

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

**IMERYS CARBONATES USA, INC.**

**and**

**Case 10-CA-232952**

**ROBERT JOSEPH BLANTON, an Individual**

**UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION,  
AFL-CIO**

**and**

**UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION,  
LOCAL 254-06, AFL-CIO**

**and**

**Cases 10-CB-232953  
10-CB-240168**

**ROBERT JOSEPH BLANTON, an Individual**

**BRIEF OF COUNSEL FOR THE GENERAL COUNSEL**

To the Honorable Arthur Amchan, Administrative Law Judge

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## **I. INTRODUCTION**

The preponderance of the record evidence proves that the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (herein the “International Union”) and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 254-06, AFL-CIO (herein the “Local Union”) (herein collectively “Respondent Union”), violated Section 8(b)(1)(A) of the National Labor Relations Act (herein the “Act”) by threatening and physically assaulting Charging Party Robert Blanton, an outspoken critic of Respondent Union leaders. Respondent Union violated Section 8(b)(2) of the Act by attempting to cause and causing the termination of Blanton. Respondent Union also violated Section 8(b)(1)(A) of the Act by failing to fairly represent Blanton during the post-termination grievance process. Respondent Union further violated Section 8(b)(1)(A) of the Act by threatening employee witness Tylor Waters with potential job loss if he spoke up in favor of Blanton after the Employer terminated Blanton.

The preponderance of the record evidence will also prove that Imerys Carbonates USA, Inc. (herein “Respondent Employer”) violated Section 8(a)(1) and (3) of the Act by unlawfully terminating Robert Blanton in retaliation for his protected activities.

Counsel for the General Counsel will begin by setting forth relevant background facts with specific focus on the events of December 4 through 6, 2018.<sup>1</sup> Counsel will then proceed to a discussion of credibility issues. Lastly, Counsel will address each of the complaint allegations with separate sections of this brief.

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<sup>1</sup> All dates herein will be 2018 unless noted otherwise.

Counsel for the General Counsel argues that the Administrative Law Judge should credit the record evidence showing that Respondents violated the Act, find the violations alleged in the complaint, and order Respondents to remedy their unlawful conduct.

## **II. FACTS**

### **A. Respondent Employer's Business Operations**

Respondent Employer operates a limestone mining company in Whitestone, Georgia (herein "Whitestone facility"). (GC Exh. 1(M) and 1(O)).<sup>2</sup> Respondent Employer maintains a workforce of hourly production employees in addition to its salary exempt supervisors and managers at its Whitestone facility. (GC Exh. 1(M) and 1(O)). The employees work three different shifts: first shift from 7:00 a.m. until 3:00 p.m.; second shift from 3:00 p.m. until 11:00 p.m.; and third shift from 11:00 p.m. until 7:00 a.m. (Tr. 16). The workers on the surface of the mine crush, load, and transport the mined material. (Tr. 27).

A description of Respondent Employer's management hierarchy will be limited to those supervisors and agents relevant to this case. Sonny Pierce is the Production Manager at the Whitestone facility. (Tr. 445). Shannon Smith is the Human Resources Director. (Tr. 444). Respondent Employer admits that the above individuals are supervisors and agents as defined by Section 2(11) and Section 2(13) of the Act. (GC Exh. 1(M) and 1(O)).<sup>3</sup>

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<sup>2</sup> All citations to the transcript will be referred to as "Tr." followed by the page number. Exhibits will be referred to in the following manner, followed by the exhibit number: General Counsel exhibits as "GC Exh."; Respondent Union exhibits as "U Exh."; and Respondent Employer exhibits as "ER Exh."

<sup>3</sup> Respondent Employer provided Operations Manager Chris DiBiase as a witness. (Tr. 464). DiBiase stated that he made the decision to terminate Blanton based on what Smith had told him. (Tr. 465). However, he did not investigate the altercation that led to the termination. (Tr. 465). He did not speak to witnesses of the altercation and he stated that he maybe did not know what was going on until Blanton was already off the site (terminated). (Tr. 465, 467). He also testified that the decision to discharge Blanton "surely . . . wasn't" on December 6. (Tr. 467). His testimony is inconsistent from the testimony of the other witnesses, and is not particularly relevant.

## **B. Respondent Union's Organization**

Respondent Union has been the exclusive bargaining representative of all production and maintenance employees at the Whitestone facility since around September 2004. (GC. Exh. 1(M) and 1(Q)). Respondent Union and Respondent Employer finalized the most recent collective-bargaining agreement covering Whitestone facility employees' terms and conditions of employment around September 2018. (Tr. 361). The International Union is a party to the collective-bargaining agreement on behalf of the Local Union. (Tr. 341).

A description of Respondent Union's hierarchy will be limited to those representatives relevant to this case. Joseph Young was a steward for the Local Union during all relevant times. (GC Exh. 1(M) and 1(Q)). Darryl Ford is the President of the Local Union. (GC. Exh. 1(M) and 1(Q)). Alex Perkins is a Staff Representative of District 9 of the International Union and held that position at all relevant times. (GC. Exh. 1(M) and 1(Q)). Kelly Smith is a Staff Representative of District 9 of the International Union and has held that position at all relevant times. (GC Exh. 1(M) and 1(Q)). Daniel Flippo is the District Director for District 9 of the International Union. Flippo was most recently elected to that position in 2017. (Tr. 480, 481).

## **C. Charging Party Robert Blanton**

Robert Blanton began working for Respondent Employer at the Whitestone facility around August 1, 2018. (Tr. 12). For the majority of his employment at the Whitestone facility, Blanton worked as a bulk loader. (Tr. 12). As a bulk loader, Blanton worked on top of a catwalk near the Raymond Mill. (Tr. 13 and GC Exh. 2). His primary job duty was loading crushed material into tanker trucks. (Tr. 12-13).

Blanton became a member of Respondent Union within a couple weeks of the start of his employment with Respondent Employer. (Tr. 18). Blanton did not approve of the September 2018

collective-bargaining agreement between Respondent Union and Respondent Employer and became a vocal opponent of Respondent Union around September 2018. (Tr. 20-21). At the time of the contract ratification vote, Blanton informed Steward Joseph Young that he voted against the contract and that he thought it was poorly negotiated. (Tr. 21). Blanton was specifically upset with the loss of a time-and-a-half pay benefit for any time worked over eight hours in a day. (Tr. 22). Blanton continued to openly criticize Respondent Union and sought to quit the Union during the months of October and November 2018. (Tr. 23, 28). Blanton expressed his displeasure with the Union directly to Steward Young on multiple occasions, including an occasion when Blanton tore his Union card up in front of Young. (Tr. 22). Blanton, along with other coworkers, was also upset about a Respondent Employer announcement in October 2018 that pay frequency was going to change from weekly to every other week. (Tr. 26).

Young testified that other bargaining unit members listened to Blanton as he attempted to circumvent the Union and deal directly with the pay frequency change. (Tr. 216, 217). Respondent Union witness Doug Harper also testified that other employees supported Blanton in his attempt to deal with the pay frequency change. (Tr. 287).

#### **D. December 4-5, 2018**

Respondent Union held a meeting on December 3 to discuss the pay frequency change. (Tr. 30, 144). Blanton did not attend this meeting. However, Blanton spoke with coworkers about the meeting in the breakroom the following day, December 4. (Tr. 30). Some coworkers told Blanton that Steward Young informed employees that it was certain Respondent Employer was going to implement the change from weekly pay to bi-weekly pay. (Tr. 31). Blanton expressed his frustrations with the Union and told his coworkers that he intended to quit the Union. (Tr. 31). Blanton's coworkers all agreed that they wanted to get out of the Union as well. (Tr. 31).

After speaking with his coworkers the morning of December 4, Blanton contacted multiple Respondent Union representatives at Respondent Union's International Office in Pittsburgh, Pennsylvania. Blanton explained that he and his coworkers were upset with Respondent Union's representation and that he sought cards for himself and his coworkers to quit the union. (Tr. 32, 33; U Exh. 21).

That same day, as a result of those phone calls, Respondent Union's legal department contacted District Director Flippo via email. (U Exh. 21). The email informed Flippo that Blanton had called multiple times and stated that he and other employees at the Whitestone facility were upset with their Union representation. (U Exh. 21). The email also stated that Blanton sought "termination cards" so members could resign from the Union. (U Exh. 21).

On December 5, Flippo forwarded the email to Respondent Union Staff Representatives Smith and Perkins and requested that they "see what is up." (U Exh 21).

Perkins called Blanton the afternoon of December 5 to investigate the complaints. (Tr. 37, 312). Blanton spoke with Perkins about his issues with the Union. (Tr. 38). Blanton informed Perkins that he sought membership withdrawal cards and let Perkins know that he and other coworkers were very upset about the announced pay frequency change. (Tr. 38).

After Blanton and Perkins spoke for approximately 45 minutes, Perkins called Darryl Ford and brought him in for a three-way teleconference with Blanton. (Tr. 39). During that portion of the phone call, Blanton told Ford that he wanted to quit the Union. (Tr. 39). He told Ford that he thought Ford was a clown, and that he was not going to be intimidated by someone who had never lifted anything heavier than a stapler. (Tr. 39-40).

Later, during the afternoon or evening of December 5, Ford spoke with Steward Joseph Young about Blanton. (Tr. 378). Ford later wrote in an email that in the phone call with Young he requested that Young “troubleshoot” the issues that Blanton was causing with the employees at the Whitestone facility. (GC Exh. 6). Ford also testified that he let Young know that he spoke with Perkins and that the International was talking about the pay frequency change. (Tr. 378).

#### **E. December 6, 2018**

The events of the morning of December 6 are the most critical aspect of this case. On that morning, Respondent Employer terminated Blanton shortly after he and Young had a 5-10-minute altercation. Six people witnessed this altercation. Young and Blanton were the only witnesses present for the entirety of the altercation. Ruel Johnson witnessed small portions of Young and Blanton speaking that morning near the Raymond Mill office. Doug Harper and Jeremiah Jerrit witnessed Blanton and Young speaking in the employee breakroom. Tylor Waters was on top of a silo and saw Blanton and Young walking back towards the Raymond Mill office from the breakroom. Waters also witnessed the end of the interaction near the Raymond Mill office.

Most importantly, Blanton’s version of events is consistent with what Johnson, Harper, Jerrit, and Waters witnessed. However, the version of events given by Young contradicts the testimony of every other witness, which will be described in further detail below.

Young clocked in for work around 7:00 a.m. on December 6. Young then went directly to Blanton’s workstation on a buggy with employee Ruel Johnson. (Tr. 43, 44, 198). Young told Johnson to stop the buggy so he could speak with Blanton. (Tr. 198). Young got off the buggy near Blanton’s workstation and got Blanton’s attention by calling out to him and waving at him. (Tr. 44, 198). Blanton initially tried to ignore Young, but eventually climbed down from his workstation on a catwalk and approached Young. (Tr. 44, 198). Young and Blanton immediately

began a heated conversation about the Union. (Tr. 45, 199). Young testified that he wanted to speak to Blanton about the Union meeting that Blanton did not attend. (Tr. 199). Blanton let Young know that he was not interested in speaking with Young. (Tr. 45, 198). Blanton testified that shortly after the conversation began, Young told Blanton that the first time he did something, the first time he messed up, he would be fired. Blanton testified that Young stated that the Union was never going to help him. (Tr. 45). Blanton responded by asking what the Union was doing for him at that time, and then letting Young know that he wanted to quit the Union. (Tr. 45). After Blanton said this, Young, who is around 80 pounds heavier and 7 inches taller than Blanton, bumped Blanton with his chest and told Blanton that he was going to kick Blanton's ass. (Tr. 18, 45). Blanton began to back away from Young after Young bumped him. (Tr. 45). Blanton walked away from Young toward the employee breakroom. (Tr. 46, 199). Young proceeded to pursue, physically assault, and threaten Blanton on the way to the breakroom. (Tr. 46). Blanton testified that Young bumped him four to six times on the walk to the breakroom. (Tr. 46). Blanton responded defensively by telling Young to leave him alone and to get away from him, and by pushing Young away. (Tr. 46).

At the entrance of the breakroom, Young bumped Blanton again, and Blanton responded by defensively pushing Young away from him.<sup>4</sup> (Tr. 47). Blanton then entered the breakroom and Young followed him into the breakroom. (Tr. 47). Inside the breakroom, Young continued to walk towards Blanton. (Tr. 47, 286, 302). Harper confirmed that Young walked towards Blanton, and Blanton walked away from Young, during the entirety of the breakroom interaction. (Tr. 286). As Young continued to approach Blanton, Blanton defensively pushed Young and told Young to get

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<sup>4</sup> This was not seen by either Jerrit or Harper as neither were in a position to see the activity outside of the breakroom as Blanton and Young entered the breakroom. (Tr. 286, 307).

the fuck away in front of Harper and Jerrit while in the breakroom. (Tr. 268, 301). Young then continued to pursue Blanton, and Blanton continued to walk away from Young. (Tr. 47, 286). Blanton then left the breakroom, and Young followed Blanton out of the breakroom. (Tr. 48, 303). Blanton, Harper, and Jerrit both stated that Young left the breakroom with Blanton. (Tr. 48, 268, 303). However, Young testified that after Blanton left, he stayed in the breakroom for 20-30 seconds and that he did not interact with Blanton again. (Tr. 222, 255).

Young then continued to pursue Blanton across the parking lot back towards Blanton's workstation and the Raymond Mill. (Tr. 48). Again, Young threatened to kick Blanton's ass and chest bumped Blanton as Blanton walked away from Young. (Tr. 48-49). From on top of an overlooking silo, employee Tylor Waters witnessed Young bump Blanton multiple times. (Tr. 147). Waters also heard Blanton say "get the fuck away from me, get the fuck off me" to Young. (Tr. 148).

Young continued to pursue Blanton until they came back to Ruel Johnson and his buggy in front of the Raymond Mill office. (Tr. 49, 149). Ruel Johnson testified that Blanton and Young were about 2-3 feet apart when they walked up to the buggy in front of the Raymond Mill. (Tr. 241). Johnson also witnessed Blanton yelling at Young in front of the Raymond Mill office. (Tr. 236). Young contrarily testified that he came back to Johnson's buggy without Blanton, and that he did not see Blanton at the Raymond Mill steps. (Tr. 222).

Waters came down from the silo after seeing Blanton and Young walking between the breakroom and the Raymond Mill. (Tr. 148). After he descended from the silo, Waters witnessed some of the end of the interaction in front of the Raymond Mill office. (Tr. 149). Waters heard Young tell Blanton in front of the Raymond Mill office that Blanton needs to watch what he says and does because "that's why [he's] going to end up getting fired." (Tr. 149).

The altercation ended when Young got on the buggy with Johnson, and Johnson drove Young to his workstation at the crusher. (Tr. 49, 149, 236). Blanton then went inside the Raymond Mill office and spoke with employees Drew Moss, Jerrit, and Waters. (Tr. 50). Blanton then moved to the plant laboratory and spoke with a coworker identified as “Commando.” (Tr. 52). While in the laboratory, Tommy, the bagging manager, came and spoke with Blanton. (Tr. 53). Blanton told Tommy that Young had tried to beat him up. (Tr. 53). Tommy then left the laboratory to go to the office and report what was going on. (Tr. 53). Tommy came back a few moments later and said that Young was already speaking with upper management in the office. (Tr. 53). Tommy said there was nothing that he or Sonny (Production Manager) could do. (Tr. 53).

Prior to his termination, Blanton also called Staff Representative Perkins and left a voicemail. (U Exh. 7). In his voicemail, Blanton stated that he wanted to file a grievance against Young because Young had threatened his physical safety and his job. (U Exh. 7).

#### **F. Termination**

Shortly after Blanton spoke with his coworkers, Tommy, and left a voicemail for Alex Perkins, Maintenance Supervisor Jaime Ellots called him into the breakroom to speak with Human Resources representative Shannon Smith and Plant Manager Sonny Pierce. (Tr. 53-54). Blanton told Smith, Pierce, and Jaime that Young had threatened him and physically assaulted him across the parking lot. (Tr. 54). Blanton also told the Respondent Employer representatives that he and Young were arguing about a Union issue. (Tr. 54, 448, U Exh. 4).

Shannon Smith conducted an investigation that lasted less than two hours and ended with the termination of Robert Blanton for allegedly being the aggressor in a fight. (Tr. 55, 450-451, 460). Smith did not speak with Young prior to making this decision. (Tr. 461). In his testimony, Smith noted that he did not speak with Blanton until around 9 a.m. (Tr. 460). Smith testified that

he met with every other witness (Doug Harper, Jeremiah Jerrit, Ruel Johnson, and Drew Moss) prior to meeting with Blanton. (Tr. 459). He also testified that they had to wait for Union steward Russell Davis to come about a half mile from the mine to the breakroom prior to meeting with Blanton. (Tr. 459). From GC Exh. 6 it is clear that Shannon Smith also contacted Darryl Ford and informed him that Blanton was going to be terminated. (GC Exh. 6). The email that Ford sent to Respondent Union representatives informing them of his conversation with Smith was a sent at 8:21 a.m. on December 6. (GC Exh. 6). Thus, Shannon Smith informed Local President Ford that Respondent Employer would terminate Blanton prior to speaking with Blanton around 9 a.m. (Tr. 460, GC Exh. 6).

#### **G. Tylor Waters Interactions with Respondent Union Following Blanton's Termination**

Within a few days of Blanton's termination, Tylor Waters informed Alex Perkins and Darryl Ford in separate phone calls that he had witnessed Young pursue, chest bump, and threaten Blanton.<sup>5</sup> (Tr. 153-154). After telling Ford that he witnessed Young bump Blanton, Ford told Waters that if his story did not line up with any of the other witness statements that Waters could be viewed as a liar. (Tr. 154) Ford also told Waters he could be fired if Respondent Employer thought he was providing a false statement. (Tr. 154, 386-387). Ford admitted that he made these statements to Waters. (Tr. 386-387). Waters believed that Ford was threatening him when Ford made these statements. (Tr. 154, 192).

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<sup>5</sup> Waters testified that he told both Perkins and Ford that he witnessed Young bump and threaten Blanton. He also testified that he spoke with Kelly Smith. Perkins, Ford, and Smith provided three different versions of events that Waters witnessed with only Ford admitting that Waters informed him that he had witnessed Young assault Blanton. However, Waters' testimony was consistent throughout exhaustive questioning.

## **H. Post-Termination Grievance Process**

Following Blanton's termination, Blanton attempted to file a grievance regarding his termination with multiple Respondent Union stewards. (Tr. 65). After failing to speak with anyone other than Alex Perkins, Blanton requested that Alex Perkins file a grievance on his behalf and Perkins told Blanton that he would make sure a grievance got filed. (Tr. 65-66, 135).

Perkins testified that after the Employer terminated Blanton, he spoke with Young about the altercation. (Tr. 339). Young informed Perkins that after Blanton pushed him, Young turned around and Blanton left the breakroom after walking around a table. (Tr. 339). Young left later and did not tell Perkins that he followed Blanton after Blanton left the breakroom. (Tr. 339). International Union representative Kelly Smith also testified that he spoke with Young. Smith testified that Young only told him about the portion of the altercation that took place inside of the breakroom. (Tr. 429, 441). Smith testified that Young did not tell him that he followed Blanton to the breakroom. (Tr. 441). Smith also testified that Young did not tell him that Blanton told Young to get away from him. (Tr. 441-442).

Darryl Ford filed Blanton's grievance on December 13 (likely at Perkin's request as Blanton did not speak with Ford after his termination). (U Exh. 3). The grievance went directly to a step three meeting and was handled by the International Union because it was a termination grievance. (Tr. 384). Kelly Smith contacted Blanton within a couple weeks of his termination. (Tr. 67). Smith informed Blanton that he would take over the processing and investigation of the grievance. (Tr. 67). Smith did not interview any witnesses (including Blanton) about Blanton's termination prior to the step three grievance meeting with management on January 10, 2019. (Tr. 419). Blanton spoke with Smith immediately prior to the grievance meeting on January 10, 2019.

(Tr. 70, 423). Smith told Blanton that he had not spoken to anyone in preparation for the meeting or taken any witness statements. (Tr. 69).

Smith testified that he spoke with witnesses after the step three grievance meeting. (Tr. 419). He spoke with Harper, Johnson, and Jerrit very briefly *after* the step 3 grievance meeting. He did not inquire any deeper than to ask each witness if they had made the statement that the Respondent Employer attributed to them in U Exh. 4. (Tr. 416-418). He did not ask them specifics beyond verifying the facts already presented by Respondent Employer. (Tr. 416-418).

### **III. CREDIBILITY**

Credibility resolutions will be a vital factor in determining whether Respondents violated the Act as alleged in the complaint. Although there are a number of facts that are not in dispute<sup>6</sup>, the context surrounding Respondents' actions are critical to analyzing whether Respondent Union threatened Blanton and Waters in violation of Section 8(b)(1)(A); whether Respondent Union attempted to cause and caused Respondent Employer to discharge Blanton in violation of Section 8(b)(1)(A) and (2); and whether Respondent Union violated Section 8(b)(1)(A) by processing Blanton's grievance in an unlawfully arbitrary and discriminatory manner. Although Respondent Union's agent witnesses either denied the allegations or attempted to cast their actions in a nondiscriminatory light, the overwhelming weight of the evidence demonstrates Respondent Union's lack of good faith and clear hostility toward Blanton.

Credibility determinations may be based on the weight of the respective evidence, established or admitted, inherent probabilities, and reasonable inferences which may be drawn

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<sup>6</sup> For example, the content of U. Exh. 21 establishes that Blanton requested union withdrawal cards from the International office on December 4, and that this information was passed on to Daniel Flippo, and then sent from Flippo on to Alex Perkins and Kelly Smith on December 5.

from the record as a whole. See *Medeco Security Locks*, 322 NLRB 664 (1996); *Shen Automotive Dealership Group*, 321 NLRB 586, 598 (1996).

The majority of the witnesses that Respondent Union called to testify were agents of Respondent Union, and all of the witnesses that Respondent Employer called were supervisors and agents of Respondent Employer. Furthermore, much of the testimony of these witnesses was elicited with leading questions during direct examination. Thus, the testimony of Respondents' witnesses should be afforded less weight than the testimony of General Counsel's witnesses and discredited where appropriate. To the extent that Respondent's witnesses failed to deny or contradict the testimony of General Counsel's witnesses, the testimony of General Counsel's witnesses should be credited as uncontradicted. See *Mark Lines, Inc.*, 255 NLRB 1435 (1981) (finding a violation of Section 8(a)(1) where General Counsel's evidence offered through witness of 'less than impressive credibility' was not rebutted and therefore confirmed by uncontradicted proof).

When a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. *International Automated Machines*, 285 NLRB 1122, 1123 (1987), *enfd.* 861 F.2d (6th Cir. 1988). This is particularly true where the witness is the respondent's agent. *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006).

Central to this case is determining the true events of an altercation that lasted between five and ten minutes. Blanton and Young offer somewhat different versions of the altercation, and the witnesses to the altercation only saw certain pieces. General Counsel maintains that the testimony of Blanton, Waters, Harper, Jerrit, and Johnson all consistently tell the same version of events. However, Young offers a contradictory, inconsistent, and incomplete version of the crucial

moments that led to Robert Blanton's termination. Additionally, Young's testimony directly contradicted the testimony of Respondent Union's other witnesses.

#### **A. Joseph Young**

As noted above, Young testified that he stayed in the breakroom after Blanton pushed him. (Tr. 222). Young's version of events has the altercation essentially ending in the breakroom. However, Blanton, Harper, Jerrit, Johnson, and Waters all contradict this version of events. Jerrit and Harper both saw Young follow Blanton out of the breakroom. (Tr. 268, 303). Waters and Johnson both witnessed Young and Blanton interacting in front of the Raymond Mill office minutes after they both left the breakroom. (Tr. 149, 234, 241). Johnson, Harper, and Jerrit were all Respondent Union witnesses.

Young also testified that he did not speak with Darryl Ford prior to speaking with Blanton. (Tr. 261). Young indicated that he chose to speak with Blanton on his own (without knowledge of Blanton's calls to Pittsburgh or Perkins). (Tr. 207). This is contradicted by Ford's testimony and by GC Exh. 6 wherein Ford writes that he spoke with Young the night before and instructed him to troubleshoot issues that Blanton created. (Tr. 378-379).

Young, under oath, created an alternate version of events that reduced his role in the altercation with Blanton and removed blame from Respondent Union. In Young's version of events (which Respondent Union's own witnesses directly undercut), he acted out of a concern unrelated to Blanton's calls and requests to Respondent Union's International office in Pittsburgh or his conversation with Perkins and Ford on December 5. Young testified that he wanted to speak with Blanton only because other employees had spoken to him directly about Blanton. This is demonstrably false.

Young also testified that he did not follow Blanton after Blanton pushed him in the breakroom. Again, this testimony is demonstrably false. It contradicts the testimony of three Respondent Union witnesses (and two additional witnesses). This testimony also portrays Young as a non-combative and calm figure during the interaction with Blanton. In Young's demonstrably false version of events, he went to Blanton, spoke with Blanton calmly, and then stopped interacting with Blanton when Blanton lost his cool. In the version of events that is corroborated by five witnesses, Young pursues Blanton and continues to walk towards Blanton even though Blanton repeatedly tells Young to get away and retreats from his workstation to the breakroom, walks away from Young in the breakroom, and retreats back to the Raymond Mill from the breakroom. In the version of events corroborated by Tylor Waters, Young continues to physically assault Blanton after Blanton and Young leave the breakroom.

The testimony of Young and other witnesses also shows that Young attempted to hide or minimize his role in the altercation that morning when he recounted the events. Staff Representative Kelly Smith testified that Young only told him about the altercation in the breakroom. (Tr. 429). Staff Representative Perkins testified that Young claimed he left the breakroom through a different entrance after Blanton pushed him. (Tr. 339). Young also testified that he informed Supervisor Pierce that he did not touch Blanton. (Tr. 200, 201). From the record evidence, Young did not tell any of these superiors or supervisors a detailed account of his role in the altercation. Put more simply, Young did not tell Pierce, Kelly Smith, or Perkins the truth.

## **B. Robert Blanton**

In contrast, Blanton told the same version of events to every person he spoke with about the altercation. He informed Perkins of a complete version of events after his termination on December 6. (Tr. 335). He also called Perkins prior to his termination and informed him that

Young had threatened his job and his physical safety. (U Exh. 7). Blanton also informed management of the altercation prior to his termination.<sup>7</sup> (U Exh. 4). Blanton did not lie to these individuals about his role in the altercation. Blanton's version of events was consistent with the testimony of other witnesses.

The General Counsel anticipates that the Respondents will attempt to undercut the testimony of Robert Blanton by noting that Blanton was known for losing his temper and that Blanton's theory that Local President Darryl Ford was going to financially benefit as a result of the pay frequency change was baseless. These potential lines of argument are distractions from Respondent Union's genuine concern that Blanton was causing other employees to lose faith in Respondent Union. Additionally, Blanton made no attempt to deny or minimize his confrontational nature. He also made no attempt to deny that he believed that Ford would benefit financially from the pay rate change.

It is worth noting that Blanton had no disciplinary history prior to his termination. Blanton also made no effort to hide his own faults during his testimony. He admitted to defensively shoving Young on the stand, just as he admitted to defensively shoving Young when he met with Respondent Employer representatives the day of his termination. Blanton has remained consistently frank and truthful since the time of his termination. His testimony is significantly more credible than the testimony of Joseph Young.

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<sup>7</sup> It is noteworthy that U. Exh. 4 has Blanton and Young leaving the breakroom from different exits of the breakroom under the notes from Blanton's interview. This is inconsistent with the testimony of Blanton, Harper, Jerrit, Waters, and Johnson.

### **C. Respondent Union Witnesses**

Additionally, and alarmingly, Respondent Union's other witnesses altered their versions of events as evidence was introduced in this case. Specifically, GC Exh. 6 and U Exh. 21 changed the narrative of Respondent Union and undercut the earlier testimony of multiple witnesses.

Prior to the introduction of GC Exh. 6, Joseph Young maintained that he had not spoken with Darryl Ford about Robert Blanton prior to the morning of December 6. (Tr. 261). Darryl Ford and GC Exh. 6 both directly contradicted this crucial testimony. (Tr. 378-379).

Prior to the introduction of U Exh. 21, Alex Perkins testified that he had not spoken with District Director Dan Flippo about Robert Blanton prior to Blanton's termination. (Tr. 347). However, Flippo and U Exh. 21 both directly contradict such testimony. (Tr. 518). Perkins testified that he had received a call and voicemail directly from the International. (347). He makes no mention of Flippo's email and testifies directly that he did not speak with Flippo. (Tr. 347).

It should also be noted that Ruel Johnson's witness testimony is of limited detail. Johnson was on his buggy about 20-30 feet away from Blanton and Young at the start of the December 6 interaction. However, he is unable to provide details of the initial interaction. Notably, he testified that he did not see Young wave and call out to Blanton. (Tr. 234). Young admitted that he did wave and call to Blanton with the intention of getting Blanton to come down. Johnson also gave no details regarding the walk towards the breakroom. He simply states that "they was walking out toward the breakroom." (Tr. 234). Respondent Union may want to use Johnson's testimony to counter the testimony of Tylor Waters regarding a possibly unlawful statement made by Joseph Young near the Raymond Mill. It should be noted that Johnson admitted that he is hard of hearing and was wearing earplugs at the time. (Tr. 241).

Additionally, Jeremiah Jerrit did not watch Blanton and Young closely before they entered the breakroom. Jerrit testified that he “took a look” through a window on the breakroom door and saw Blanton and Young “briefly” as they walked to the breakroom. (Tr. 306-307).

#### **D. Tylor Waters**

In this case, Tylor Waters spoke in support of Blanton at no benefit to himself. It is anticipated that Respondents will attempt to undercut the testimony of Waters by noting that he mixed up the silo on which he was standing by saying silo #1, then #3, then #1 during cross examination. Respondents may also argue through the testimony of Doug Harper that Waters was a known liar. These are inconsequential issues when viewed in the full context of Waters’ testimony. Respondent Employer terminated Waters in November 2019, shortly before the hearing. (Tr. 140). At the time of the hearing, Waters had an ongoing grievance that he filed with Respondent Union. (Tr. 156). He testified against Respondent Union’s interest in the presence of Local President Ford and Staff Representative Kelly Smith, the individuals most likely to be in charge of his grievance process. Waters also had nothing to gain by testifying and cooperating in this case. He took the stand only at a risk to himself.

#### **E. Respondent Employer Witnesses**

Curiously, Respondent Employer did not provide Sonny Pierce to provide testimony. Pierce was central to the investigation prior to Blanton’s termination. Doug Harper testified that he called and spoke with Pierce about the altercation in the breakroom. (Tr. 270). Joseph Young testified that he spoke with Pierce, and not Shannon Smith, about the altercation in the breakroom. (Tr. 200). Based on the entirety of the record, Pierce was likely present for the interviews with all witnesses prior to the decision to terminate Blanton.

Shannon Smith was in the hearing room for the entirety of the hearing, and when he provided testimony he used notes he prepared in January 2019. (Tr. 461-462). These were not the original notes as discussed by Smith, he actually took notes by hand. (Tr. 461-462). The notes themselves are not trustworthy both because the document was likely created over a month after the termination, but also because the notes are contradictory to the evidence provided by all other witnesses. (Tr. 462). This is especially apparent by the notes under Blanton's name wherein it states that Blanton left the breakroom from one exit and Young left from a separate exit. (U Exh. 4). This is contrary to all other accounts of this interaction except for Joseph Young's account. Young testified that he stayed in the breakroom after Blanton left, and Alex Perkins stated that Young told him that he left a different exit from the breakroom. (Tr. 222, 339). This departure from Blanton, Harper, Jerrit, and Johnson's testimony indicates that the notes are untrustworthy. The limited notes from Johnson and Harper also indicate that the investigation was cursory and disregarded details. The notes are inherently contradictory, limited, and inconsistent. Therefore, they should be disregarded along with the substantive testimony of Shannon Smith as he relied on this faulty document while on the stand.

#### **IV. ALLEGATIONS AND ARGUMENTS**

##### **A. Joseph Young Unlawfully Threatened Robert Blanton [Complaint ¶ 7(a-b)]**

As noted above, during the December 6 altercation with Robert Blanton, Joseph Young made numerous threatening and coercive statements to Blanton. Blanton's testimony reflects that Young told Blanton that he was going to kick Blanton's ass on the way to the breakroom and on the way back from the breakroom. He also told Blanton that "the first time you do something, the first time you mess up, he said, you're fired. We're never going to help you." (Tr. 45).

Tylor Waters also heard Young threaten Blanton's job in front of the Raymond Mill at the end of the altercation. Waters heard Young tell Blanton that "you need to watch what you say and do, because that's why you're going to end up getting fired." (Tr. 149).

In determining whether statements violate Section 8(b)(1)(A), the Board uses an objective test and does not attempt to discern whether the employee was actually coerced or restrained by the alleged threats. See *Steel Workers Local 1397*, 240 NLRB 848, 849 (1979). A threat of physical violence is clearly conduct which is likely to coerce and restrain employees in the exercise of their Section 7 rights. See *YKK (U.S.A.) Inc.*, 268 NLRB 82 (1984) (sustaining objections based on threats of physical violence by union representatives during the critical period); *Electrical Workers Local 309*, 212 NLRB 409, 414 (1974) (finding violation of Section 8(b)(1)(A) based on threats of violence directed at traveler). Likewise, a union violates Section 8(b)(1)(A) when an agent threatens to seek the discharge of an employee or tells an employee that the union will not represent him if he files a grievance. See *Steel Workers Local 1397*, 240 NLRB at 849; *Teamsters Local 886*, 229 NLRB 832, 832-833 (1977).

The statements made by Joseph Young, the chair steward at the Respondent Employer's Whitestone facility, were all objectively coercive. The statements were all made in the context of attempting to prevent Blanton from further criticizing Respondent Union. Young made these statements to Blanton after he received a phone call from Ford informing him that he needed to troubleshoot the situation with Blanton. His method of troubleshooting Blanton was to verbally and physically threaten Blanton.

The record reflects that Respondent Union, through Young, violated Section 8(b)(1)(A) through at least four different statements during the walk to and from the breakroom with Blanton.

Based on the foregoing, the Administrative Law Judge should find that Respondent Union unlawfully threatened Blanton in violation of Section 8(b)(1)(A) as alleged in the complaint.

**B. Joseph Young's Physical Assault of Robert Blanton [Complaint ¶ 7(c)]**

Blanton and Waters both testified that Joseph Young physically bumped Blanton multiple times. Young is a considerably larger man than Robert Blanton, and by all accounts Blanton attempted to walk away from Young while Young pursued Blanton during their altercation. Blanton attempted to remove himself from the altercation with Young after Young bumped him, but Young continued to pursue and chest bump Blanton to and from the employee breakroom. Young admitted that he followed Blanton to the breakroom from Blanton's worksite. He admits that he followed Blanton even though Blanton told Young that he was not interested in talking to Young. Harper, Jerrit, and Blanton, all testified that Young followed Blanton out of the breakroom after Blanton left the breakroom. Blanton, Waters, and Johnson all testified that Young followed Blanton to the Raymond Mill.

Section 8(b)(1)(A) of the Act makes it unlawful for a labor organization to "restrain or coerce" employees in the exercise of their Section 7 rights, and the Board and the courts have long held that the test for determining restraint and coercion is "... 'whether the misconduct is such that, under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act.'" *Plumbers Local No. 38 (Bechtel Corp.)*, 306 NLRB 511, 518 (1992). An assault or battery committed by an employer or a union in retaliation for employees engaging in Section 7 activity violates the Act. *McBride Construction Co.*, 122 NLRB 1634, 1639 (1959), *enfd.* 274 F.2d 124 (10th Cir. 1960).

There is no question that Young's physical bumping of Blanton was coercive and unlawful. As with the statements made during the same altercation, the purpose of the bumping was to

intimidate Blanton in response to his outspoken criticism of the Union. Blanton complained about his local representation to his coworkers and to representatives from the International Union, sought cards for himself and others to quit the Union, and insulted the Local President. Within two days of these actions, Respondent Union's chief steward threatened and physically assaulted Blanton at the jobsite. Young's actions as a Union steward were patently violations of Section 8(b)(1)(A).

Based on the foregoing, the Administrative Law Judge should find that Respondent Union unlawfully physically assaulted Blanton in violation of Section 8(b)(1)(A) as alleged in the complaint.

**C. Respondent Union Caused the Termination of Robert Blanton [Complaint ¶ 8]**

“A union violates Section 8(b)(2) when it causes or attempts to cause an employer to discriminate against an employee in violation of Section 8(a)(3). In determining whether a union has violated Section 8(b)(2), the Board has applied both the analytical framework set forth in *Wright Line* and the duty-of-fair-representation framework. [Footnote and Citations Omitted]” *Caravan Knight Facilities Management, Inc.*, 362 NLRB 1802, 1804-1805 (2015), enf. denied on the facts, 844 F.3d 590 (6th Cir. 2016). Importantly, “... these are separate and distinct analyses.” *International Association of Machinists and Aerospace Workers (Spirit Aerosystems)*, 363 NLRB No. 165, slip. op. at 1 fn. 3 (2016).

Under the duty of fair representation analysis, the Board applies a rebuttable presumption that a union violates the Act by causing the discharge of a bargaining unit employee, and permits the union to rebut the presumption by demonstrating that it acted in accordance with a valid union security clause or in a manner that was necessary to effectuate the performance of its function of

representing its constituency. See *Acklin Stamping Co.*, 351 NLRB 1263, 1263 (2007), citing, inter alia, *Graphic Communications Workers Local 1-M (Bang Printing)*, 337 NLRB 662, 673 (2002). See also *Operating Engineers Local 18*, 204 NLRB 681, 681 (1973) enf. denied on other grounds 496 F.2d 1308 (6th Cir. 1974). Under the *Wright Line* analysis, the General Counsel must first prove, by a preponderance of the evidence, that the employees' protected conduct was a motivating factor in the union's adverse action by demonstrating that the employees engaged in protected activity, the union had knowledge of that activity, and the union possessed animus against the employees' protected conduct. A union may rebut the General Counsel's showing by demonstrating that it would have taken the same action absent the employees' protected activity.

Regardless of which framework one uses to analyze Respondent Union's actions, the evidence clearly establishes that Respondent Union retaliated against Blanton because of his protected activity. Respondent Union admitted that it had knowledge of Blanton's dissident conduct, and Respondent Union -- particularly Joseph Young -- clearly exhibited animosity toward Blanton's activity. Young had no legitimate reason for his actions.

Additionally, and this will be covered by the following sections, causation could be found through a direct action, through a reasonable inference, or through a combination of the direct actions of Joseph Young and the surrounding circumstances and communications.

**i. Respondent Union Directly Caused Blanton's Termination**

The Board held on more than one occasion that a Union violates Section 8(b)(2) when it reports employee activities to management, and then management makes a decision to terminate the employee. *Graphic Communications International Union, Local 1-M (Bang Printing, Inc.)*, 337 NLRB 662 (2002) (Union official's reporting of an unsubstantiated rumor to the employer that employee engaged in sexual harassment, was an attempt to cause discrimination because union

official had a retaliatory motive and knew such a charge would likely result in employee's discharge); *Town & Country Supermarkets*, 340 NLRB 1410 (2004) (Union official's request to suspend and discharge a dissident employee by reporting to the employer the employee's threat to "kick" his "ass," was retaliatory and constituted an attempt to cause the employer to terminate as report of the threat was likely to cause discipline).

The record evidence shows that Respondent Union directly caused Blanton's termination. Blanton engaged in protected activity by discussing working conditions and his critical opinions of the Union with his coworkers. Young, under instructions from Local President Darryl Ford, went out of his way to confront, threaten, pursue, and physically assault Blanton in retaliation for his protected activities. Blanton reacted defensively, and his reaction of pushing Young away from him while telling Young to leave him alone led directly to his termination.

After pursuing, threatening, and physically assaulting Blanton, Young then spoke to Plant Manager Pierce. Young told Pierce that he and Blanton argued about Union business. (Tr. 202). Pierce asked Young if he had touched Blanton, which Young denied.<sup>8</sup> (Tr. 200). Young also told Pierce that Blanton had pushed him in the breakroom. (Tr. 200). Young did not tell Pierce that he had confronted Blanton and then pursued him to and from the breakroom. Young did not tell Pierce that he threatened to kick Blanton's ass. He did not tell Pierce that Blanton backed away from him and repeatedly told Young to leave him alone. In sum, Young lied to the Employer in order to make it appear that Blanton, rather than Young, was the aggressor, which directly led to Blanton's termination.

GC Exh. 6 also shows that the Employer informed Local President Ford of Blanton's termination within approximately one hour of the altercation. Ford communicated to five members

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<sup>8</sup> We only have Young's version of events regarding this conversation because Respondent Employer failed to call Sonny Pierce as a witness.

of the International that Blanton was going to be terminated for assaulting Joseph Young. In the email, Ford notes that Blanton was the employee that was instigating the bi-weekly pay issue. Later that day, District Director Flippo thanked Ford and informed Ford that he had done good work.

Young's actions directly caused Blanton's termination. Young, a Respondent Union representative gave critical misinformation to Sonny Pierce, a Respondent Employer supervisor and agent. The misinformation led to the Employer's discharge of Blanton in violation of Section 8(a)(3) of the Act, which will be discussed in a later section of this brief. Therefore, Respondent Union caused Blanton's termination in violation of Section 8(b)(1)(A) and 8(b)(2) of the Act.

**ii. A Reasonable Inference is Warranted that Respondent Union Caused Robert Blanton's Termination**

The Board has held on multiple occasions that a union violates the Act when there is a *reasonable inference* that the Union caused or attempted to cause an employee's termination. To establish a violation of Section 8(b)(2) of the Act, direct evidence that the union expressly demanded the discrimination is not necessary. *M. W. Kellogg Constructors*, 273 NLRB 1049, 1050 (1984) (internal citations omitted). A union can be found to have caused employer discrimination if there is sufficient evidence to support a reasonable inference of a union request or a union-employer understanding. *Id.* "Cause may be established by circumstantial evidence and inferences of such may be drawn where the record warrants," and "it suffices if any pressure or inducement is used by the union to influence the employer." *Fischbach/Lord Electric Co.*, 270 NLRB 856, 875-876 (1984).

In *Warehouse Employees Local 20408 (Dubovsky & Sons)*, 296 NLRB 396 (1989), the Board affirmed an administrative law judge's decision that the union caused an employer to terminate multiple union dissidents. In *Dubovsky & Sons*, there was no direct evidence of union

instruction, reports, or direct communication with management. However, the union openly threatened union dissidents with termination, and management terminated the dissidents shortly after the union made the threats. *Id.* at 403. The administrative law judge noted that the Board previously held: “‘A union's actions may be direct or indirect, obvious or subtle, friendly or threatening.’ If considered in their full context the union's actions could fairly be taken or were taken by the employer to be an attempt to cause the termination of an employee, or if the actions in fact cause the termination of an employee, a prima facie violation of Section 8(b)(2) has been established. *Graphic Arts Local 280 (Blazer-Shopes)*, 274 NLRB 787 at 789 (1985).” *Id.*

In this case, while direct evidence is limited, an inference of causation is reasonable based on the preponderance of the evidence. The record shows that the Employer terminated Robert Blanton, a worker without any disciplinary issues, within days after speaking critically about the Union with his coworkers and informing the International Union that he and his coworkers intended to quit the Union. The record also shows that two days prior to his termination, Blanton was the subject of an email from the Union’s International Legal department to District Director Daniel Flippo wherein it is noted that Blanton sought “termination cards” so that members could resign from the Union. Flippo then forwarded this email to International Staff representatives Alex Perkins and Kelly Smith. The record further demonstrates that Respondent Employer Human Resources Director Shannon Smith contacted Local President Darryl Ford sometime prior to 8:20 a.m. on the morning of Blanton’s termination and informed him that Blanton would soon be terminated. Ford then sent an email to Flippo, Perkins, and Kelly Smith (among other International Representatives) at 8:21 a.m. informing them that Blanton “will be terminated immediately for physically assaulting Unit Chair Joseph Young.” Ford also notes that Blanton is the employee who was “instigating this bi-weekly pay issue.” In the email, Ford notes that he spoke with Young the

night before and “instructed Young to troubleshoot any damage” that Blanton caused with union members.

After having the phone call with Ford on December 5, Young came into work the following day and immediately went to Blanton and called him down from his workstation. He then threatened, pursued, and chest bumped Blanton across the worksite. Blanton responded by repeatedly telling Young to get away from him and by pushing Young away from him.

The Respondent Employer, after purportedly speaking with only two employees who witnessed Blanton push Young, then decided that it was going to terminate Blanton. Based on the timing of the email that Ford sent, and the testimony of Shannon Smith, Respondent Employer made the decision to terminate prior to even speaking with Robert Blanton about the incident. Smith stated in his testimony that he did not speak with Blanton until around 9:00 a.m. that morning.

Remarkably, Respondent Employer made the decision to terminate, and then terminated Blanton, allegedly without speaking directly to Young. Young states that he told Sonny Pierce that Blanton gave him a school yard push, but Shannon Smith stated that he did not speak with Young prior to terminating Blanton, despite speaking to several witnesses. These claims are dubious given that Bagging Manager Tommy told Blanton that he saw Young in the office speaking with management immediately after the altercation. Additionally, Smith had time to email Darryl Ford prior to speaking with and terminating Blanton.

Later that same day, District Director Flippo responded to Ford’s email about Blanton by letting Ford know that he had done “good work.” Clearly, Ford was not reporting bad news to the International representatives.

While there is no direct evidence in the record that Respondent Union explicitly made a request to Respondent Employer to terminate Blanton, there is more than sufficient evidence to support a reasonable inference that the Union caused the Employer to terminate Blanton in retaliation for his protected activities. The timing, circumstances, and surrounding communications show a clear linear connection between Blanton's anti-union activities and his termination.

Young threatened Blanton's job during the altercation, and then, within two hours of the threat, Respondent Employer fired Blanton. This is akin to *Dubovsky* where a union representative let employees know that they would be the next to go, and then the employer terminated those employees. However, there was less evidence of animus and communication between the union and employer in the *Dubovsky* case than there is in the instant case. Here, there is substantial evidence of communications between Respondent Employer and Respondent Union that suggest a likely request or understanding about Blanton. The record evidence supports a reasonable inference that the Respondent Union unlawfully influenced the Respondent Employer in making the decision to terminate Blanton.

The record evidence indicates that Respondent Union caused the termination of Blanton through direct action and that there is a reasonable inference that Respondent Union caused Blanton's termination. The record evidence also supports a finding that these combined circumstances certainly caused, and greatly contributed to, Respondent Employer's decision to terminate Blanton.

Based on the foregoing, the Administrative Law Judge should find that Respondent Union unlawfully caused Respondent Employer to terminate Robert Blanton in violation of Section 8(b)(1)(A) and (2) of the Act.

#### **D. Darryl Ford's Threats to Employee Witness Tylor Waters [Complaint ¶ 9]**

Within a few days of Blanton's termination, Tylor Waters informed Alex Perkins and Darryl Ford in separate phone calls that he had witnessed Young pursue, chest bump, and threaten Blanton.<sup>9</sup> After telling Ford that he witnessed Young bump Blanton, Ford told Waters that if his story did not line up with any of the other witness statements that Waters could be viewed as a liar. Ford also told Waters he could be fired if Respondent Employer thought he was providing a false statement. Ford admitted that he made these statements to Waters. Waters believed that Ford was threatening him when Ford made these statements. (Tr. 154, 192).

Section 8(b)(1)(A) of the Act makes it unlawful for a labor organization to "restrain or coerce" employees in the exercise of their Section 7 rights, and the Board and the courts have long held that the test for determining restraint and coercion is "... 'whether the misconduct is such that, under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act.'" *Plumbers Local No. 38 (Bechtel Corp.)*, 306 NLRB 511, 518 (1992).

Ford's statement to Waters was objectively coercive and a violation of Section 8(b)(1)(A). Waters informed Ford that he had witnessed a Union steward physically bumping Blanton, an employee who was causing trouble for the Union and who had insulted Ford over the phone. Ford's knowledge of, and animus toward, Blanton is undeniable. Just days before speaking with Waters, Ford had requested that Young troubleshoot the situation that Blanton was causing with the Union.

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<sup>9</sup> Waters testified that he told both Perkins and Ford that he witnessed Young bump and threaten Blanton. He also testified that he spoke with Kelly Smith. Perkins, Ford, and Smith provided three different versions of events that Waters witnessed with only Ford admitting that Waters informed him that he had witnessed Young assault Blanton. However, Waters' testimony was consistent throughout exhaustive questioning.

During the conversation with Waters, Ford told Waters that if his statement did not match the statements of the other witnesses that it might look like Waters was lying, and Waters could lose his job. The effect of this statement was to scare Waters from speaking out against Union steward Young. The statement also effectively prevented Waters from speaking in favor of Union dissident Robert Blanton. Waters, who had just witnessed Blanton get fired after speaking out against the Union publicly, was informed that if he chose to speak out against the Union, it could result in job loss. Given these circumstances, the effect of Ford's statement was to coerce and intimidate Waters into remaining silent regarding what he witnessed on December 6.

Additionally, it does not matter that the Ford did not have the authority to terminate Waters. The Board has consistently held that the fact that a union could not effectuate a threat without the cooperation of the employer is not a defense. *Clothing & Textile Workers Local 990 (Troy Textiles)*, 174 NLRB 1148, 1150 fn. 2 (1969); *Sav-On-Drugs, Inc.*, 227 NLRB 1638, 1644-1645 (1977). The nature of the statement, under these circumstances, was such that a reasonable person would be coerced or intimidated into not speaking out against Young, a Union steward.

Based on the foregoing, the Administrative Law Judge should find that Respondent Union violated Section 8(b)(1)(A) of the Act when it threatened Tylor Waters with potential job loss if he spoke out against Respondent Union steward Young.

**E. Union Representatives Failed to Process Blanton's Termination Grievance [Complaint ¶10]**

Even without evidence of a hostile motive, the Board will find a violation of Section 8(b)(1)(A) if a union processes a grievance in a perfunctory or arbitrary manner. See *Union of Sec. Personnel of Hospitals*, 267 NLRB 974, 980 (1983). The Board considers a union's actions to be arbitrary if they are "so far outside a wide range of reasonableness as to be irrational." *Steel Workers (Cequent Towing Products)*, 357 NLRB 516, 517 (2011), quoting *Airline Pilots v.*

*O'Neill*, 499 U.S. at 67 (1991). The Board will also find a violation if the union's actions are found to demonstrate "something more" than mere negligence. See *Truck Drivers Local 692*, 209 NLRB 446, 447-448 (1974). As the Board has noted, the "something more than negligence" standard is not susceptible to precise definition but must be analyzed by the particular facts of each case. *Office Employees Local 2*, 268 NLRB 1353, 1355 (1984). Although it is well settled that "an employee is subject to the union's discretionary power to settle or even abandon a grievance," the union must exercise its discretion in good faith. *Teamsters Local 528 (Walsh Construction)*, 272 NLRB 28, 28 (1984), citing *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). Finally, regardless of the apparent merits of a grievance, the Board will find that a union violates Section 8(b)(1)(A) if it abandons a grievance for invidious reasons. See *Bottle Blowers Local No. 106*, 240 NLRB 324, 324-326 (1979).

Although the Board does not require a union to investigate every complaint or deem the mere mismanagement of a grievance to be a violation of Section 8(b)(1)(A), Kelly Smith's disregard of Blanton's version of events and lack of investigation clearly demonstrates his complete lack of good faith. At its essence, Section 8(b)(1)(A) imposes the affirmative obligation that, when a union undertakes a grievance, its decision-making process must be fair and honest. See *General Truck Drivers Local 315 (Rhodes & Jamieson, Ltd.)*, 217 NLRB 616, 618-619 (1975). Under the circumstances, there can be no doubt that Respondent Union utterly failed to meet its obligation to represent Blanton fairly.

Further, and arguably more importantly, Joseph Young, an agent of Respondent Union, actively downplayed and even lied about his role in the interaction with Blanton when he spoke with higher level Union representatives. Young told neither Perkins nor Smith that he followed Blanton out of the breakroom. He only told Smith about what happened in the breakroom, and he

told neither that he followed, threatened, or assaulted Blanton. Young's limited statement to Smith during the investigation undercut Blanton's ability to get a fair grievance hearing and undoubtedly affected Smith's decision to not seek arbitration. Essentially, a Respondent Union agent (Young) grossly tainted the grievance investigation by lying and minimizing his role as a Union steward in a physical altercation.

Considering Respondent Union's active involvement in causing Blanton's discharge, the manner in which it processed his grievance warrants heightened scrutiny. This is not a case in which Respondent Union simply made a reasoned decision that it would not arbitrate Blanton's discharge grievance. Rather, the evidence overwhelmingly demonstrates that Respondent actively stacked the deck against Blanton and then processed Blanton's grievance in a manner that was intended to mask its unlawful motive and actions.

Based on the foregoing, the Administrative Law Judge should find that Respondent Union failed to process Blanton's grievance in a lawful manner in violation of Section 8(b)(1)(A) of the Act as alleged in the complaint.

**F. Respondent Employer Unlawfully Terminated Robert Blanton [Complaint ¶ 14]**

Respondent Employer provided two witnesses to testify regarding the decision to terminate Robert Blanton. Shannon Smith testified that he conducted an investigation that lasted less than two hours and ended with the termination of Robert Blanton. Smith did not speak with Young prior to making this decision. Smith also contacted Darryl Ford and informed him that Blanton was going to be terminated prior to speaking with Blanton. Chris Dibiase stated that he made the decision to terminate Blanton. Dibiase did not speak directly to any witnesses and made his decision based on the information gathered by Shannon Smith.

**i. Adverse Inference Against Respondent Employer**

As noted above in the credibility section, Respondent Employer failed to provide Sonny Pierce as a witness even though he played a central role in the investigation prior to Blanton's termination. Respondent Employer's failure to provide Pierce as a witness gives rise to an adverse inference against Respondent Employer. The adverse inference rule consists of the principle that "when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." *Auto Workers v. NLRB*, 459 F.2d 1329, 1335-1336 (D.C. Cir. 1972) (describing the adverse inference rule as "more a product of common sense than of the common law"); see also *Metro-West Ambulance Service, Inc.*, 360 NLRB 1029, 1030-1031 fn. 13 (2014); *SKC Electric*, 350 NLRB 857, 872 (2007). An adverse inference may be drawn based upon a party's failure to call a witness within its control having particular knowledge of the facts pertinent to an aspect of the case. See *Chipotle Services, LLC*, 363 NLRB No. 37, slip op. at 1 fn. 1, 13 (2015) (adverse inference is particularly warranted where uncalled witness is an agent of the party in question).

In this case, Respondent Employer did not call Sonny Pierce even though Pierce was the only supervisor who likely spoke with Joseph Young prior to Blanton's termination. It was Pierce's duty to gather witnesses to the altercation for Shannon Smith's investigation. Remarkably, Pierce did not bring Young to meet with Shannon Smith. Young testified that Pierce came to speak with him at the crusher, but without Pierce's testimony the specifics of that conversation are limited only to what Young stated. By failing to provide Pierce as a witness, Respondent Employer was able to create a narrative where the supervisors involved in the investigation and termination of Blanton did not speak with a Union representative prior to making their determination. This conveniently benefits both Respondents.

It is the General Counsel's position that an adverse inference should be made against Respondent Employer for failing to call Pierce as a witness to the altercation and investigation. Pierce would have been able to provide the most complete timeline of the investigation. He also could have provided a direct account of how and why the investigation began. Respondent Employer's failure to call Pierce as a witness supports an inference that Respondent Employer conducted a minimal sham investigation at the benefit of the Union.

## **ii. Unlawful Termination**

The Employer violated the Act under the Supreme Court's standard set forth in *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964). See also, e.g., *Taylor Motors, Inc.*, 365 NLRB No. 21 (2017); *Marshall Engineered Products Co., LLC*, 351 NLRB 767 (2007). In *Burnup & Sims*, the Court held that Section 8(a)(1) "is violated if it is shown that the discharged employee was at the time engaged in a protected activity, that the employer knew it was such, that the basis of the discharge was an alleged act of misconduct in the course of that activity, and that employee was not, in fact, guilty of that misconduct." *Id.* at 23.

Respondent Employer justified its decision to terminate Blanton by noting that Blanton was the aggressor in a fight under rule 1.4. (GC Exh. 3). Shannon Smith testified that witnesses Jerrit and Harper both stated that Blanton pushed Young in the breakroom. Smith also noted that Blanton gave a version of events where Young pursued him and bumped him prior to Blanton defensively pushing Young in an attempt to get away. Under the *Burnup & Sims* standard, the Employer violated the Act if Blanton was not the aggressor in the fight. There is substantial evidence that Young went to Blanton's worksite, and then pursued him to and from the breakroom. There are also two witnesses (Blanton and Waters) who saw Young bump Blanton. The witness who saw Blanton push Young in the breakroom also heard Blanton say "get the F--- away from me." Harper also witnessed Young pursue Blanton throughout the breakroom. Blanton was not the

aggressor in the altercation. Multiple witnesses testified that Blanton attempted to get away from Young throughout the interaction. Young admitted that Blanton attempted to get away from him. Blanton only pushed Young as a defense because he was being bullied and pursued. Blanton's behavior was clearly defensive and Young was clearly the aggressor in the interaction by all accounts.

The Employer knew that Blanton was engaged in an argument with Young regarding Union representation prior to terminating him. Young and Blanton both told the Employer. Therefore, open and known Union activity was at the center of Blanton's actions that led to his termination. Under the *Burnup and Sims* standard, if Blanton was not the aggressor in the fight then the Employer violated the Act. Under no reasonable interpretation of the word "aggressor" did Blanton act as the aggressor. He was pursued, threatened, and physically assaulted and intimidated by a larger man for at least five minutes. Young continued to pursue and threaten Blanton even after Blanton repeatedly attempted to remove himself from the situation and intensely requested that Young leave him alone and get away from him. The Employer failed to investigate this altercation thoroughly and did in fact make a mistake with its estimation that Blanton was the aggressor in a fight. Blanton, by any measure, was a victim of bullying and acted defensively.

Therefore, under the *Burnup and Sims* legal standard articulated by the Supreme Court, Respondent Employer violated Section 8(a)(1) and (3) of the Act when it terminated Blanton on December 6.

**V. RESPONDENT UNION'S MOTION FOR DISMISSAL OF CHARGES AGAINST THE INTERNATIONAL UNION SHOULD BE DENIED**

**A. The International Union and the Local Union Acted in Concert When Processing Blanton's Grievance**

The constitutions, bylaws, and collective-bargaining practices of the International Union establish an agency relationship with the Local Union. Additionally, by acting in concord with,

and approving the actions of the Local Union in response to Robert Blanton's complaints, the International Union is responsible for the acts of Darryl Ford and Joseph Young.

It is true that the International Union and the Local Union are distinct entities and one is not automatically responsible for the acts of the other. *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212 (1979); *Coronado Coal Co. v. Mine Workers*, 268 U.S. 295 (1925); *Electrical Workers (Franklin Electric Construction Co.)*, 121 NLRB 143, 146 (1958). However, the Act was specifically amended in 1947 to make both unions and employers subject to the ordinary common law rules of agency, and the Board has a clear statutory mandate to apply the ordinary law of agency to its proceedings. *California Saw & Knife Works*, 320 NLRB 224, 250 (1995), *enfd.* 133 F.3d 1012 (7th Cir. 1998).

There is no factual dispute regarding the sharing of collective-bargaining responsibilities in this case among the both levels of Respondent Union. The International Union is the recognized exclusive bargaining representative of Respondent Employer's employees on behalf of the Local Union. (Tr. 525). Representatives from the International Union and the Local Union are signatories to 2019 collective-bargaining agreement. (Tr. 525). By its constitution, the International Union delegated to District 9 and the Local Union the responsibility of implementing and administering the collective-bargaining agreement with Respondent Employer. (U Exh. 18, Tr. 525). Local Union representatives handle grievances at the initial steps and the International Union handles grievances at the latter steps through arbitration. (Tr. 384) Representatives from the International Union and the Local Union participated in negotiations for a new collective-bargaining agreement in 2018. (Tr. 341, 528). Alex Perkins, Darryl Ford, and Kelly Smith all directly dealt with Blanton's grievance process (see Section II.H. above).

This case falls within the Board's previous determinations finding an agency relationship among international and local unions. In *Mine Workers (Garland Coal Co.)*, 258 NLRB 56 (1981), affd. 727 F.2d 954 (10th Cir. 1984), the Board affirmed the administrative law judge's finding that by delegating its contractual and statutory duties to the district and local mine committee, the international created an agency. Having done that, the international could not disavow the actions of its agents. In *Mine Workers Local 17 (Joshua Industries)*, 315 NLRB 1052 (1994), affd. 85 F.3d 616 (4th Cir. 1996), the Board approved the administrative law judge's extension of the *Garland* rationale to a situation where an admission by a local officer regarding the circumstances of an employee's layoff was deemed to be binding on the district. The administrative law judge wrote:

While these cases do not speak directly to establishing the local union as the agent of the local's District, there appears to be no meaningful distinction that would preclude such agency application from being so extended to the Districts, as well. Under the existing shared arrangement, the local, in processing and resolving grievances at the immediate level, also acts as the agent of its parent District. *Id.* at 1064.

The agency relationship found in these cases arose in the context of collective bargaining and contract administration. In this case, the agency relationship between the International Union and the Local Union arises in the same context. The International Union and the Local Union acted jointly to negotiate the 2018 collective-bargaining agreement, acted jointly to administer the agreement and acted jointly to manage Blanton's grievance as defined by the terms of the contract.

In this case, the Respondent Union (both at the Local and International level) dealt directly with Robert Blanton's termination grievance. District Representative Smith, an admitted agent of the International, worked directly with Local President Darryl Ford in an effort to process Blanton's termination grievance. This process was understood by the Local and the International

and is covered by the collective-bargaining agreement that both the International and the Local agreed to. There is no question that an agency relationship was established regarding the grievance process.

**B. Local Union Representatives Acted with Apparent Authority of the International Union when Causing Blanton's Discharge and Making Coercive Statements to Blanton and Waters**

In addition to having a clear agency relationship regarding the grievance process, Respondent Union also established an agency relationship between the International Union and the Local Union by giving the Local Union apparent authority to deal with Blanton and Waters in a coercive and unlawful manner.

There is no evidence in the record establishing that any International representative gave express instructions to Young or Ford regarding the threatening statements of the Local representatives. However, the circumstances surrounding the alleged unlawful statements, physical assault, and the Local's role in Blanton's termination demonstrate a common law agency relationship between the Local and the International.

This relationship is established by the joint response of International and Local representatives to Blanton's complaints. By assenting to the "good work" of getting Blanton terminated, District President Daniel Flippo acknowledged that the actions of the Local were, if not explicitly directed, then at the very least encouraged, and approved, by the International.

Representatives from all levels participated in the coordinated response to Robert Blanton's attempt to get cards that would allow Blanton and his coworkers to end their Union membership. Perkins, an agent of the International Union called Blanton directly after receiving instructions to look into the matter by District Director Daniel Flippo. Flippo sent that email in response to an email from the International's legal department. Perkins then connected Darryl Ford for a three-way call with Blanton. Following the phone call with both International and Local Agents Ford

and Perkins, Ford then called Young directly and instructed him to “troubleshoot” the issues Blanton was causing at the Whitestone facility. The result of this direct line of communication from International office to Flippo, Flippo to Perkins, Perkins to Ford, Ford to Young was that on December 6, Young threatened and assaulted Blanton and then caused his termination.

Additionally, following Blanton’s termination Tylor Waters called Alex Perkins at Blanton’s suggestion. Waters told Perkins that he had witnessed Young assault and threaten Blanton. Perkins then had Ford call Waters and speak with Waters. During that phone call, Ford threatened Waters with potential job loss if he spoke out against Young. Again, this action was a direct result of coordinated and likely approved action between International and Local agents.

The Board has held that communications between international and local agents can be indicative of an apparent authority for local agents to act on behalf of the international. In *Transportation Workers Union of America, AFL-CIO and its Local 525 (Johnson Controls World Services, Inc.)*, 326 NLRB 8, 9 (2014), the Board noted that it appeared the international acceded to a local agent’s action by virtue of the fact that copies of a letter from the local agent were sent to the international vice president and to the international’s attorney. In this case, there is significantly more evidence of approval from the International. Here, there were multiple layers of communication prior to the unlawful statements and actions of Local agents Ford and Young. Additionally, and more critically, District Director Flippo gave his direct assent to the termination of Blanton in response to Ford’s email.

In all circumstances, the Local Union and International Union made a coordinated and approved response to Blanton’s criticisms of the Union. The Local and International both acted directly to remove Blanton as a problematic critic of the Local. After he was removed, the International and Local responded to neutral witness Tylor Waters by threatening his employment.

Based on the record evidence and relevant case law, the Local Union acted as an agent of the International Union in all allegations described in the Consolidated Complaint. As such, Respondent Union's motion for dismissal should be denied.

## **VI. CONCLUSION**

Counsel for the General Counsel respectfully urges that the Administrative Law Judge credit the testimony of Counsel for the General Counsel's witnesses and find that Respondents violated the Act as alleged in the complaint. Counsel for the General Counsel seeks an order requiring Respondents to cease their unlawful conduct and remedy the harm that they have caused to their members and employees.

The General Counsel also seeks an order requiring that Respondent Union attempt to refile and process Blanton's termination grievance and ask Respondent Employer to consider it timely filed and thereafter pursue the grievance in good faith and with due diligence, including to arbitration; seek a make whole remedy and reinstatement from Respondent Employer on behalf of Blanton; permit Blanton to be represented throughout the grievance process and arbitration by an attorney of his choosing; and pay the reasonable legal fees of such attorney.

The General Counsel further seeks an order requiring that if Respondent Employer deems the grievance untimely and refuses to consider the grievance for arbitration, and it is not possible for Respondent Union to pursue it further, and if the General Counsel shows in compliance proceedings that if it had been timely pursued, the grievance likely would have been successful, then Respondent Union shall make Blanton whole for any increase in damages, if any, suffered as a consequence of its failure to process his grievance in good faith, with interest. These remedies are appropriate in cases like this one, where the union has unlawfully failed to pursue an

employee's grievance. *Iron Workers Local 377 (Alamillo Steel Corp.)*, 326 NLRB 375, 376-77, 380 (1998).

Finally, the General Counsel seeks all other relief deemed appropriate to remedy Respondents' violations of the Act.

Respectfully submitted,

/s/Kurt Brandner  
Kurt Brandner  
Counsel for the General Counsel  
National Labor Relations Board, Region 10

/s/Matthew Turner  
Matthew J. Turner  
Counsel for the General Counsel  
National Labor Relations Board, Region 10

Dated this 14th day of February 2020.

## APPENDIX I – PROPOSED CONCLUSION OF LAW

1. Respondent Employer, Imerys Carbonates USA, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent Union, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 254-06, are labor organizations within the meaning of Section 2(5) of the Act.
3. By threatening employees of Respondent Employer with potential job loss, in order to prevent employees from vocally opposing Respondent Union, Respondent Union violated Section 8(b)(1)(A) of the Act.
4. By threatening employees with physical violence because they vocally opposed Respondent Union, Respondent Union violated Section 8(b)(1)(A) of the Act.
5. By physically battering employees because they vocally opposed Respondent Union, Respondent Union violated Section 8(b)(1)(A) of the Act.
6. By attempting to cause and causing Respondent Employer to discharge Robert Blanton because he vocally opposed Respondent Union, Respondent Union violated Section 8(b)(2) and (1)(A) of the Act.
7. By failing to fairly represent Robert Blanton regarding his grievance against Respondent Employer, Respondent Union violated Section 8(b)(1)(A) of the Act.
8. By terminating Robert Blanton as a result of his protected activity and vocal opposition to Respondent Union, Respondent Employer violated Section 8(a)(1) and (3) of the Act.

## APPENDIX II – PROPOSED ORDER

Respondent Union, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 254-06, its officers, agents, successors, and assigns shall:

1. Cease and desist from
  - (a) Threatening employees of Respondent Employer, Imerys Carbonates, USA Inc. with potential job loss, in order to prevent employees from vocally opposing Respondent Union.
  - (b) Threatening employees with physical violence because they vocally opposed Respondent Union.
  - (c) Physically battering employees because they vocally opposed Respondent Union.
  - (d) Attempting to cause and causing the Employer to discharge employees because they vocally opposed Respondent Union.
  - (e) Failing to fairly represent employees during their grievance processes.
  - (f) In any like or related manner 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.
  - (a) Jointly and severally with Respondent Employer, make whole Robert Blanton for any loss of earnings and other benefits plus interest from the date of his discharge to the date of his reinstatement by the Respondent Employer.
  - (b) Remove from its files, and ask Respondent Employer to remove from Respondent Employer's files, any reference to Blanton's unlawful discharge and notify Blanton in writing that it has done so and that it will not use the discharge against Blanton in any way.
  - (c) Promptly request Respondent Employer to consider Robert Blanton's grievance and, if it agrees to do so, process the grievance with due diligence in accordance with the collective-bargaining agreement between Respondent Employer and Respondent Union.
  - (d) Permit Robert Blanton to be represented by his own counsel at any grievance proceeding, including arbitration or other resolution proceeding, and pay the reasonable legal fees of such counsel.

- (e) In the event that it is not possible for Respondent Union to pursue the grievance, and if the General Counsel shows in a compliance proceeding that a timely pursued grievance would have been successful, make Robert Blanton whole for any increases in damages suffered as a consequence of Respondent Union's failure to process his grievance in good faith, in the manner set forth in the remedy section of this decision.
- (f) In the event that Robert Blanton is awarded backpay pursuant to paragraph 2(e) above, compensate him for the adverse tax consequences, if any, of receiving a lump-sum backpay award.
- (g) Within 14 days after service by the Region, post at its Union office and at Respondent Employer's Whitestone, Georgia facility copies of the attached notice marked "Appendix IV." Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union and maintained for 60 consecutive days in conspicuous places, including all places where notices to Respondent Union members are customarily posted. In addition to physical posting of paper notices, 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 Union customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.
- (h) Sign and return to the Regional Director sufficient copies of the notice for posting by Respondent Employer, if willing, at all places where notices to members are customarily posted.
- (i) Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Union has taken to comply.

Respondent Employer, Imerys Carbonates USA, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from
  - (a) Discharging employees in retaliation for their protected activities and/or opposition to the Union.
  - (b) In any other 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
  - (a) Within 14 days from the date of the Board's Order, offer Robert Blanton full reinstatement to his former job, or if that job no longer exists, to a substantially

equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

- (b) Jointly and severally with Respondent Union, make whole Robert Blanton for any loss of earnings and other benefits plus interest from the date of discharge to the date of reinstatement.
- (c) Remove from its files any reference to Robert Blanton's unlawful discharge and notify him in writing that it has done so and that it will not use the discharge against him in any way.
- (d) Within 14 days after service by the Region, post at its Whitestone, Georgia facility copies of the attached notice marked "Appendix III." Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent Employer 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, 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 Employer customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent Employer has gone out of business or closed the facility involved in these proceedings, the Respondent Employer shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent Employer at any time since December 5, 2018.
- (e) Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Employer has taken to comply.

## APPENDIX III – (Proposed) NOTICE TO EMPLOYEES

(To be printed and posted on official Board notice form)

### FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative 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** interfere with, restrain, or coerce you in the exercise of the above rights.

**YOU HAVE THE RIGHT** to freely discuss pay frequency issues with coworkers and criticize your union representation, and **WE WILL NOT** do anything to interfere with your exercise of those rights.

**WE WILL NOT** fire you because you exercise your rights to discuss pay issues and make complaints about union representation on behalf of yourself and other employees.

**WE WILL NOT** fire you because you do not support the union.

**WE WILL** offer Robert Blanton immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and/or privileges he previously enjoyed.

**WE WILL** jointly and severally with United Steelworkers Local 254-06 make whole Robert Blanton for any loss of pay or other benefits he suffered because of our discrimination against him.

**WE WILL** remove from our files all references to the discharge of Robert Blanton, and **WE WILL** notify him in writing that this has been done and that the discharge will not be used against him in any way.

**WE WILL NOT** in any like or related manner interfere with your rights under the National Labor Relations Act.

APPENDIX IV – (Proposed) NOTICE TO EMPLOYEES AND MEMBERS

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative 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** interfere with, restrain, or coerce you in the exercise of the above rights.

**WE WILL NOT** fail to properly investigate and process your grievances.

**WE WILL NOT** threaten you with physical violence.

**WE WILL NOT** physically assault you.

**WE WILL NOT** tell you that the union will not do anything for you if you criticize the union.

**WE WILL NOT** tell you that you may lose your job for providing a witness statement to Imerys Carbonate USA, Inc.

**WE WILL NOT** cause or attempt to cause your termination if you criticize the union.

**WE WILL** jointly and severally with the Employer Imerys Carbonate USA, Inc., make whole Robert Blanton for any loss of earnings and any other benefits he may have suffered because of our discrimination against him.

**WE WILL** promptly ask Imerys Carbonate USA, Inc., to hear the grievance of former employee Robert Blanton concerning his termination at the arbitration stage, and if it agrees to do so, **WE WILL** process that grievance with due diligence and competent representation.

**WE WILL** permit Robert Blanton to be represented by his own counsel at any grievance proceedings, including arbitration or other resolution proceedings, and **WE WILL** pay the reasonable legal fees of such counsel.

**WE WILL**, if it is not possible to pursue the grievance, and if the General Counsel of the National Labor Relations Board shows in compliance proceedings that a timely pursued grievance would have been successful, make whole (with interest) Robert Blanton for any increases in damages suffered because we failed to process his grievance.

**WE WILL NOT** in any like or related manner restrain or coerce you in the exercise of your rights under the National Labor Relations Act.

CERTIFICATE OF SERVICE

This is to certify that on February 14, 2020, copies of the Brief of Counsel for the General Counsel were served by email on:

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