

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

BEMIS COMPANY, INC.,

Charging Party,

and

**GRAPHIC COMMUNICATIONS
CONFERENCE/INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
LOCAL UNION NO. 735-S,**

Respondent.

Cases: 04-CB-215127

**EMPLOYER BEMIS COMPANY, INC.'S BRIEF IN SUPPORT OF
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION**

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I. INTRODUCTION

Bemis Company, Inc. (hereinafter “Bemis”), pursuant to the Board’s Rules and Regulations 102.46, submits this brief in support of its contemporaneously-filed Exceptions to the decision of Administrative Law Judge David I. Goldman (“ALJ”) dated February 1, 2019 (“ALJ Decision”).¹ The ALJ correctly found that Respondent Local Union 735-S (“Union”) violated the National Labor Relations Act (the “Act”) by engaging in certain actions to threaten, intimidate and otherwise harass employees who provided information to Bemis regarding workplace misconduct committed by the Union’s President, resulting in the Union President’s suspension and discharge from employment with Bemis.

However, the ALJ erred in failing to find that other actions taken by the Union, as part of the same campaign of harassment and intimidation against those who dared to report the Union President’s misconduct to Bemis, also violated the Act as alleged in the Complaint. These findings and conclusions, which serve as the basis for the ALJ’s dismissal of a portion of the Complaint, are unsupported by the record, contrary to law, and should be overruled.

II. STATEMENT OF THE CASE

On June 25, 2018, the Regional Director for Region 4 of the Board issued a Complaint and Notice of Hearing (“Complaint”) alleging that the Respondent violated Sections 8(b)(1) and 8(b)(2) of the Act by taking various actions to intimidate and coerce employees and/or retaliate against them for reporting misconduct by the Union’s President, including: (1) verbally threatening employees with unspecified reprisals; (2) posting a communication to employees threatening them with retaliatory actions including “fines” and being “black listed from all union jobs;” (3) threatening violence and other harm against employees; and (5) attempting to cause

¹ Citations to the Administrative Law Judge’s decision will be referenced as “ALJD” followed by the appropriate page number(s). Citations to the hearing transcript will be referenced as “Tr.” followed by the appropriate page number(s). Joint exhibits will be referenced as “Jt. Exh.” followed by the exhibit number(s). General Counsel’s exhibits will be referenced as “G.C. Exh.” followed by the exhibit number(s).

Bemis to issue discriminatory disciplinary action against an employees by reporting alleged safety violations on the part of the employee. (Complaint.)

A hearing was held on October 22, 2018, in Hazleton, Pennsylvania, before ALJ Goldman. On February 1, 2019, ALJ Goldman issued a decision finding some violations as alleged in the Complaint, and dismissing certain allegations of the Complaint. In his decision, ALJ Goldman correctly found that the Union engaged in violations of Section 8(b)(1)(A) when it posted the written notice to employees expressly threatening them with fines and being black-listed from all union jobs (ALJD, p. 11, L44-45), and by the Union Vice President's verbal threats against an employee during the same time period. (ALJD, p. 12, L8-32.)

However, the ALJ incorrectly found that Union Secretary-Treasurer Lynn Andrews' threats to "investigate" and "get to the bottom of" the employee's reports of the Union President's misconduct were not unlawful threats. (ALJD, p. 11, L11-42.) In further error, the ALJ found that Andrews' relentless campaign of reporting alleged violations by an employee to Bemis somehow was not an unlawful attempt to cause Bemis to discipline that employee. (ALJD, pp 13-16.) In so doing, the ALJ inexplicably ignores the Union's repeated and express threats, both verbal and in writing, telling employees that they "better watch their back," that "nobody is safe," that the Union would "investigate," "get to the bottom of" the employee's reports of the Union President's misconduct, and then retaliate against them with "fines," "black-listing from all union jobs," as well as violence and damage to property. While the ALJ acknowledged and found that the Union engaged in these threats, he inexplicably and deliberately disregarded the overwhelming evidence of the Union's retaliatory and intimidating intent and purpose to find that these actions were somehow free of retaliatory intent. The failure to find these additional, very similar violations as part of the same pattern of unlawful activity was in error.

For all of these reasons, the ALJ's dismissal of these allegations should be overruled and the Board should hold that the Union violated the Act on all counts alleged in the Complaint.

III. QUESTIONS INVOLVED

1. Did the ALJ err in finding that the Union did not violate Section 8(b)(1)(A) by Lynn Andrews' confrontation and tirade against Joe Stasko? (Exceptions 1-3.)
2. Did the ALJ err in finding that the Union did not violate Section 8(b)(2) by attempting to cause Bemis to discipline Employee Joe Stasko? (Exceptions 4-10.)
3. Did the ALJ err in dismissing the allegation that the Union also violated Section 8(b)(1)(A) by attempting to cause Bemis to discipline employee Joe Stasko? (Exception 11.)

IV. STATEMENT OF THE FACTS

A. Background Information About Bemis and the Union.

Bemis operates a production facility in Hazelton, Pennsylvania, at which Bemis manufactures bread bags. (Tr. 25-26.) At the facility, the Union represents a bargaining unit of approximately 350 production, maintenance and logistics employees. (Tr. 26.) The Union was the representative of the employees at the facility when Bemis acquired the Hazelton facility in 1993, and Bemis and the Union have had an ongoing bargaining relationship since that time. (Tr. 26.) At all relevant times, Bemis and the Union have had a collective bargaining agreement that is in effect through 2020. (Tr. 27, G.C. Exh. 3.)

The President of the Union is Dominic DeSpirito. (Tr. 27.) DeSpirito was an employee of Bemis for approximately 30 years, until Bemis discharged him from employment on January 18, 2018. (Tr. 28-29.)

B. Bemis's Suspension and Discharge of the Union President.

On December 14, 2017, employees complained to Bemis management that DeSpirito was engaging in sexually lewd harassment of a pressroom employee and Union member named Joseph Stasko. (Tr. 31-32.) Bemis's investigation of DeSpirito's misconduct began with a report from an employee named Jimmy Kassak that DeSpirito was harassing Stasko. (Tr. 31-32.) That same day, on December 14, 2017, Bemis placed DeSpirito on suspension pending investigation of this misconduct. (Tr. 32.)

After Kassak initially brought the complaint forward to management, Stasko and another employee, Mike Samsel, also shared their experiences and concerns with the Company about DeSpirito's misconduct. (Tr. 31-32.) Stasko reported that DeSpirito frequently had made lewd comments to him and had made sexual gestures with his hands simulating oral sex. (Tr. 68.) DeSpirito would say things like Stasko "sucks cock," that Stasko "sucks a bunch of cock," and that Stasko specifically sucked the cocks of various managers and others working at Bemis. (Tr. 68.) DeSpirito's harassment of Stasko began in September 2017, and continued until mid-December 2017, when it was reported to Bemis. (Tr. 68.)

Samsel, a press assistant and member of the Union, also cooperated in the Company's investigation of DeSpirito's harassing conduct toward Stasko. (Tr. 159-160.) Samsel provided a statement to Bemis management regarding his observations of DeSpirito's misconduct, which corroborated Stasko's reports. (Tr. 160.)

C. The Union's Campaign of Intimidation and Threats.

Immediately after DeSpirito's suspension, the Union expressly announced its intent to retaliate against those who reported DeSpirito's misconduct to Bemis. The day DeSpirito was suspended, DeSpirito called Samsel and asked what was going on at the plant. (Tr. 162.) Samsel responded that employees were being interviewed about DeSpirito's misconduct, and said that he was not going to lie for DeSpirito. (Tr. 163.) DeSpirito said to Samsel that "nobody is safe, "they better watch their back," and that he "wasn't going to do anything" for those people who had made reports of his misconduct. (Tr. 163.) The ALJ expressly credited this evidence and found that DeSpirito made these threats. (ALJD, p. 3, L5-12 and fn. 2.)

True to DeSpirito's threat, immediately after Bemis suspended and later discharged DeSpirito, the Union and its officers and agents began a pattern of harassment, including threats to and complaints against and about the employees who shared with Bemis their concerns about DeSpirito's misconduct.

1. The Union Threatened Stasko on December 18, 2017.

On December 18, 2018, just 4 days after DeSpirito was suspended and told Samsel that “nobody is safe” and they “better watch their backs,” the Union began a campaign of harassment and retaliation against those who reported DeSpirito’s misconduct. Lynn Andrews, the Union’s Secretary-Treasurer, confronted and threatened Stasko in the press breakroom at Bemis.

Andrews expressly admitted that she went to the press breakroom to confront Stasko because DeSpirito had told her that she needed to “go and see these people.” (Tr. 215.) Thus, she was acting specifically on the instruction of DeSpirito, who had announced that these employees “better watch their back,” and “nobody is safe.” Andrews testified that she did not even know who Stasko was, so she went to the press department and asked another employee who Stasko was. (Tr. 215.) Another employee directed her to Stasko, so she went to him and confronted him. (Tr. 216.)

Stasko testified that he was in the press department breakroom on a break. (Tr. 73.) Andrews came in the door of the breakroom and stood over Stasko, who was seated, wagged her finger in his face about 12 inches from his nose, and yelled at him. (Tr. 73-74.) Andrews told Stasko that she was going to “get to the bottom” of what was going on. (Tr. 74.) Andrews asked Stasko, “how could you do this” to DeSpirito. (Tr. 74.) Andrews stated she was going to conduct her own investigation. (Tr. 74.) Andrews was upset, and was yelling loudly as she said these things to Stasko. (Tr. 75.) Samsel was also present when Andrews came into the breakroom, and Samsel corroborated Stasko’s testimony. (Tr. 165.) The ALJ expressly credited the testimony of Stasko and Samsel regarding this incident, and found that this incident occurred as they testified. (ALJD, p. 4, L5-16.) As fully discussed below, the ALJ inexplicably found that Andrews’ threats, although made, had no unlawful intent or effect.

2. The Union’s Posting of “The Communicator” Threatened and Coerced Employees in January 2018.

On January 22, 2018 – just days after Bemis converted DeSpirito’s suspension to a discharge – the Union posted in Bemis’s plant a Union-produced document called “The Communicator.” (Tr. 9, G.C. Exh. 2.) The Union posted “The Communicator” on the Union’s bulletin board and on the door to the employee breakroom. (Tr. 9.) This particular edition of “The Communicator” provided the following warning from the Union to Bemis’s employees:

ATTENTION

The events that have happened are very troubling. We as Union Brothers and Sisters do not turn each other in if we have an issues [sic] we go to a steward or a board member. Turning in fellow Union members is a violation of the Union by laws and could result in fines and black listed from all union jobs.

* * *

**Thank you
Dominic DeSpirito
President GCC/IBT Local 735-s**

(G.C. Exh. 2.)

The ALJ correctly found that, by this posting, the Union made an unlawful threat against employees – “[i]t is a threat to their employment rights and is a. (ALJD, pp. 11-12.) However, as fully discussed below, the ALJ failed to give appropriate consideration to this express, written statement of the Union’s intent to retaliate and discrimination to inform the intent and purpose of the Union’s other actions and threats against employees.

3. The Union Threatened Samsel in January 2018.

Later in January 2018, Kevin Davidovich, the Union’s Vice President, threatened Samsel. Samsel asked Davidovich about threatening notes and objects that Samsel had found in his working area, such as homemade paper rats, which Samsel believed were targeting him for reporting DeSpirito’s misconduct. (Tr. 168.) Davidovich replied to Samsel, “things could get much worse.” (Tr. 168.) When Samsel asked what Davidovich meant by that, Davidovich

replied that “things could be settled like in the old days,” including “caving in skulls,” “smashing lockers,” and damaging property and cars. (Tr. 168.) Samsel told Davidovich that the Vice President of the Union should not be making threats like that. (Tr. 168.) Davidovich responded that it was going to get worse, because DeSpirito had told Davidovich to “go after the rats.” (Tr. 168.) The ALJ correctly found that these comments by Davidovich were threats of reprisals against Samsel in violation of the Act. (ALJD, p. 12, L21-32.)

D. The Union’s Attempts to Cause Bemis to Discriminate Against Stasko.

The Union made it perfectly clear that it maintains a “rule” that employees should not report misconduct on the part of the other employees. The Union expressed this in writing in the posting of “The Communicator,” which threatened “fines” and “black-listing” against employees who did so. (ALJD, p. 4-5; G.C. Exh. 2.) The Union also expressed it by DeSpirito’s threats to Samsel that those who reported DeSpirito’s misconduct “better watch their backs” and “nobody is safe.” (ALJD, p. 3, L5-12.) Additionally, Andrews, as a Member of the Union’s Executive Board for over 20 years, testified directly that the Union has a policy against employees turning in other employees for alleged misconduct, and confirmed that the Union frowns upon employees reporting other employees. (Tr. 97.)

However, the Union flatly abandoned this “rule” in order to retaliate against Stasko for reporting DeSpirito’s misconduct. Almost immediately after DeSpirito was discharged as a result of the complaints of Stasko, Andrews launched an active campaign to try to get Bemis to discipline Stasko.

1. The Union Reported Stasko For A Purported Safety Violation In Mid-January 2018.

In mid-January 2018, Bemis’s Safety Advocate, Denise Eisley, came to Stasko and told him that Andrews had made a complaint about him to Eisley and to Bemis supervisors Mike Parker and Glenn Youngcourt, alleging that Stasko was not wearing his hearing protection. (Tr.

77-78.) Stasko had observed Andrews watching him just a few minutes earlier, Andrews had made direct eye contact with him and then went into the press office. (Tr. 78-80.) Stasko acknowledged that he had briefly removed his hearing protection at that time to have a conversation with another employee, because he could not hear the conversation with the hearing protection on. (Tr. 78-79.) Employees frequently take off their hearing protection very briefly to have a conversation with another person. (Tr. 80.)

Andrews admitted that she went to the office to report Stasko for not wearing hearing protection to Company supervisors and the Safety Advocate, Denise Eisley. (Tr. 98.) She attempted to downplay this behavior by claiming that she “did not say his name.” (Tr. 98.) Nonetheless, Andrews acknowledged that she was referring to Stasko, and that the Company supervisors and Eisley understood that she was referring to Stasko. (Tr. 98.)

Andrews further tried to justify her complaints by claiming that she only reported it because Stasko was a habitual offender of personal protective equipment (“PPE”) requirements. (Tr. 222.) However, on cross-examination, Andrews admitted that she had only seen Stasko with his ear protection off *on one occasion*. (Tr. 222.) Andrews had already admitted that, on December 18, 2017, when she went to the press breakroom to threaten Stasko, she did not even know who Stasko was at that time. (Tr. 215, 222.) Yet, despite only knowing who Stasko was for five weeks, and despite seeing him without proper PPE on only one occasion, she falsely testified that she knew Stasko to be a “habitual offender” of PPE requirements. (Tr. 222.)

Most tellingly, Andrews acknowledged that in her 42 years of employment with Bemis, she had never before – not even once – reported another employee’s safety violation to the Company. (Tr. 99.)

2. The Union Reported Stasko For A Purported Safety Infraction On January 25 and 26, 2018.

On January 25 and 26, 2018, Andrews made no less than three separate complaints about

Stasko to Bemis management in an effort to get Bemis to take disciplinary action against him. These complaints related to an incident in which Stasko was alleged to have used a work knife to cut pizza. During a safety committee meeting on January 25, 2018, the Company provided pizza to the committee. (Tr. 125.) During the meeting, another employee and fellow member of the safety committee, Michelle Hernandez, testified about that Stasko had engaged in a safety violation. (Tr. 205.) Hernandez stated that she observed Stasko remove a razor blade from his safety knife with his bare hands, use the blade to cut pizza, wipe the blade on a paper towel, and put it back into the safety knife. (Tr. 206-208.) She was concerned about this because Stasko should not have been handling a razor blade with his bare hands, and because the blade contacting the pizza could contaminate the Company's bread bags if the knife were later used in the Company's operations. (Tr. 206-208.) She believed that Bemis's Environmental Health & Safety ("EHS") Manager, Carl Passler, was intentionally ignoring these violations. (Tr. 206-207.)

Hernandez testified that she was very upset about the violation that she observed, and that she thought Stasko should have been discharged or disciplined for the offense. (Tr. 208.) Hernandez complained about this incident to Andrews because Stasko was "causing all these problems between other employees." (Tr. 209.) On cross-examination, Hernandez confessed that her concern that Stasko was "causing all these problems with other employees" was in reference to his reporting DeSpirito's misconduct. (Tr. 209.) Thus, Hernandez's announced intent was to cause retaliation against Stasko for that report.

Andrews was all too eager to escalate and pursue Hernandez's concern about Stasko. First, on January 25, 2018, Andrews left an angry voicemail message for Bemis's EHS Manager. Passler testified to receiving the voice message. (Tr. 118.) A recording of the message was received into evidence as General Counsel Exhibit 5(b):

Hello, this is Lynn Andrews calling. I heard what happened at the safety meeting with a gentleman taking a razor blade out and cutting the pizza, putting it back in his knife to go cut film. And you said nothing, absolutely nothing. He used a razor blade between his fingers and didn't have any protection on, and you let that happen at a safety meeting? Unbelievable.

(Tr. 121.) The recording demonstrates that Andrews' voice was animated and she was agitated and angry in leaving the message. Even though Andrews' message did not mention Stasko by name, Passler was aware that Andrews' message was referring to Stasko because of the concerns raised by Hernandez during the safety meeting earlier that day. (Tr. 125.) Passler forwarded the voice message to HR Manager Pienkowski that same day, and Pienkowski listened to Andrews' complaint. (Tr. 36.) Andrews acknowledged that she had called Passler to complain about Stasko and the alleged pizza knife incident. (Tr. 102.)

However, Andrews was not done yet. She also contacted the Company's Corporate Compliance Hotline to complain about Stasko's conduct in the "pizza knife" incident. (Tr. 37; G.C. Exh. 4.) Andrews confirmed that she had never before, in 42 years of employment, called the Corporate Hotline to report misconduct by a fellow employee. (Tr. 102-104.)

Even after complaining to Passler and to the Corporate Compliance Hotline on January 25, Andrews still was not done pursuing this issue. The next morning, January 26, 2018, Andrews called HR Manager Pienkowski's cell phone to complain about Stasko. At the time, Pienkowski was in a morning leadership meeting. (Tr. 35.) Andrews asked Pienkowski what was happening with the Company's investigation of Stasko cutting his pizza with a work knife. (Tr. 35.) Passler was in the leadership meeting with Pienkowski, so Pienkowski invited Passler out of the meeting with her and they went to Pienkowski's office to take Andrews' call, which they put on speakerphone. (Tr. 35.) In that conversation, Andrews claimed that the Company was giving Stasko preferential treatment, argued that the Company had disciplined other employees for less, and that she wanted to know what the Company was going to do about

Stasko. (Tr. 35.) Andrews was angry on the phone, and raised her voice and sounded excited. (Tr. 36.) Andrews demanded to know what the Company was going to do about disciplining Stasko. (Tr. 129.) Passler asked Andrews what she wanted him to do and what her expectations were for an outcome to the Company's investigation. (Tr. 36.) Andrews responded, "I can't talk about this right now," and she hung up on them. (Tr. 36.) Passler confirmed that Andrews was angry during the call, was speaking louder than her normal speaking voice and hung up on them when she didn't like their response. (Tr. 129-130.)

Andrews confirmed in her testimony that she was "very upset that nothing happened" to Stasko, that he was not disciplined by the Company. (Tr. 106.) This is a direct admission by Andrews that she was advocating for Bemis to discipline Stasko, an employee whose interests the Union is supposed to be representing. As noted above, in 42 years of employment at Bemis, Andrews had never before reported another employee's safety violation to the Company. (Tr. 99.) Yet, between the earlier PPE complaint and the "pizza knife" incident, she made at least four such reports against Stasko within a week of DeSpirito's discharge. Andrews directly admitted her intention and attempts to get Bemis to discipline Stasko in direct retaliation for Stasko's protected activity, and this violation was demonstrated by overwhelming evidence at hearing.

Inexplicably, the ALJ found that Andrews engaged in these repeated and relentless efforts to report alleged violations by Stasko, but erroneously concluded that Andrews had no intent of causing Bemis to discipline Stasko – that she was just "making a point." (ALJD, p. 16, L11.) As fully discussed below, the ALJ's finding in this regard irrationally ignores the Union's repeated announcements that employees like Stasko who had reported DeSpirito's misconduct should "watch their backs," that "nobody is safe" from the Union, that they would be subjected to reprisals such as "fines" and "blacklisting," and Andrews' own admittedly false testimony that

that Stasko should be disciplined as a “habitual offender” of safety regulations, even though she was aware of only one potential violation on Stasko’s part. The ALJ’s finding makes sense only if one ignores all of this evidence.

E. Employer Filed a ULP Charge Against The Union.

When Bemis became aware that the Union was retaliating against and threatening employees, it filed the underlying unfair labor practice charge and participated in the NLRB’s investigation of the charge, resulting in the instant Complaint and unfair labor practice findings against the Union.

V. ANALYSIS

In his decision dated February 1, 2019, ALJ Goldman correctly found that the Union’s posting of the threats in “The Communicator” and Union Vice President Davidovich’s threatening comments to Samsel, were unlawful threats in violation of Section 8(b)(1)(A) of the Act. However, the ALJ erroneously ignored the context and motivation in demonstration in these threats when evaluating other conduct by the Union against these employees.

First, the ALJ actually found that the Union, by Secretary-Treasurer Andrews, made other threats to Joe Stasko that the Union was “conducting its own investigation” and “would get to the bottom of this,” but the ALJ erroneously interpreted these threats to be lawful threats that the Union would conduct a lawful investigation of a disciplinary matter. This finding is absurd in light of the facts, found by the ALJ, that DeSpirito had directed Andrews to confront Stasko, while DeSpirito had already warned Samsel that those who reported DeSpirito’s misconduct – people like Stasko – had “better watch their backs” and that “nobody is safe.”

Second, the ALJ found that Union agents did, in fact, repeatedly report alleged safety violations on the part of Stasko to management, and that the Union had never engaged in this type of reporting against any other employee ever before. However, the ALJ erroneously found

that these reports were lawful. The ALJ made the bizarre finding that the Union's reports of alleged violations by Stasko were not attempts to cause Bemis to discipline Stasko, but rather just "making a point." Again, this finding inexplicably ignores that the Union had announced its intent to retaliate. Not only did DeSpirito tell Samsel on December 18, 2017, that the employees who reported DeSpirito's misconduct should "watch their backs" and that "nobody is safe," but the Union also made the written announcement to employees in "The Communicator" that it would retaliate against any members who reported the misconduct of their fellow members – to fine them and "blacklist" them from Union-represented jobs.

As set forth in greater detail below, the ALJ's findings on these issues are unsupported by the record, contrary to law, and should be reversed.

A. The ALJ Erred in Dismissing the Allegation of Andrews' Threat to Stasko.

A union, acting through its agents, violates Section 8(b)(1)(A) of the Act when it engages in acts that "restrain or coerce...employees in the exercise of the rights guaranteed" in Section 7 of the Act. 29 U.S.C. § 158(b)(1)(A). A threat of retaliation by a union representative against an employee for sharing concerns about workplace conditions is such a violation. *See, e.g., McLean Trucking Co.*, 257 NLRB 1349, 1354 (1981); *U.S. Steel Corp.*, *supra*; *International Packings Corp.*, 221 NLRB 479, 484-85 (1975), *enfd.* 542 F.2d 1163 (1st Cir. 1976). The Board applies an objective standard to determine "whether a remark can be reasonably interpreted by an employee as a threat,' regardless of the actual effect upon the listener." *Teamsters Local 391*, 357 NLRB 2330, 2330-2331 (2012) ("that fucking scab needs to be stopped" was an unlawful threat even though not a specific, express threat). When determining whether an unlawful threat has been made, the Board will consider a larger context indicating threatening intent and effect, even where the threat is non-specific or vague. *See id.* In evaluating Andrews' threats to Stasko, in the presence of Samsel, the ALJ erroneously ignored the extensive contextual

evidence of the Union's intent to intimidate and retaliate against those who report Stasko. The ALJ erred in these findings and in dismissing that allegation, as set forth in Exceptions 1 through 3.

The ALJ expressly found that, on December 18, 2017, Union Secretary-Treasurer Andrews went to the press room break area, asked around to find out who Stasko was, and then angrily confronted him, stood over him and wagged her finger in his face, yelling at him. (Tr. 73-74, 215.) She threatened Stasko that she was going to conduct her own investigation and "get to the bottom" of what was going on. (Tr. 74-75.) She asked Stasko, "how could you do this" to DeSpirito, clearly taking the position that Stasko should not have reported DeSpirito's misconduct. (Tr. 74.) Samsel was also present when Andrews came into the breakroom, and Samsel corroborated Stasko's testimony. (Tr. 165.) The ALJ expressly credited the testimony of Stasko and Samsel regarding this incident, and found that this incident occurred as they testified. (ALJD, p. 4, L5-16.)

Inexplicably, the ALJ concluded that Andrews' angry tirade at Stasko was just good, old-fashioned union representation, and that she was merely promising to conduct a fair and upstanding investigation of a member's disciplinary action – a lawful union activity, free of any unlawful threat or coercion. This conclusion is plainly erroneous to the point of absurdity. Andrews' tirade in Stasko's face occurred just 4 days after DeSpirito was suspended and threatened Samsel that "nobody is safe" and they "better watch their backs." (ALJD, p. 3, L5-12.) DeSpirito announced the Union's retaliatory intentions, but because DeSpirito was out of the plant on suspension, he sent Andrews to carry out those intentions. Andrews expressly admitted that she went to the press break room to confront Stasko specifically because DeSpirito had told her that she needed to "go and see these people." (Tr. 215.) Andrews testified to the Union's "policy" that an employee should not report the misconduct of another employee. (Tr.

97.) Later, the Union further announced in “The Communicator” that it intended to fine and black list members who reported the misconduct of DeSpirito. (ALJD, pp. 11-12; G.C. Exh. 2.) The Union made it perfectly clear to employees that the only “investigation” it was interested in conducting was one to determine who had “ratted” on DeSpirito, and how to retaliate against those employees for violation of the Union’s “policy.”

Andrews’ conduct had the purpose and effect of communicating to Stasko, and to Samsel whom was present, that the Union was angry about their protected activities and that they would suffer some unspecified, adverse consequences as the result of the Union’s “investigation” and hostility toward their protected activities. Such threatening and coercive implied threats violate the Act. *See Teamsters Local 391, 357 NLRB at 2330-2331.* The ALJ’s dismissal of that allegation should be reversed, and the Board should find that Andrews’ threats to Stasko violated employee rights under the Act.

B. The ALJ Erred In Dismissing the Allegations Regarding the Union’s Attempts to Cause Bemis to Discipline Stasko.

1. The ALJ Erroneously Dismissed the Section 8(b)(2) Allegation.

Where a union engages in efforts to cause an employer to discipline, discharge or take other adverse action against an employee because that employee has engaged in protected activities, the union violates Section 8(b)(2) of the Act. *See Shipbuilders Local 9 (Todd Pacific Shipyards), 279 NLRB 617, 618 (1986)* (union violated the Act by suggesting to the employer that it demote the employee, transfer him to another ship, and indicated that the union would not file grievances if the employer took action against the employee); *Development Consultants, 300 NLRB 479, 483 (1990)* (union’s encouragement to employer to refrain from recalling an employee violated the Act). There is no requirement that the Union be successful in its efforts in order to violate the Act. Even where, as here, the Employer sees through the Union’s unlawful efforts, a failed effort to cause the employer to discipline or otherwise treat an employee adversely violates the Act, as Section 8(b)(2) establishes that it is unlawful for a union “to cause

or *attempt to cause* an employer to discriminate against an employee...” 29 U.S.C. § 158(b)(2) (emphasis added.)

The evidence presented at hearing established that the Union engaged in multiple unfair labor practices of this type and the ALJ found that the Union made several reports of alleged violations on the part of Stasko, even though the Union had a policy against so doing, and never had done so before. Even a truthful report of alleged misconduct is unlawful when it shown to be discriminatory in intent and purpose. *See Stagehands Referral Service*, 347 NLRB 1167, 1170-1171 (2006) (union’s truthful report of employee absence unlawful because the union had not reported such conduct on the part of other employees, but rather targeted one employee for unlawful reasons).

However, the ALJ erroneously concluded that the Union was just trying to “make a point” with this report, and that everybody – including the Union – knew that these reports could not and would not result in Bemis disciplining Stasko. This conclusion ignores the reality and effect of these reports. The ALJ’s findings in this regard again deliberately ignore the context of the Union’s repeated threats and announcement to these employees of its intent to retaliate against employees who reported DeSpirito’s misconduct. The only “point” the Union was making was that if you report misconduct on the part of the Union President, the Union will make good on its many threats to retaliate against you and make your working life difficult in any way that it can.

Further, it is perfectly clear that the Union advocated that Bemis *should* discipline Stasko for these alleged offenses, and that the Union was hounding Bemis about Stasko in an effort to cause Bemis to discipline him. Contrary to the ALJ’s finding that nobody ever thought for a minute that repeatedly reporting an employee for safety violations could result in disciplinary action, the evidence showed otherwise.

It was undisputed that Bemis employees *are* subject to disciplinary action for repeated

offenses of safety requirements. (Tr. 50, 55, 135.) Andrews was very deliberate and specific that she was claiming that Stasko was a “habitual” violator of safety requirements – the type of “habitual” offender who should be disciplined. (Tr. 222.) While the ALJ was correct that Bemis does not discipline employees for minor safety violations unless they have been warned repeatedly, the Union clearly was trying to paint Stasko as just such a habitual offender, uniquely worthy of disciplinary action.

Andrews stated that, regarding her repeated reports and angry hounding of management about the alleged “pizza knife” incident, she was acting based upon a report she received from employee Michelle Hernandez, a safety committee member. (Tr. 99, 208, 216.) Hernandez testified unequivocally that she strongly believed that Stasko should have been discharged or disciplined for his alleged safety violations, and that she wanted him disciplined because Stasko was “causing all these problems between other employees” by reporting DeSpirito’s misconduct. (Tr. 209.) She testified to her concern, as a safety committee member, as follows: “[EHS Manager] Carl [Passler] didn’t reprimand him verbally, didn’t write him up for that. It’s a safety violation. He probably could have been fired.” (Tr. 207.) When asked by the Union’s attorney whether she thought Stasko should have been discharged, Hernandez replied “If I did something like that, I would at least be told about it. I probably would receive a written warning, possibly been fired, because it’s a direct violation of their safety code and their quality code because that’s a cross-contamination issue.” (Tr. 208.) Hernandez tipped off Andrews to go after Stasko, and it clearly was Hernandez’s view that Stasko should be disciplined. (Tr. 208-209.)

Hernandez told Andrews that Stasko should be disciplined, and Andrews was relentless in trying to make that happen. She called Passler and left an angry voicemail message. (Tr. 118, G.C. Exh. 5(b).) Next, she called Bemis’s Corporate Compliance Hotline to complain about Stasko’s conduct and management’s failure to take action. (Tr. 37; G.C. Exh. 4.) As if that

weren't enough, she later called the HR Manager to follow-up, expressly alleged that the Company had disciplined other employees for lesser violations, and demanded to know what the Company "was going to do about" Stasko's alleged violation. (Tr. 35.)

Finally, and most importantly, Andrews herself admitted that her goal in reporting Stasko's alleged violations was to get him disciplined:

Q. Notwithstanding the policy against turning in fellow union members, you yourself tried to have Mr. Stasko disciplined, correct?

A. The only time I do that is when one union member is told about the same thing another union member is already doing or getting away with. I do not get involved nor do I care what anybody gets away with until another union member comes to me and complains.

(Tr. 97-98.)

It would be more accurate to say that the only time Andrews tries to get a coworker disciplined is when that coworker has reported misconduct by the Union President. In 42 years of employment at Bemis, Andrews had never before reported another employee's safety violation to the Company. (Tr. 99.) When Stasko dared to speak up against the Union President's misconduct, he became Andrews' first target of such reports, and her efforts were fierce. The ALJ's finding that the Union did not actually attempt to cause Bemis to discipline Stasko is directly contradicted by the great weight of the undisputed evidence, including the Union's own witnesses' testimony about what they were doing and why.

Clearly, if Stasko had been disciplined as a result of the Union's relentless tattle-tale campaign against him, the result would have been an indisputable violation of Section 8(b)(2). Essentially, the ALJ is rewarding the Union for Bemis's ability to sift through the Union's unlawful attempts, and for Bemis's willingness to stand up to the Union's pressure to retaliate against Stasko. Section 8(b)(2) states that it is unlawful "to cause or *attempt to cause* an employer to discriminate against an employee..." 29 U.S.C. § 158(b)(2). Andrews clearly

attempted, and attempted, and attempted, and attempted to get Bemis to discipline Stasko. Regardless of whether Bemis would play along, it is clear that the Union believed that Stasko should be disciplined, the Union wanted Stasko disciplined, and the Union was doing everything it could to cause that to happen.

The ALJ's dismissal of the Section 8(b)(2) allegation was in error and should be reversed, and the Board should find that the Union violated Section 8(b)(2) by Andrews' actions, as set forth in Exceptions 4 through 10.

2. The ALJ Erroneously Dismissed the Related Section 8(b)(1)(A) Allegation.

Likewise, the ALJ's finding that these same actions did not violation Section 8(b)(1)(A) are in error and should be reversed, as set forth in Exception 11. The Board holds that when a Union violates Section 8(b)(2), it also commits a derivative violation of Section 8(b)(1)(A) because of the obvious effect these actions have to restrain and coerce the employee's exercise of Section 7 rights. *See SPFPA Local 444*, 360 NLRB 430, 435 (2014); *Postal Workers*, 350 NLRB 219, 222 (2007).

The restraint and coercive effect upon Stasko is plain and obvious. Not only did the Union repeatedly hound management to discipline Stasko, but Stasko was well aware that the Union was doing this to him. First, upon learning that Stasko had provided information about DeSpirito's misconduct, Andrews found Stasko, wagged her finger in his face and yelled at him that she was "going to get to the bottom of it" and was going to do "her own investigation." (Tr. 74.) Of course, Stasko never received any information about any Union "investigation." (Tr. 76.) The only Union "investigation" he was aware of was the Union's efforts to monitor him and report his alleged violations to Bemis. Stasko testified that he learned that Andrews had made a complaint about him to Safety Advocate Eisley and to Bemis supervisors, alleging that he was not wearing his hearing protection. (Tr. 77-78.) Stasko had observed Andrews watching him

just a few minutes earlier, when she made direct eye contact with him before going into the press office to report him. (Tr. 78-80.) Stasko was also aware, as the ALJ found, that Andrews made an unsubstantiated complaint about Stasko to Bemis on January 24, 2018, alleging that Stasko had stared her down in the parking lot trying to intimidate her. (ALJD, p. 16, fn. 12.) Of course, all of this was taking place within the larger context of the Union’s posting of “The Communicator” and making it clear to employees that those who reported on DeSpirito would face consequences in retaliation. Even if the Union’s many efforts to cause Bemis to discipline Stasko were unsuccessful, the knowledge that the Union would go to such lengths to disrupt his working life in retaliation for reporting DeSpirito’s workplace misconduct certainly would impose a restraint and coercion upon Stasko’s and other employees’ rights under the Act to report such concerns to their employer. The Union’s conduct in trying to get Stasko discipline clearly violated Section 8(b)(1)(A), and the ALJ’s decision should be reversed on that point.

VI. CONCLUSION

For all of the foregoing reasons, the decision and recommended Order of the Administrative Law Judge should not be upheld, but rather should be reversed by the Board, on the specific points set forth in the Employer’s Exceptions and this Supporting Brief.

Respectfully submitted this 1st day of April 2019.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 1, 2019, a copy of the foregoing
**EMPLOYER BEMIS COMPANY, INC.'S EXCEPTIONS TO ADMINISTRATIVE LAW
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