss the entire Complaint for lack of sufficient evidence and the use of the CA file as part of the prosecution of this CB case.

CONCLUSION

In light of the foregoing, the Union respectfully requests that the Judge dismiss the charges of the Complaint. The testimony and evidence establishes that the allegations are not credible and, in any event, had no likelihood or intent of infringing on Section 7 rights. Moreover, to the extent that any violation is found, it would necessarily be *de minimus* in nature.

Respectfully Submitted

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By: Ira H. Weinstock
IRA H. WEINSTOCK

CERTIFICATE OF SERVICE

AND NOW, this 30th day of November, 2018, I, Ira H. Weinstock, Esquire, attorney for the Respondent, hereby certify that I served the within **BRIEF IN SUPPORT OF RESPONDENT** this day by depositing the same in the United States mail, postage prepaid, in the post office at Harrisburg, Pennsylvania, addressed to:

By E-Mail to:

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