

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

KUMHO TIRES,)	
)	
Respondent/Employer)	
)	
and)	Case 10-CA-208255
)	Case 10-CA-208414
UNITED STEEL, PAPER & FORESTRY)	Case 10-RC-206308
RUBBER, MANUFACTURING, ENERGY)	
ALLIED INDUSTRIAL & SERVICE)	
WORKERS INTERNATIONAL UNION)	
AFL-CIO, CLC)	
Charging Party/Petitioner)	
)	
)	
)	

RESPONDENT’S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE’S DECISION

NOW COMES Kumho Tires, Respondent herein, and files its Exceptions to Administrative Law Judge’s (ALJ’s) Decision dated May 14, 2019. Respondent simultaneously files its Brief in Support of Exceptions to Administrative Law Judge’s Decision.

EXCEPTIONS ¹

Respondent takes exception to the ALJ’s Decision:

1. Finding and/or conclusion that President Hyunho Kim said that only “employees’ jobs were in jeopardy,” on the ground that this finding and/or conclusion is not supported by the record evidence. (JD 2:34-36).

¹ References to the ALJ’s decision are designated as “JD” followed by the appropriate page and line numbers. References to the record are set forth in Respondent’s Brief in Support of Exceptions.

2. Finding and/or conclusion that when President Hyunho Kim told Bradley, through an interpreter, that if “this happened”, he was “clearly referring to unionization,” on the ground that this finding and/or conclusion is not supported by the record evidence. (JD 2:34-36).
3. Finding and/or conclusion that there is testimony “herein in which Respondent’s witnesses did not sufficiently address the testimony of the General Counsel’s witnesses and that in these instances the testimony of the General Counsel’s witnesses is uncontradicted and therefore credible,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 2:50-end; FN2).
4. Finding and/or conclusion that a partial recording of Jerome Miller’s speech is accurate on the ground that this finding and/or conclusion is not supported by the record evidence (JD 5:45-46).
5. Finding and/or conclusion that President Hyunho Kim “was obviously suggesting such adverse consequences were more likely if employees selected union representation,” on the ground that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 6:4-5).
6. Finding and/or conclusion that William Monroe was hired by Respondent “to lecture employees about the National Labor Relations Act so as to encourage them to vote against union representation,” on the ground that this finding and/or conclusion is not supported by the record evidence. (JD 6:12-14).
7. Finding and/or conclusion that William Monroe did not address Chase Register’s testimony that Monroe asked him how he felt about the Union and therefore Register’s testimony is uncontradicted and because “Register’s testimony regarding this interrogation

- is uncontradicted” it would be credited, on the ground that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 6:42-43).
8. Finding and/or conclusion that William Monroe inquired about Chase Register’s union sympathies before he was aware of them on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 7:1-2).
 9. Finding and/or conclusion that Harry “Kip” Smith’s inquiry of Register’s (open union supporter) union sympathies is a violation of Section 8(a)(1) on the ground that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 7:14-20; 38-end; FN 10).
 10. Finding and/or conclusion that “given the context of the inquiries by Smith and other supervisors (threats of plant closure, etc.), [the ALJ] would find that these interrogations violated Section 8(a)(1) even if the employee interrogated was an open union supporter,” on the ground that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 7:38-end; FN 10).
 11. Finding and/or conclusion that Harry “Kip” Smith told Marcus Horne that Smith “would not be able to [help employees] if employees chose to be represented by the Union,” on the ground that this finding and/or conclusion is not supported by the record evidence. (JD 7:28-33; 7:38-end; FN 11).
 12. Finding and/or conclusion that the ALJ would credit the four employees and find that Harry “Kip” Smith told Van Cook, Michael Cannon, and Chaser Register that he “would not be able to help them if they selected the Union” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 7:33 to 8:1-4).

13. Finding and/or conclusion that Harry “Kip” Smith “asked Horne how he planned to vote,” on the ground that this finding and/or conclusion is not supported by the record evidence. (JD 8:4).
14. Finding and/or conclusion that Respondent held a meeting within 24 hours of the start of balloting, on the ground that this finding and/or conclusion is not supported by the record evidence. (JD 8:17-19; FN12).
15. Finding and/or conclusion that “[t]here is no apparent reason for Van McCook to fabricate his testimony,” where he testified that “Smith said that employees should think about whether or not they wanted a union because Kumho could shut the plant down and send its tire molds back to Korea,” and that the testimony is credible because McCook “left Kumho voluntarily when the employer who had laid him off rehired him,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 8:14-16; 32-33).
16. Finding and/or conclusion that Harry “Kip” Smith showed Chase Register and Michael Cannon a picture of a help wanted sign on his mobile phone “before the election” and that “[t]here would be no reason for Smith to talk about ‘if disaster struck’, after the balloting,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 8:42-45 to 9:1).
17. Finding and/or conclusion by the ALJ to “credit Morman whose account of this interaction was much more detailed than Michael Geer’s” and that the record discloses no reason for “Morman to fabricate his testimony” despite Geer’s contradicting testimony because “Morman left Kumho voluntarily for a better paying job,” on the grounds that this finding

and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 9:15-17).

18. Finding and/or conclusion that Christopher Daniely's testimony about Michael Whiddon's alleged comment "remains uncontradicted" despite Whiddon's contradicting testimony, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 10:29-34).
19. Finding and/or conclusion that Rutherford's "denial does not directly address Horne's testimony which was about generalized retaliation against pro-union employees for their Facebook posts" and that it "also does not directly contradict Horne's testimony that Rutherford told him Respondent was watching the pro-union website," where there was Rutherford's testimony which addresses and directly contradicts Marcus Horne's testimony and the related allegation of an unfair labor practice, on the grounds that this finding and/or conclusion is not supported by the record evidence. (JD 11:42-45).
20. Finding and/or conclusion that "[t]here are a number of factors that make their testimony more credible than that of Walker. Many of these apply to the testimony of the many other current and former employees who testified in this proceeding and will be discussed further. However, Lee and Wilson's testimony is particularly credible in its consistency with each other. In particular, the detail given by both as to Walker's invocation of God as a reason to vote against the Union rings particularly true," on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 12:35-40).
21. Finding and/or conclusion that (1) the record establishes that Cliff Kleckley as an agent of Respondent; and (2) as an agent company, Kleckley engaged in unlawful interrogation, on

the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 13:4-9; 13:50-end; FN 21; 19:20-21).

22. Finding and/or conclusion that “testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 13:39-41).

23. Finding or conclusion that “[o]f the seven, the record only shows potential bias or animus towards Respondent on the part of the two former employees who were terminated,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 13:47-48).

24. Finding and/or conclusion that:

In virtually every case they denied the accuracy/veracity of the General Counsel’s witnesses. The denials were often in response to leading questions and without any detail as to any interaction the company witness had with the General Counsel’s witness. In general Respondent’s witnesses’ testimony was limited to a short, sometimes one-word response to a question such as “Did you tell X the plant would shut down?”

on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 14:6-7).

25. Finding or conclusion that “Respondent would have me believe that 18 witnesses, including 11 current employees of Kumho fabricated their testimony. This is extremely unlikely,” and that the ALJ would “credit the testimony of the General Counsel’s witnesses with possibly a few exceptions,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 14:9-11).

26. Finding and/or conclusion that Respondent's statements couched in what "might" happen are violation of Section 8(a)(1), on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law (JD 15:11-13).
27. Finding and/or conclusion that "statement by President Hyunho Kim to Landon Bradley that if the plant were unionized, employees' jobs were in jeopardy," violated Section 8(a)(1) of the Act on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 15:17-18).
28. Finding and/or conclusion that "statement by Hyunho Kim to Mario Smith that the plant would not survive if employees choose to be represented by the Union," on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 15:20-21).
29. Finding and/or conclusion that Miller's statement, "Five percent of production can just quickly [go] away [and] be captured by someone else," on the grounds that this finding and/or conclusion is erroneous as a matter of law. (JD 15:25).
30. Finding and/or conclusion that Miller "clearly" suggested that the "selecting union representation is a decision not to get together and work together," on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 15:27).
31. Finding and/or conclusion that "Respondent has no intention of bargaining in good faith," on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 15:28-29).

32. Finding and/or conclusion that “Miller did not have any basis on which to predict a shutdown of production,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 15:31-33).
33. Finding and/or conclusion that “Miller did not have any objective basis to suggest that unionization would lead to a strike,” on the ground that this finding and/or conclusion is not supported by the record evidence. (JD 15:35-36).
34. Finding and/or conclusion that a statement of Miller’s speech was “made without any basis at all,” on the ground that this finding and/or conclusion is not supported by the record evidence. (JD 15:37-38).
35. Finding and/or conclusion that a portion of Miller’s speech, which stated, “And we’ll be looking at tires being shipped somewhere else. So, I’m telling you that now, okay?” violate Section 8(a)(1), on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 15:39).
36. Finding and/or conclusion that “Miller’s confidential conversation [real or made up] that an employee told him that unionization put everything at risk,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 15:40-41).
37. Finding and/or conclusion that a Miller’s speech, particularly, the last portion of the speech, was violative of the National Labor Relations Act, because “it conveys that selecting the Union would be an exercise in futility and suggests that Respondent will be punitively intransigent in the event the Union wins the election,” on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 16:2-8).

38. Finding and/or conclusion that Harry “Kip” Smith’s comments at a pre-shift meeting violated the Act in predicting or threatening plant shutdown and/or loss of employment, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 16:13-14).
39. Finding and/or conclusion that Michael Geer’s comments violated the Act in predicting or threatening plant shutdown and/or loss of employment, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 16:16-17).
40. Finding and/or conclusion that Harry “Kip” Smith’s statements made in conjunction with “showing a picture of workers dismantling carnival equipment” violated the Act in predicting or threatening plant shutdown and/or loss of employment, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 16:19-20).
41. Finding and/or conclusion that statements by Brad Asbell, Chris Wilson, and Eric Banks violated the Act in predicting or threatening plant shutdown and/or loss of employment on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 16:22-23).
42. Finding and/or conclusion that Freddie Holmes’ statements to Jemel Webb violated the Act in predicting or threatening plant shutdown and/or loss of employment on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 16:25-26).
43. Finding and/or conclusion that Stevon Graham’s statements to Annie Scott and Christopher Harris violated the Act in predicting or threatening plant shutdown and/or loss of

employment on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 16:28-29).

44. Finding and/or conclusion that Michael Walker's statements to Randy Wilson violated the Act in predicting or threatening plant shutdown and/or loss of employment, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 16:31-32).
45. Finding and/or conclusion that Chris Butler's statements to Marcus Horne violated the Act in predicting or threatening plant shutdown and/or loss of employment, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 16:34).
46. Finding and/or conclusion that Michael Whiddon's statements at a pre-shift meeting violated the Act in predicting or threatening plant shutdown and/or loss of employment, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 16:36).
47. Finding and/or conclusion that "... Respondent violated Section 8(a)(1) in each and every interrogation alleged in the complaint," on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 17:9-10; 18:1-5).
48. Finding and/or conclusion that "evasive and/or untruthful answers given to these inquiries by witnesses is a good indication that they were coerced," on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 17:28-29).

49. Finding and/or conclusion that none of the allegedly questioned employees' status as an open and active union supporters was not established prior to being interrogated because that would have removed the need to question them, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 17:30-32).
50. Finding or conclusion that "the following supervisors or agents violated Section 8(a)(1) when questioning the following employees about their union sympathies:
- Bill Monroe's inquiry to Michael Cannon (complaint paragraph 14).
Bill Monroe's inquiry to Chase Register (complaint paragraph 15).
Harry "Kip" Smith's inquiry to Sterling Lewis (complaint paragraph 11).
Smith's inquiry to Van McCook.
Smith's inquiry to Marcus Horne.
Michael Geer's inquiry to Andre Morman (complaint paragraph 37).
Eric Banks' inquiries to Chauncey Pryor and others (complaint paragraph 33).
Freddie Holmes' inquiries to Jemel Webb (complaint paragraph 25).
Stevon Graham's inquiries to Landon Bradley.
Lorenzo Brown's inquiry to Landon Bradley (complaint paragraph 38).
Cliff Kleckley's inquiries to Chase Register and Van McCook (complaint paragraph 36).
Chris Butler's inquiry to Marcus Horne (complaint paragraph 21).
Chris Butler's offer of a "Vote No" hat to Landon Bradley (complaint paragraph 29),"
- on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 17:38-48; 18:1-5).
51. Finding and/or conclusion that Harry "Kip" Smith violated Section 8(a)(1) in "telling employees that he would no longer be able to assist them in their work," on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 18:11-16).
52. Finding and/or conclusion that Harry "Kip" Smith violated Section 8(a)(1) in telling Van McCook that "he might not be able to give him a day off without 10 days' notice if employees selected the union," on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 18:18-21).

53. Finding and/or conclusion that Michael Geer violated Section 8(a)(1) in telling Annie Scott not to speak to other employees about the union, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 18:26-33).
54. Finding and/or conclusion that General Counsel established that Respondent, by Aaron Rutherford, violated Section 8(a)(1) in creating the impression that Respondent was engaged in surveillance of employees' union activities, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 18:39 to 19:1-3).
55. Finding and/or conclusion that "the statement can I count on you, suggests that Kleckley and therefore Respondent might hold it against them if he could not 'count on them.'" on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 18:45-47; FN 27).
56. Finding and/or conclusion that Michael Geer violated Section 8(a)(1) by suggesting Respondent would get rid of some or all of the employees who voted for union representation, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 19:16-23).
57. Finding and/or conclusion that Aaron Rutherford violated the Act in telling Mario Smith that Respondent would "go by the book" if employees selected the Union and that employees who posted on the pro-union website would suffer retaliation as well, on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 19:29-33).

58. Finding and or conclusion that any such “violation occurred” as stated in footnote 30 on the grounds that this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 19:50 to end; FN 30).
59. Finding and/or conclusion that (1) the Board’s *Excelsior* decision controlled Respondent’s voting list obligations rather than the Board’s Rules and Regulations for Representation Cases, which are invalidly applied here, (2) that “Respondent’s *Excelsior* list was completely inaccurate” and (3) that “the inaccuracy was deliberate,” on the grounds this finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 20:20-26).
60. Finding and/or conclusion that Respondent deliberate provided inaccurate list and such finding is the basis for overturning the results of the first election even in the absence of unfair labor practice and that a second election would be recommended, on the ground that this finding and/or conclusion is not supported by the record evidence. (JD 20:24-26, 28-29).
61. Finding and/or conclusion that “Respondent’s statements, some of which were made by high-ranking officials in captive audience meetings had more than a minimal impact on employees. The violative statement were numerous, severe (i.e., threats of plant closure) disseminated widely and were made up to the evening prior to balloting,” on the grounds that this finding and/or conclusion is not supported by the record evidence. (JD 21:8-11).
62. Finding and/or conclusion that Respondent’s “deliberate failure to provide an accurate election eligibility list warrants setting aside the October 2017 election,” and that the election would be set aside and a second election recommended on the grounds that this

finding and/or conclusion is not supported by the record evidence and is erroneous as a matter of law. (JD 21:11-14).

63. Proposed Remedy, on the grounds it is not supported by the record evidence and is erroneous as a matter of law. (JD 21:18-37).
64. Proposed Order, on the grounds it is not supported by the record evidence and is erroneous as a matter of law. (JD 22:4-42 to 23:1-19).
65. Proposed Notice to Employees, on the grounds it is not supported by the record evidence and is erroneous as a matter of law. (Appendix).
66. Failure to dismiss the Amended Consolidated Complaint in its entirety, on the grounds that the record fails, as a matter of law, to establish any violations of the Act.

CONCLUSION

For the reasons set forth herein and in the accompanying Brief, the Respondent requests that the ALJ's findings and remedial order not be adopted as the Board's Decision and Order and that the Amended Complaint and Representation Case be dismissed. Respondent further requests that the representation election result not be set aside, contrary to the recommendation of the ALJ.

Respectfully submitted this 25th day of June 2019.

/s/ W. Melvin Haas, III
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CERTIFICATE OF SERVICE

I hereby certify that on this day, I served the forgoing EXCEPTIONS by electronic mail
on the following parties:

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Dated this 25th day of June, 2019.

/s/ W. Melvin Haas, III

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