Graphic Communications Conference/International Brotherhood of Teamsters Local Union No. 735–S *and* Bemis Company, Inc. Case 04–CB–215127

June 5, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On February 1, 2019, Administrative Law Judge David I. Goldman issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party each filed cross-exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] only to the extent consistent with this Decision and Order.[3]

We adopt the judge's finding that the Respondent violated Section 8(b)(1)(A) of the Act by posting a memo on the union bulletin board threatening to blacklist members from employment opportunities if they "turned in" fellow union members, i.e., reported misconduct by coworker union members to the Employer. We also adopt the judge's finding that the Respondent, through Union Vice President Kevin Davidovich, violated Section 8(b)(1)(A) by threatening employee Michael Samsel with reprisals in response to Samsel's complaint about hostile notes being left at his workspace.[4] For the reasons stated below, however, we reverse the judge's dismissal of the allegations that the Respondent violated Section 8(b)(1)(A) by threatening employee Joseph Stasko with reprisals for reporting alleged misconduct by Union President Dominic DeSpirito and violated Section 8(b)(2) and (1)(A) by attempting to cause the Employer to discipline Stasko.

DISCUSSION

Bemis Company, Inc. (the Employer) manufactures bread bags at its West Hazelton, Pennsylvania facility. Since 1993, Graphic Communications Conference/International Brotherhood of Teamsters Local Union No. 735–S (the Respondent) has represented the facility's production, maintenance, and warehouse employees as their exclusive collective-bargaining representative.

Around December 14, 2017, an employee reported to the Employer that a coworker, Union President DeSpirito, had been verbally harassing employee—Stasko on an ongoing basis since September 2017. In response, the Employer immediately suspended DeSpirito and launched an investigation, which, among other things, involved individually interviewing employees and taking statements from them regarding DeSpirito's conduct. Press assistant employees Samsel and Stasko participated by giving statements to human resources. On January 18, 2018, the Employer discharged DeSpirito.[5]

A. Protected Activity

As an initial matter, we find that Stasko engaged in protected activity when he participated in the Employer's investigation of Union President DeSpirito and provided a statement to the Employer regarding his alleged misconduct. The Board has held that employees have a protected right to participate in the machinery of the grievance and arbitration process. See *Cement Workers D–357 (Southern Portland Cement)*, 288 NLRB 1156, 1157–1158 (1988); *Oil Workers Local 7–103 (DAP, Inc.)*, 269 NLRB 129, 130 (1984). This includes the right to provide witness statements, including those against fellow members, that are foreseeably part of the grievance process. See *Cement Workers D–357*, above at 1156–1157; *Oil Workers Local 7–103*, above at 130.[6] Here, it would have been foreseeable to Stasko that the Employer's investigation of DeSpirito for allegedly verbally harassing him would lead to discipline—DeSpirito had already been suspended before the investigation began—and that a grievance would

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We have amended the judge's conclusions of law consistent with our findings herein.

[3] We shall modify the judge's recommended Order to conform to our findings and to the Board's standard remedial language, and in accordance with our recent decision in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020). We shall substitute a new notice to conform to the Order as modified.

[4] The General Counsel contends that the judge failed to specifically find that Davidovich's comment to Samsel that Union President Dominic DeSpirito told him "to go after the rats" also violated Sec. 8(b)(1)(A). In finding the violation, however, the judge properly addressed the entirety of the allegation, which included the "go after the rats" comment. Moreover, the additional finding the General Counsel seeks would not materially affect the remedy.

[5] At the hearing, the Respondent's representative stated that the Respondent was challenging DeSpirito's discharge through an arbitration process that was then ongoing.

[6] See also *Sheet Metal Workers Local 550 (Dynamics Corp.)*, 312 NLRB 229, 234 (1993) (Employees have a protected right "to cooperate with management in the investigation of employee misconduct which might lead to discipline, at least where a grievance has been, or . . . is likely to be filed.").

likely be filed.[7] Indeed, at the time of the hearing, the Respondent asserted that it was, in fact, challenging DeSpirito's discharge through the arbitration process. Accordingly, we find that Stasko's participation in the investigation and provision of a witness statement against DeSpirito constituted protected activity.[8]

B. Threat of reprisal

On or about December 18, 2017, shortly after DeSpirito was suspended, Stasko and Samsel were seated at a table in the press department breakroom. According to Stasko's credited testimony, Union Secretary–Treasurer Lynn Andrews

> came right to me and started yelling with her finger in my face about 12, 14 inches from my nose telling me . . . that she is going to get to the bottom of it. How could we do this to Dominic? And she doesn't know what's going on and she wanted to—she was going to conduct her own investigation.

The incident lasted about 30 to 45 seconds.

The judge found that Andrews' December 18 confrontation with Stasko did not violate Section 8(b)(1)(A) because Andrews' threat—that the Respondent would conduct its own investigation of DeSpirito's suspension—was merely a statement of the Respondent's intent to investigate the matter. The judge reasoned that conducting an investigation of a disciplinary issue constitutes "a basic and legitimate function of a union." Accordingly, he concluded that "[t]he 'threat' of a union investigation into an employee's suspension does not reasonably tend to restrain or coerce other employees," and that Andrews' anger and finger wagging did "not transform the incident into an unlawful threat."

We disagree. Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of rights protected by the Act. Under Section 8(b)(1)(A), a union agent's subjective intent is irrelevant. Rather, the appropriate test is "whether the remark can reasonably be interpreted by the employee as a threat." *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1066 (2007), enfd. per curiam 577 F.3d 467 (2d Cir. 2009). Here, Stasko—a bargaining unit member and the alleged target of DeSpirito's harassment—had just exercised his protected right to provide a witness statement against DeSpirito under circumstances that made it likely a grievance over DeSpirito's discipline would be filed. In this context, Andrews' accusatory language and gestures coupled with her promise to "get to the bottom of it" would be reasonably interpreted not as a general expression of the Respondent's intent to investigate, but as a personalized threat to hold Stasko accountable for his role in DeSpirito's discipline. Certainly, we agree with the judge that the Respondent here had a right to investigate any disciplinary proceedings against DeSpirito. But Andrews referred only to "her own investigation" and did so while sharply singling out an individual who played a central role in the Employer's probe. For these reasons, a reasonable listener would have construed the totality of Andrews' outburst not as a benign expression of the Respondent's intent to fulfill its representative duties, but rather as a suggestion that adverse action could be taken against Stasko for participating in the Employer's process.[9] Accordingly, we reverse the judge and find that the Respondent violated Section 8(b)(1)(A).

C. Attempt to Cause Discipline

On the morning of January 25, 2018, Union Secretary-Treasurer Andrews observed Stasko walking across the press department floor without his required noise

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[7] See *Sheet Metal Workers Local 550*, above at 234 fn. 10 (finding that employees could reasonably anticipate that a grievance would be filed where "the subject of the Employer's questioning was conduct of a high ranking union officer" and that officer had already been suspended).

[8] In addition, the Board has held that a union violates Sec. 8(b)(1)(A) when it disciplines an employee for reporting a work-rule infraction by another employee if the disciplined employee is under a duty to make such reports. *Operating Engineers Local 513 (Ozark Constructors)*, 355 NLRB 145 (2010), enf. denied 635 F.3d 1233 (D.C. Cir. 2011), and cases cited therein. Here, the judge found that the Employer called Stasko to the human resources office to interview and provide a statement about DeSpirito's conduct. See *Teamsters Local 439 (University of the Pacific)*, 324 NLRB 1096, 1098 (1997) (finding that union's discipline of member for performing his "employer-assigned tasks" of reporting misconduct was unlawful), enfd. 175 F.3d 1173 (9th Cir. 1999).

Although the United States Court of Appeals for the District of Columbia Circuit denied enforcement in *Operating Engineers Local 513* on the ground that the Board furnished no basis for its finding that the employee who reported the work-rule infraction in that case was engaged in concerted activity, 635 F.3d at 1235, it also recognized that under Supreme Court and Board precedent, invoking a right grounded in a collectively bargained agreement is concerted activity. See *NLRB v. City Disposal Systems Inc.*, 465 U.S. 822, 832 (1984) ("[W]hen an employee invokes a right grounded in the collective-bargaining agreement, he does not stand alone. Instead, he brings to bear on his employer the power and resolve of all his fellow employees."); *Interboro Contractors, Inc.*, 157 NLRB 1295, 1298 (1966), enfd. 388 F.2d 495 (2d Cir. 1967). Here, we have found that by participating in the Employer's investigation, Stasko was exercising his right to participate in the contractual grievance procedure. Accordingly, he was engaged in protected concerted activity under *City Disposal* and *Interboro*. Cf. *Operating Engineers Local 513*, 635 F.3d at 1236 (noting that Board "explicitly decline[d] to rely on *City Disposal*").

[9] See, e.g., *Teamsters Local 391*, 357 NLRB 2330, 2330 (2012) (finding Sec. 8(b)(1)(A) violation in the absence of express threat where statement would have been reasonably interpreted to "'suggest unpleasant repercussions'" against a unit member for participating in Board processes) (quoting *Auto Workers Local 235 (General Motors Corp.)*, 313 NLRB 36, 41 (1993)).

protective gear, known as earmuffs.[10] Andrews reported Stasko's safety violation to supervisors of the Employer as well as the bargaining unit safety advocate, Denise Eisley. Andrews had raised safety concerns to the Employer in the past, but this was the first time that she reported an employee for a safety violation. After Andrews' report, Eisley told Stasko to wear his earmuffs, and Stasko complied.[11]

Later that same day, the Employer's environmental health and safety manager, Carl Passler, conducted a safety committee meeting for one of the four voluntary safety committees in the facility. Between 12 and 14 employees were present, including Stasko. Pizza was served and, at some point during the meeting, Stasko used the razor blade that he uses to cut film for work to cut a slice of pizza. Using a work blade on food and using the blade without a protective "cut glove" violated safety protocols, and Michelle Hernandez, an employee present at the meeting, reported the incident to Passler. The Employer did not take disciplinary action at the time of the incident, and Passler testified that he would not have issued discipline for a first offense of that nature.

Hernandez reported the incident to Secretary-Treasurer Andrews. That afternoon, Andrews filed a complaint regarding the incident on the Employer's 1–800 corporate compliance hotline. In the evening, Andrews left a voicemail for Passler, again reporting the incident and expressing her concern that he had not acted.[12]

The next day, January 26, Andrews called Human Resources Manager Leslie Pienkowski; during the call, Andrews was upset and stated that she wanted an investigation conducted into the pizza-cutting incident. Andrews further complained that the Employer was giving Stasko preferential treatment and that the Employer had disciplined people for less.[13] Following Andrews' reports, Passler instructed Eisley to speak to Stasko regarding the incident.

The judge dismissed the General Counsel's allegation that the Respondent violated Section 8(b)(2) and (1)(A) by attempting to have Stasko disciplined by the Employer for the two safety violations. The judge premised his conclusion solely on his finding that Andrews did not actually attempt to have Stasko disciplined. First, the judge determined that Andrews did not make an express demand or request that Stasko be disciplined. Second, the judge found that disciplinary action against Stasko by the Employer would not have been a "foreseeable consequence" of Andrews' reports. In so finding, the judge emphasized that there was no possibility that the Employer would have disciplined Stasko in light of its longstanding practice of counseling employees rather than imposing discipline for isolated safety violations. The judge concluded that "[r]eporting an employee for a violation for which he will not be disciplined is not an attempt to have him disciplined."[14] Accordingly, the judge dismissed the allegation without reaching the question of whether the Respondent's actions were unlawfully motivated.[15]

Section 8(b)(2) of the Act makes it an unfair labor practice for a union or its agents to cause or attempt to cause an employer to discriminate against an employee in violation of Section 8(a)(3). To establish a violation, direct evidence that the union expressly demanded the discrimination is not necessary. *M. W. Kellogg Constructors, Inc.*, 273 NLRB 1049, 1051 (1984), remanded on other grounds 806 F.2d 1435 (9th Cir. 1986). A union can be found to have caused or attempted to cause discrimination if there is sufficient evidence to support a reasonable inference of a union request or a union–employer understanding. Id.[16] Accordingly, the Board has held that this requirement has been satisfied where the union's conduct "warrants the inference of an implied request" that an employee be disciplined.[17]

Contrary to the judge, we find that the General Counsel has established that the Respondent attempted to have Stasko disciplined by the Employer. Indeed, even absent an express request for discipline, the record makes clear that Andrews' entire course of conduct was directed toward one goal: having the Employer take formal

[10] The judge credited Stasko's testimony that he had briefly removed his earmuffs in order to have a conversation. The Employer's environmental health and safety manager, Carl Passler, indicated that the removal of earmuffs is a violation of safety protocols; he also testified that it was commonplace in the workplace for an employee to remove his earmuffs.

[11] It was longstanding practice for a safety advocate or manager to direct employees to put on their safety protection gear rather than reporting the violation. The record does not contain any evidence of an employee receiving discipline for a safety violation prior to the events at issue here.

[12] In her voicemail, Andrews stated:

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

[13] The judge credited Andrews' testimony that she "wanted something done."

[14] The judge then concluded that Andrews had filed the safety complaints simply to "mak[e] a point" that the Employer had enlisted a certain group of employees in the termination of DeSpirito and that those employees were being protected by the Employer.

[15] The judge also dismissed the General Counsel's allegation that Andrews' reporting of Stasko amounts to a derivative violation of Sec. 8(b)(1)(A). We address this allegation below.

[16] See also *Paperworkers Local 1048 (Jefferson Smurfit Corp.)*, 323 NLRB 1042, 1044 (1997).

[17] Id.

disciplinary action against Stasko. Despite the fact that the longstanding practice was for both the Employer and Andrews to address safety lapses through informal counseling, Andrews repeatedly suggested that the Employer's informal handling of the minor incidents involving Stasko did not go far enough. Significantly, the Employer's safety representative was present when the pizza-cutting incident took place and had already determined that Stasko's conduct did not warrant discipline. Nonetheless, Andrews lodged three separate complaints regarding the incident—to the corporate compliance hotline, to Safety Director Passler, and to Human Resources Manager Pienkowski. Finally, not only did Andrews specifically complain to Passler that his reaction to Stasko's conduct was inadequate, she expressly requested that Pienkowski initiate an investigation of the incident, arguing that "we've disciplined people for less." In this context, the only reasonable interpretation of Andrews' statement that she "wanted something done" is that she wanted the Employer to impose discipline on Stasko. See, e.g., *Food & Commercial Workers Local 454 (Central Soya)*, 245 NLRB 1295, 1297 (1979) (finding that union president implicitly attempted to cause discipline where she mentioned a disciplinary rule and an employee's escape from consequences under that rule), enfd. mem. 625 F.2d 1012 (5th Cir. 1980).

We agree with the General Counsel that the issue of whether Stasko would actually be disciplined by the Employer is separate from the question whether Andrews' actions could be reasonably construed as a request for discipline outside of the Employer's existing protocols. Andrews, in her multiple complaints against Stasko and her escalating course of reporting, clearly sought to portray Stasko as a repeat offender whose actions merited sanction rather than mere counseling. In our view, Andrews' decision to file complaints via the corporate compliance hotline and a human resources manager—rather than just the Employer's safety manager—and her explicit request for an investigation also suggest a disciplinary aim rather than one solely related to safety. For all of these reasons, we conclude that the Respondent, through Andrews, attempted to cause Stasko to be disciplined.

Having found that Andrews attempted to cause Stasko to be disciplined, we next consider whether the Respondent acted unlawfully in doing so. In assessing whether a union has violated Section 8(b)(2), the Board has applied both the analytical framework set forth in *Wright Line*[18] and the duty-of-fair-representation framework.[19] For the reasons that follow, we find the violation under either standard.[20]

To satisfy his initial *Wright Line* burden, the General Counsel must show that the employee engaged in protected activity, the union had knowledge of that activity, and the union bore animus towards the employee's protected activity. See *Sheet Metal Workers Local Union 85 (Logistics Co.)*, 368 NLRB No. 50, slip op. at 8 (2019). Inferences of discriminatory motive may be warranted under the totality of the circumstances of a case. *Paperworkers Local 1048*, 323 NLRB at 1044. If the General Counsel meets his burden, the burden shifts to the union to show that it would have taken the same action absent the employee's protected activity. *Security, Police & Fire Professionals of America (SPFPA) Local 444*, 360 NLRB 430, 436 (2014).

For the reasons set forth above, we find that Stasko engaged in protected activity by providing a witness statement in the Employer's investigation of DeSpirito under circumstances that made it likely a grievance over DeSpirito's discipline would be filed, and the record shows that the Respondent had knowledge of this activity. In addition, we find that the record includes ample evidence of the Respondent's animus toward Stasko's protected activity. As discussed above, Andrews—before she reported Stasko's safety violations—unlawfully threatened Stasko with reprisals for participating in the Employer's investigation. Likewise, as stated above, the Respondent violated the Act by posting a memo in which it threatened to blacklist union members who "turn[ed] in fellow union members."[21] In this context, it is clear that Andrews' efforts to compel Stasko's discipline were the consummation of the Respondent's repeated threats to inflict consequences on those who participated in the Employer's investigation.[22]

Even apart from the Respondent's unlawful conduct, Andrews' words and actions surrounding her requests evince her animus toward Stasko's conduct. Significantly, Andrews indicated that she lodged the complaints against Stasko out of her frustration that certain co-

[18] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); see, e.g., *Paperworkers Local 1048*, above at 1044 (applying *Wright Line* analytic framework to alleged discrimination by a union).

[19] See *Graphic Communications Local 1–M (Bang Printing)*, 337 NLRB 662, 678 (2002) (applying duty-of-fair-representation framework to alleged discrimination by a union).

[20] *Caravan Knight Facilities Mgmt., Inc.*, 362 NLRB 1802, 1804–1805 (2015) (applying both frameworks to determine whether a union has violated Sec. 8(b)(2)), enf. denied on other grounds sub nom. *United Auto Workers v. NLRB*, 844 F.3d 590 (6th Cir. 2016).

[21] Tellingly, Andrews testified that she was responsible for putting the memo on display.

[22] See, e.g., *O.K. Trucking Co.*, 298 NLRB 804, 809 (1990) (finding animus where respondent carried out previous threats of reprisal by actually imposing discipline).

workers "get away with things," specifically those "who have testified or who have participated in the investigation against . . . DeSpirito." Indeed, the judge found that Andrews filed the complaints to "mak[e] a point" about those employees. All of this evidence sufficiently establishes that Stasko's protected conduct was a motivating factor in Andrews' decision to file her complaints. Notably, Andrews complained about the Employer's supposedly insufficient response to Stasko's conduct only days after the Employer discharged DeSpirito.[23] In addition, Andrews had never previously reported an employee for a safety violation; she did so here repeatedly, and to multiple sources, in spite of the relatively mild nature of the underlying conduct and the fact that, consistent with its existing protocol, the Employer had already declined to impose discipline for either incident. For all of these reasons, we find that the General Counsel has met his initial burden under *Wright Line*.

To the extent that the Respondent argues, without elaboration, that Andrews reported Stasko solely for committing safety violations, it has offered no credible evidence that she would have filed these reports even in the absence of Stasko's protected activity, and thus the Respondent has not met its *Wright Line* defense burden. Therefore, applying *Wright Line*, we find that the Respondent violated Section 8(b)(2) by attempting to cause the Employer to discipline Stasko.

We reach the same result applying the duty-of-fair-representation framework. When a union causes or attempts to cause an employee to be disciplined, there is a rebuttable presumption that it acted unlawfully because that "'demonstrates its power to affect the employees' livelihood in so dramatic a way as to encourage union membership among the employees.'" *Graphic Communications Local 1–M*, 337 NLRB at 673 (quoting *Operating Engineers Local 478 (Stone & Webster)*, 271 NLRB 1382, 1382 fn. 2 (1984)). A union may rebut the presumption that it acted unlawfully by demonstrating that its action "was necessary to the effective performance of its function of representing its constituency." *Operating Engineers Local 18 (Ohio Contractors Assn.)*, 204 NLRB 681, 681 (1973), enf. denied on other grounds 496 F.2d 1308 (6th Cir. 1974).

Here, the Respondent has failed to rebut the presumption of unlawful conduct that arose when Andrews sought to have Stasko disciplined. The Respondent has made no attempt—at the hearing or via briefing—to demonstrate that Andrews' reporting of either incident was necessary to the representation of its constituency. Accordingly, we find that it has breached its duty of fair representation in violation of Section 8(b)(2) by reporting Stasko for his conduct. See *Service Employees Local 1877 (American Building Maintenance)*, 345 NLRB 161, 166 (2005) (finding that union did not rebut presumption where it failed to present a defense).

Finally, consistent with the General Counsel's complaint, we find that the Respondent independently violated Section 8(b)(1)(A) by retaliating against Stasko for engaging in protected activity.[24]

AMENDED CONCLUSIONS OF LAW

1. Bemis Company, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent, Graphic Communications Conference/International Brotherhood of Teamsters Local Union No. 735–S, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent, on or about December 18, 2017, violated Section 8(b)(1)(A) of the Act by threatening employee Joseph Stasko with reprisals because of his involvement in the Employer's investigation into the Union President's misconduct.

4. The Respondent, on or about January 22, 2018, violated Section 8(b)(1)(A) of the Act by posting a message threatening to blacklist members from employment opportunities.

5. The Respondent, on or about January 22, 2018, violated Section 8(b)(1)(A) of the Act by threatening employee Michael Samsel with reprisals, including destruction of property, in response to Samsel's complaint about hostile notes calling him a "rat" being left at his workplace.

6. The Respondent, on or about January 25, 2018, violated Section 8(b)(2) of the Act by attempting to cause the Employer to discipline Stasko, and Section 8(b)(1)(A) of the Act by restraining or coercing Stasko in the exercise of rights guaranteed him by Section 7 of the Act.

[23] An employee reported the allegations against DeSpirito on December 14, 2017, the Employer discharged DeSpirito on January 18, 2018, and Andrews reported Stasko on January 25 and 26, 2018. Evidence of suspicious timing supports an inference of animus. *Paperworkers Local 1048*, above at 1044.

[24] See *Teamsters Local 705 (Pennsylvania Truck Lines)*, 314 NLRB 95, 95–96 fn. 4 (1994); *Laborers Local 373 (Arrow Enterprises)*, 282 NLRB 347, 348–349 (1986). In finding that the Respondent independently violated Sec. 8(b)(1)(A), we do not rely on the judge's characterization of the 8(b)(1)(A) violation as "derivative." See *National Maritime Union (Texas Co.)*, 78 NLRB 971, 985–986 (1948) (finding no suggestion in the legislative history of the Taft-Hartley Act that a union would derivatively violate Sec. 8(b)(1)(A) where its violation of Sec. 8(b)(2) "constituted merely an *attempt* to cause the employer to discriminate"), enfd. 175 F.2d 686 (2d Cir. 1949), cert. denied 338 U.S. 954 (1950).

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

ORDER

The National Labor Relations Board orders that the Respondent, Graphic Communications Conference/International Brotherhood of Teamsters Local Union No. 735–S, West Hazelton, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees with reprisals for providing a witness statement to the Employer for use in a potential grievance proceeding.

(b) Threatening employees with loss of employment opportunities in retaliation for engaging in protected activity.

(c) Threatening employees with reprisals in response to complaints that they have received messages implying they are disloyal and/or hostile to the Respondent.

(d) Attempting to cause the discipline and/or discharge of any employee because of his or her protected activity.

(e) 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) Within 14 days from the date of this Order, remove from its files, and ask the Employer to remove from the Employer's files, any reference to the unlawful reports of misconduct against Joseph Stasko, and within 3 days thereafter notify Stasko in writing that it has done so and that it will not use the reports against him in any way.

(b) Post as its West Hazelton, Pennsylvania facility copies of the attached notice marked "Appendix."[25] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and 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 internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Deliver to the Regional Director for Region 4 signed copies of the notice in sufficient number for posting by the Employer at its West Hazelton, Pennsylvania facility, if it wishes, in all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 5, 2020

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John F. Ring, Chairman

_____
Marvin E. Kaplan, Member

_____
William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

[25] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted by the Respondent, and delivered to the Regional Director for posting by the Employer, if it wishes, within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted and delivered within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its members by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with reprisals for providing a witness statement to the Employer for use in a potential grievance proceeding.

WE WILL NOT threaten you with loss of employment opportunities in retaliation for engaging in protected activity.

WE WILL NOT threaten you with reprisals in response to complaints that you have received messages implying that you are disloyal and/or hostile to the Union.

WE WILL NOT attempt to cause your discipline and/or discharge because of your protected concerted activity.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, remove from our files, and ask the Employer to remove from the Employer's files, any reference to our unlawful reports of misconduct against Joseph Stasko, and WE WILL, within 3 days thereafter, notify him in writing that we have done so and that we will not use the reports against him in any way.

GRAPHIC COMMUNICATIONS CONFERENCE/ INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL UNION NO. 735–S

The Board's decision can be found at www.nlrb.gov/case/04-CB-215127 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

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Timothy C. Kamin, Esq. (Ogletree, Deakins, Nash, Smoak & Stewart, P.C.), of Milwaukee, Wisconsin, for the Charging Party.

DECISION

INTRODUCTION

DAVID I. GOLDMAN, ADMINISTRATIVE LAW JUDGE. This case involves allegations by the government that a union unlawfully threatened employees and unlawfully attempted to have the employer discipline an employee. As described more fully herein, I find that the union unlawfully threatened employees in two of three instances alleged by the government. I dismiss the allegations relating to the union's alleged attempt to have the employee disciplined.

STATEMENT OF THE CASE

On February 20, 2018, the Bemis Company, Inc. (Bemis or Employer) filed an unfair labor practice charge alleging violations of the Act by the Graphic Communications Conference/ International Brotherhood of Teamsters Local Union No. 735–S (Union), docketed by Region 4 of the National Labor Relations Board (Board) as Case 04–CB–215127. The charge was amended on March 6, 2018, amended for a second time on May 29, 2018, and a third time on June 18, 2018.

Based on an investigation into this charge, on June 25, 2018, the Board's General Counsel, by the Regional Director for Region 4 of the Board, issued a complaint and notice of hearing in this case alleging violations of the National Labor Relations Act (Act). The Union filed an answer denying all violations of the Act on June 29, 2018.

A trial in this matter was conducted on October 22, 2018, in Hazelton, Pennsylvania. Counsel for the General Counsel, the Employer, and the Union filed posttrial briefs in support of their positions by December 3, 2018.

On the entire record, I make the following findings, conclusions of law, and recommendations.

JURISDICTION

At all material times, Bemis has been a corporation with an office and place of business in West Hazelton, Pennsylvania, and has been engaged there in the production and distribution of packaging used for the food, consumer products, healthcare, and other industries. During the past year, Bemis, in conducting its business operations described above, purchased and received at its West Hazelton facility goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. At all material times, Bemis has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

UNFAIR LABOR PRACTICES

Background

Bemis manufactures bread bags at its West Hazelton, Pennsylvania facility. Since and before Bemis acquired the facility in 1993, the Union has represented the facility's production,

maintenance, and warehouse employees.[1] At the time of the hearing, Human Resources Manager Leslie Pienkowski estimated that there were approximately 350 union-represented employees working at Bemis. The current collective-bargaining agreement between the Union and Bemis was effective August 15, 2016, and is scheduled to terminate no earlier than August 14, 2020.

Around December 14, 2017, an employee reported to management that a coworker—Union President Dominic DeSpirito—had been verbally harassing another employee, Joseph Stasko, on an ongoing basis, since September 2017. The Employer immediately suspended DeSpirito and launched an investigation, which, among other things, involved individually calling employees to the human resources office, where Bemis officials interviewed the employees and took statements from them about DeSpirito's conduct.

On January 18, 2018, Bemis terminated DeSpirito. At the hearing in this matter, the Union represented that it is challenging the termination through an arbitration process that was ongoing at the time of the hearing in this matter.

Bemis bargaining unit employee Michael Samsel works as a press assistant in the press room. In mid-December, the day that he gave a statement to Bemis about DeSpirito's conduct, Samsel was exiting the Bemis parking lot after work when DeSpirito called Samsel on his cell phone. DeSpirito asked Samsel "what was going on in the plant," and Samsel replied that "we were getting called in about things going on with him." DeSpirito told Samsel that he had been suspended. Samsel told DeSpirito that he was not going to lie for him and DeSpirito told Samsel that he did not want or expect him to do so. Then DeSpirito told Samsel that "when he gets back, that nobody was safe, they better watch their back, and he wasn't going to do anything for them."[2]

Andrews Confronts Stasko in the Breakroom

Joseph Stasko works at Bemis as a press assistant. Stasko testified that in the middle of December, a day or two after DeSpirito had been suspended, he was seated at a table in the press department breakroom with fellow press assistant Michael Samsel. The Union's secretary–treasurer, Lynn Andrews, entered the press department breakroom and came right to me and started yelling with her finger in my face about 12, 14 inches from my nose telling me . . . that she is going to get to the bottom of it. How could we do this to Dominic? And she doesn't know what's going on and she wanted to—she was going to conduct her own investigation.

Stasko described Andrews as "loud" and "upset." The whole incident took about 30–45 seconds, and then Andrews left.

Other than dating the incident as occurring after Christmas or early in January, Samsel corroborated Stasko's account of this incident. He testified that Andrews entered the breakroom and "basically got in Joe's [Stasko's] face" saying "how could he do this to Dominic, that they were going to do their own investigation to get to the bottom of what was going on." Samsel testified that Andrews "pointed her finger in [Stasko's] face very aggressively" and that "her mood was upset, agitated."

Andrews testified about this incident, saying that it occurred on December 18, 2017. According to Andrews she went to find Stasko after "Dominic told me that I need to go and see these people, that, you, know, that if I could talk to them myself about the investigation." Andrews testified that on break she left her machine in the bag department and went to the press area where she asked the supervisor "who's Joe Stasko?" Andrews was told that he was in the breakroom, so she entered to speak to him. However, according to Andrews, she simply asked Stasko "Joe, do you mind if I talk to you tomorrow," and he did not reply. According to Andrews, nothing further was said by her to Stasko. Andrews testified that she began talking to another employee who asked her some questions and she was "not in that breakroom not even a minute." Andrews denied waving her finger at Stasko. She suggested that any finger-waiving occurred when she was talking to the other employee, and she allowed that "I talk with my hands."

I credit Samsel and Stasko's credibly offered testimony as to this incident. Both testified with credible demeanor—their accounts appeared to avoid exaggeration and there did not appear to be any artifice in their responses to questions. Their accounts were consistent, with the exception that Samsel dated the incident as occurring in late December or early January, but that does not, in my estimation, undermine the credibility of the account.[3] To the contrary, it supports my feeling that their testimony was unscripted. Andrews, on the other hand, was evasive at times and her testimony repeatedly lapsed into indirection and digression. Her account also seems unlikely: admittedly sent by DeSpirito to talk to Stasko, she simply let the matter drop when she found him. I credit Stasko and Samsel's account of the conversation over Andrews'. I do find that the incident occurred on or about December 18, 2017. This is consistent with both Andrews' and Stasko's recollection. Samsel recalled the incident occurring later in the month, but it is more plausible that it

[1] At all relevant times Bemis has recognized the Union as the exclusive collective-bargaining representative of the following unit of employees, a unit appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act:

> All hourly paid production, maintenance and warehouse employees of the Company at its West Hazleton, Pennsylvania plant, excluding professional, administrative, supervisory, office and plant clerical, receiving clerk, plant laboratory technicians, guards, salespeople, office porters, and truck-drivers.

[2] I credit Samsel's credibly offered and unrebutted testimony. I recognize that this incident was not in Samsel's pretrial affidavit. But I accept Samsel's explanation that "I may not have recalled it at the time I went to Philly [to give the affidavit]." In addition to being unrebutted, I note that Samsel's account included segments favorable to DeSpirito—such as DeSpirito's allowance that he did not want or expect Samsel to lie for him—that only enhance Samsel's credibility about the incident. I note that testimony about this incident was offered only as background. (Tr. 164.) This incident is not alleged as a violation of the Act.

[3] "Dates, and even sequence, are notoriously the subject of testimonial confusion without substantially affecting credibility determinations relating to disputed conversations." *L. D. Brinkman Southeast*, 261 NLRB 204, 209 fn. 5 (1982) (citations omitted); *Hearst Corp.*, 281 NLRB 764, 779 (1986) ("obvious inaccuracy of dates provided for certain events . . . appears to have been no more than a confusion as to details") (internal quotations omitted), enfd. mem. 837 F.2d 1088 (5th Cir. 1988); *NLRB v. Longshoremen Local 10*, 283 F.2d 558, 562–563 (9th Cir. 1960).

occurred immediately after the investigation of DeSpirito and his suspension.[4]

Posting of The Communicator Memo

On January 22, 2018, the Union posted the following memo, under the heading of *The Communicator*—the name for the Teamster's Graphic Communications Conference newspaper:

ATTENTION

> The events that have happened are very troubling. We as [ ] Union Brothers and Sisters do not turn each other in if we have an issue[ ] we go to a steward or a board member. Turning in fellow Union members is a violation of the Union by laws and could result in fines and black listed from all union jobs. It has also come to the Union attention that people are writing on walls and contacting the people that went to the company instead of doing the right thing. Please do not do this or jeopardize your job. This issue as most have stated is unfair. We will fight this as we fight all issues. Do not let this Company divide this union or pit brother and sister against each other.
>
> Thank you
> Dominic DeSpirito
> President GCC/IBT Local735-s

The parties stipulated that this memo was posted by the Union for less than 24 hours on the union bulletin board and at the breakroom entrance.

Incident with Union Vice President Davidovich

Samsel testified that in late January 2018, as he was ending a shift, the union vice president, Kevin Davidovich, approached him and asked Samsel if HR Manager Pienkowski had been "on the floor shaking hands and congratulating people that Dominic got fired." Samsel denied that Pienkowski had done this, but used the opportunity to

> Ask [Davidovich] about the stuff going on, on my press, told him I didn't appreciate the things that were being found or left at my press. They were leaving notes. They were leaving a fake rat, like homemade paper rats around the work area.

Davidovich testified and, although he contended that Samsel approached him, and not vice versa, he confirmed that he and Samsel discussed the "little artifacts" that were being left around his machine "that people are finding offensive."

At this point, however, Samsel and Davidovich's accounts of events diverge in significant ways. Samsel testified that Davidovich replied that

> it could get much worse. And I asked him what he meant by that. He said, they can settle like the old days, caving in skulls, smashing lockers, people's personal properties and cars. I told him that he was the vice president of the Union and he shouldn't be talking that way. That's not how it's supposed to go, which he replied, it's going to get worse. And I said, well, why? He said, because Dominic's told him to go after the rats.

Davidovich testified that he told Samsel,

> I don't know who's doing it or where it's coming from, I can't stop it. And then I proceeded to say, well, you know, thankfully, it's not like in years past where people's toolboxes were getting vandalized, lockers were being caved in, or cars were being keyed.

According to Davidovich, that's where the conversation ended. Davidovich denied that he told Samsel that he or anyone would engage in physical violence against him or cause property damage to anyone, or that DeSpirito had instructed him to harass employees who reported misconduct.

This dispute raises some difficult credibility issues. I found Samsel to have an engaging and credible-seeming demeanor. But nonetheless, there are some issues in his testimony that are significant.

Samsel gave two prior statements about this incident—first, an affidavit to the NLRB investigators on February 27, 2018, approximately 1 month after the incident. But before that, the day after the incident, Samsel gave an unsworn but signed statement to the Employer providing his account of the incident, complete with quotation marks identifying what Davidovich reportedly said to him.

Much about the three accounts (his testimony and the two prior statements) is consistent—that is to say, in many respects the prior statements do not impeach, they corroborate Samsel's testimony. One would expect differences in three separate accounts of a single event, and for the most part the differences are unremarkable, minor, and plausible. But there are two exceptions.

Most significant, in my view, is the fact that unlike Samsel's testimony and his pretrial affidavit—in which Samsel claimed that Davidovich told him that in the old days things were settled with "caving in skulls"—in the statement Samsel gave to the Employer the day after the incident there was no claim that Davidovich mentioned "caving in skulls," or skulls at all, or made any reference to bodily violence against persons. This is a highly significant omission.[5]

It strikes me as very unlikely that someone providing a statement intended to report a threatening event would overlook and omit a reference to physical assault or "caving in skulls." The statement given by Samsel the day after the incident recorded Davidovich talking about the "old days" when there was property damage initiated against "rats," including the "caving in of things," but there is no mention of assault against a person or

[4] As stated, above, I credit Samsel and Stasko. I do so notwithstanding my concerns with other parts of Samsel's testimony, discussed below. I note in this regard that credibility findings need not be all-or-nothing propositions. Indeed, "nothing is more common in all kinds of judicial decisions than to believe some and not all" of a witness' testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951); *Daikichi Sushi*, 335 NLRB 622, 622 (2001), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003).

[5] *Jencks v. United States*, 353 U.S. 657, 667 (1957) ("Every experienced trial judge and trial lawyer knows the value for impeaching purposes of statements of the witness recording the events before time dulls treacherous memory. Flat contradiction between the witness' testimony and the version of the events given in his reports is not the only test of inconsistency. The omission from the reports of facts related at the trial, or a contrast in emphasis upon the same facts, even a different order of treatment, are also relevant to the cross-examining process of testing the credibility of a witness' trial testimony").

bodily damage. But a month later, when he gives his pretrial affidavit, and then nine months later, when he testifies, the list of transgressions Davidovich is said to have threatened now includes the "caving in [of] skulls." This broadening of the threat to include threats of physical assault raises some doubts about Samsel's testimony.

Not as serious, but nonetheless of note, is the fact that while Samsel testified that Davidovich told him that "they could settle things like in the old days, caving in skulls, smashing lockers, people's personal properties and cars," in his day-after-the-incident statement to the employer Samsel wrote that Davidovich told him "Lucky this isn't settled like the old days, stealing people's personal belongings, caving things in, sabotage of work areas, and so on." In his pretrial affidavit, Samsel's account omitted any reference to the "old days" but averred that Davidovich stated, "it could get a lot worse, we could start damaging personal property, lockers, and cars, and caving in skulls." Thus, in the day-after-the-incident statement to the Employer, the recitation of potential damage is mediated by phrasing stating that Samsel is fortunate that scores are no longer settled that way—in the trial testimony and pretrial affidavit the mediating phrase is gone—Davidovich is flatly saying that these things could happen, not that Samsel is lucky that they no longer happen. It is one further example of the elaboration of Samsel's account over time. I think the day-after statement undercuts Samsel's trial version. Whether or not the difference avoids the threatening implications of Davidovich's point is another matter altogether, but in terms of the credibility of Samsel's trial testimony, it is something I consider.

We now have two points of Samsel's testimony—one serious, one less so—in which Samsel's testimonial and affidavit account paint Davidovich's comments in a more negative light than what he first reported the day after it occurred.[6]

Samsel's trial testimony must be considered in light of these differences in his pretrial statement. And of course, in light of Davidovich's testimony. Notably, while denying any threats, or that he said that DeSpirito was telling him to harass or "go after the rats," or that things could "get much worse," Davidovich's testimony corroborates the essential core of Samsel's testimony: after Samsel reported that he had been subject to a series of "rat" notes and messages, Davidovich responded by saying that he could not stop it but fortunately, ("thankfully") it is not like in years past where employees were subjected to significant property damage, of which Davidovich provided several examples.

However, Davidovich's demeanor while testifying was not exemplary. He avoided eye contract with questioners, even while the oath was being administered, something that, in my experience, is highly unusual. I do believe that his account of the incident is modified in an effort to put it in a more benign light.

Taking all these factors together, my best judgment and finding is that Samsel's account should be (and is) credited—but without the reference to physical assault on a person ("caving in skulls") and Davidovich's statement was not "they can settle like the old days" but, rather, something to the effect of "they don't" or (as Davidovich testified) "thankfully it's not like in years past." Thus, my finding is that conversation was to the following effect:

> Davidovich said "it could get much worse." Samsel asked him "what he meant by that." Davidovich said "thankfully it's not settled like the old days, smashing lockers, people's personal properties and cars." Samsel told him that he was the vice president of the Union and he shouldn't be talking that way. "That's not how it's supposed to go," to which Davidovich replied, "it's going to get worse. Samsel said, "well, why?" He said, because Dominic's told him "to go after the rats."

Andrews' Reporting of Stasko

On January 25, Andrews repeatedly approached management about purported misconduct by Stasko.

The morning of January 25, Andrews came to Pienkowski's office and said that the previous evening, as she was in her car getting ready to leave the Employer's parking lot, she noticed Stasko staring at her from approximately two parking spaces away. Stasko denied the incident. Bemis dropped the matter.[7]

Later that day, Andrews was walking to the bag department office and spotted Stasko walking across the floor to press 23 where he worked. He did not have his "earmuffs" on—noise protective gear that employees are required to wear. Andrews immediately reported Stasko to the supervisors and the bargaining unit safety advocate, Denise Eisley, in the press office. Andrews did not use Stasko's name but agreed that "they knew" she was "referring to him." As Andrews explained it: "So I saw him, and I just went in and I said, you know, he doesn't have his earmuffs on. None of you say anything, and that was pretty much it."

Andrews had made safety complaints in the past, but this was the first time that she had reported an employee for a safety violation.

Stasko testified that he had removed his earmuffs only briefly in order to have conversation, something he and the plant's environmental health and safety manager, Carl Passler, described as commonplace, but nonetheless, a violation of safety protocols.

[6] I note that I reject the Respondent's suggestion that Samsel's testimony should be discredited for a third reason—based on the fact that his pretrial affidavit does not specifically reference Davidovich's reported comment that DeSpirito "told him to go after the rats." It does allude to it—the affidavit says that DeSpirito was telling union board members to harass us"—and, moreover, the day-after-the-incident statement to the employer specifically mentions the instruction from DeSpirito "to harass rats." Thus, while all three (the live testimony, the affidavit, and the next-day statement given to the employer) are phrased differently, they all consistently have Davidovich relaying the same point. I do not discount Samsel's testimony on this point.

[7] At the hearing Andrews testified that when she was in her car getting ready to leave she looked up "Stasko was standing there staring at me." Andrews testified that her response to seeing Stasko staring at her from two parking spaces away was that she

> almost panicked because I thought that if I say anything or do anything, it's more icing for his case.

Andrews claimed she was so upset she almost wrecked and the next day, for the first time in 42 years, she did not want to go to work and was late. Stasko, for his part, denied the incident. He testified that he has "no idea where [Andrews] parks" and doesn't know what her car looks like.

4 or 5 minutes after Andrews reported Stasko, Eisley came out and told Stasko to wear his hearing protection. Stasko described that this is in keeping with what happens if someone is not wearing hearing protection:

> Supervision or one of the safety advocates or the safety manager will come over and, you know, [tell the employee] put your safety protection on, whether it be your glasses or your hearing protection.

Eisley also testified that Stasko "is occasionally seen not wearing his proper hearing protection. When I see him, I usually will tell him about putting it in, putting it on; probably, I would say, maybe half a dozen times I have actually told him about it." Eisley testified that she was unaware of Stasko, or any other employees receiving discipline for safety equipment, glasses, or shoes, certainly not "in the last few years."

In his testimony, the plant's environmental health and safety manager, Safety Manager Passler made clear that employees at Bemis are not disciplined for such isolated violations. He testified that with regard to removing earmuffs momentarily to have a conversation on the shop floor, while a "violation" it was not, as longstanding matter of practice and policy, an event for which someone would be disciplined. Passler testified that employees are not disciplined by Bemis for not wearing hearing protection when they are having a conversation in the plant. He has *never* written someone up for not wearing protective gear. Indeed, Passler testified that if someone is seen not wearing PPE it is reported by supervisors and employees without naming the employee.

That same day, January 25, there was a safety committee meeting for the A crew safety committee, one of four voluntary safety committees in the facility. The meeting lasted 1 hour, beginning at about 12 noon. The meeting was conducted by Safety Manager Passler. Between 12 and 14 employees were present. Pizza was served, which Passler had bought for the group. Stasko was present, and at some point used the razor blade from the hook knife he uses to cut film for work to cut a slice of pizza. This was a safety violation, both for using a work blade on food that could later be used on plastic bread bags, but also for using the blade without a "cut glove" to protect against injury.

Passler was in the room when this incident occurred. There was conflicting testimony as to whether Passler observed Stasko cutting the pizza—he denied it, but an employee who was there, Michelle Hernandez, testified that Passler observed and jokingly commented on it. In any event, while I need not resolve that dispute in the testimony, it is clear that Passler knew about the incident, as Hernandez, who was upset by it, told him about it during the meeting. No discipline or much ado at all was made of it at the time by Passler and the meeting concluded. Passler testified that for "a first offense like that we don't write people up." Indeed, Passler testified directly that if he had witnessed the incident "I would not have issued disciplinary action."

Hernandez, who was unhappy with the "problems" that Stasko had recently caused "between other employees," reported the incident to Andrews—her "union representative on the floor" as there was no shop steward on that shift at that time. Hernandez told Andrews that

> management seen him do this and he's causing all these problems between other employees, and they're not reprimanding him, not even verbally, that it's not fair that he can cause problems with the Company, with other employees, and laugh it off.

That afternoon, Andrews placed a call to Bemis' 1–800 corporate compliance hotline, a corporatewide system through which employees can file complaints. The issue as recorded by Bemis on the hotline call was as follows:

> These girls came to me and said that they were at a safety meeting and they had pizza. This gentleman that was sitting next to Michelle took out his cut knife, took the razor blade out with his bare fingers, cut the pizza, wiped it on his pants, put the blade back in his knife and put it in his pocket. The safety director Carl Passler said, "I didn't see anything." I am not allowed to touch or remove the razor blade and have to use gloves if I use the knife. This all happened right in front of the safety director. I wonder if he is going to go cut film with that blade because we make plastic bags for bread.

In addition, that evening, January 25, Andrews left a voicemail for Bemis Safety Manager Passler:

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

The next day, on January 26, Andrews called Pienkowski's cell phone between 9 and 10 a.m. and left a voicemail. Pienkowski was in a meeting when Andrews called and after the meeting, along with Bemis Safety Manager Carl Passler, she called Andrews from her office. Andrews was upset. She wanted an investigation conducted into the pizza-cutting incident. Andrews complained that Bemis was "giving him [Stasko] preferential and that . . . we've disciplined people for less." At the hearing, Andrews credibly denied that she said that she wanted Stasko disciplined ("I don't think I said discipline because I wouldn't—I don't say that"), but admitted only that "I wanted something done."[8]

Passler directed the plant safety advocate, bargaining unit employee Denise Eisley, to speak with Stasko and make sure that he replaced the blade in the knife he used to cut the pizza. He was later told by Eisley that Stasko had replaced the knife even before she spoke with him, a point Eisley corroborated when she testified at the hearing.

[8] I do not credit Passler's assertion that Andrews asked Pienkowski and Passler on this call "how we were going to discipline." This was credibly denied by Andrews ("I don't think I said discipline because I wouldn't—I don't say that"), not recounted by Pienkowski, and unmentioned by Andrews in the recorded phone message or in the corporate safety complaint she made on the issue. Andrews admitted that she was "very upset that nothing happened." Asked whether she was upset that he was not disciplined, Andrews replied, "Yeah, he wasn't even told about it." Contrary to the assertions of the Employer (CP Br. at 17), this is not an admission that she attempted to have Stasko disciplined, that this was the purpose of her reporting him, or that she told Bemis so. Indeed, the gravamen of this testimony and circumstances refutes it.

Analysis

The General Counsel and the Employer contend that the Union threatened employees in violation of Section 8(b)(1)(A) of the Act, specifically by Andrews' confronting Stasko in the press area breakroom on or about December 18, 2017, by posting *The Communicator* notice in the plant on January 22, 2018, and by Davidovich's confrontation with Samsel in the press area in late January 2018.

In addition, the General Counsel and the Employer contend that the Union attempted to cause the employer to discriminate against Stasko in violation of Section 8(b)(2) of the Act, by Andrews' reporting of Stasko for two minor safety violations on January 25, 2018.

I will consider each alleged violation in turn.

I. THE ALLEGED 8(B)(1)(A) THREATS PARAGRAPH 6 OF THE COMPLAINT

Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7."

"Integral to the policy underlying both Section 8(b)(1)(A) and (2) of the Act was the intent to separate membership obligations owed by employees to their labor organizations from the employment rights of those employees." *Longshoremen, Local 13 (Pacific Maritime Association)*, 228 1383, 1385 (1977), enfd. 581 F.2d 1321 (9th Cir. 1978). "The policy of the Act is to insulate employees' jobs from their organizational rights." *Radio Officers' Union of the Commercial Telegraphers Union v. NLRB*, 347 U.S. 17, 40 (1954).

In analyzing an alleged 8(b)(1)(A) violation, the Board applies an objective standard that focuses on whether the union conduct would have a reasonable tendency to restrain or coerce employees in the exercise of their Section 7 rights. *Carpenters (Society Hill Towers Owners' Assn.)*, 335 NLRB 814, 815 (2001), enfd. 50 Fed. Appx. 88 (3d Cir. 2002); *Letter Carriers, Branch #47 (USPS)*, 330 NLRB 667, 667 fn. 1 (2000) ("The test for a violation of Sec. 8(b)(1)(A), however, does not depend upon an examination of a respondent's motivation. Rather, it depends on whether or not the respondent's statement or conduct would have a reasonable tendency to restrain or coerce an employee in the exercise of statutory rights"); *Teamsters Local 162 (American Steel, Inc.)*, 255 NLRB 1230, 1233 (1981) ("the test is an objective, rather than a subjective, one and depends on whether, in the circumstances of a given case, the probable effect of the conduct is to restrain or coerce an employee in the exercise of his Section 7 rights").

In this case, the General Counsel and the Employer allege that the Union violated Section 8(b(1)(A) in three separate incidents.

1. First, the General Counsel and Employer contend that Andrews' December 18, 2017 confrontation—and tirade—with Stasko in the press breakroom violates the Act. I disagree. Section 8(b)(1)(A) was not violated by this conduct.

Andrews was angry, for sure. And wagging a finger in someone's face is always objectionable in terms of manners—but neither finger-wagging nor angry confrontation is actionable under the Act. In this case Andrews' "threat" was to chastise the employees for turning in DeSpirito ("how could we do this to Dominic") and to announce that the Union was going to conduct "their own investigation to get to the bottom of what was going on."

The Union is entitled to conduct its own investigation about an employee's suspension (and later) discharge. It is a core union activity. The suspension and firing of any employee, and no less the union president, is a big deal. The Union represents DeSpirito. And the Union is entitled to investigate the matter, all the more so when the Employer has called numerous employees to the office in order to develop the basis for the DeSpirito discipline. I do not think it surprising, or suspicious, or actionable, that this would raise concern on the part of the Union. If tempers flared, that is not surprising and does not transform the incident into an unlawful threat.

The General Counsel's theory is that the threat of an investigation is an implicit threat to take reprisals against Stasko and/or Samsel in a manner that affects their employment. This assumes a lot—far too much—and serves to categorize as illegal any union expression of intent to "get to the bottom" of these events. But getting to the bottom of an employee's discipline is, after all, a basic and legitimate function of a union. The "threat" of a union investigation into an employee's suspension does not reasonably tend to restrain or coerce other employees.

Importantly, I think the appropriate way to review this incident is without assuming the guilt or the innocence of DeSpirito as to the serious charges levied against him. Indeed, Andrews and the Union are entitled to dispute, disbelieve, and contest DeSpirito's guilt, even if they are wrong. Even if the Union is wrong about DeSpirito, this does not turn Andrews' announcement that the Union will conduct its own investigation into DeSpirito's suspension and discharge, and not merely rely on the Employer's investigation, into an independent unlawful threat of reprisal. I dismiss paragraph 6(a) of the complaint.

2. The General Counsel and the Union contend that the Union's January 22, 2018 posting of *The Communicator* message on January 22, 2018, violated Section 8(b)(1)(A). I agree. The Union's notice threatens fines and "black list[ing] from all union jobs" in retaliation for "[t]urning in fellow union members." While the threat to "blacklist" members from "all union jobs" may have been intended simply to refer to barring members from holding positions within the Union—I think the phrasing is, at best, ambiguous, and would reasonably likely be interpreted by members as a threat to employment. *Teamsters Local 391*, 357 NLRB 2330, 2330–2331 (2012) (ambiguous statement that might have been intended as lawful request to withdraw grievance is unlawful violation of Sec. 8(b)(1)(A) because reasonable listener could conclude that statement was threatening unlawful action). This more troublous reading, which is advanced by the General Counsel (GC Br. at 23–24) and the Employer (CP Br. at 8), presents an obvious violation of Section 8(b)(1)(A). It is a threat to unlawfully retaliate against members by denying them job opportunities should they join together to complain about working conditions in a manner that implicates another

employee. It is a threat to their employment rights and is unlawful.[9]

3. Finally, the General Counsel and the Employer allege that Davidovich's confrontation with Samsel in the press area in late January 2018, violated Section 8(b)(1)(A). Although I have not accepted entirely, either witness's account, the credited version is clearly an unlawful threat. For convenience, I repeat here the credited version of what Davidovich told Samsel in response to Samsel raising the "rat" paraphernalia and messages being left near his worksite:

> Davidovich said "it could get much worse." Samsel asked him "what he meant by that." Davidovich said "thankfully it's not settled like the old days, smashing lockers, people's personal properties and cars." Samsel told him that he was the vice president of the Union and he shouldn't be talking that way. "That's not how it's supposed to go," to which Davidovich replied, "it's going to get worse. Samsel said, "well, why?" He said, because Dominic's told him "to go after the rats."

Thus, Davidovich concluded the conversation by telling Samsel that DeSpirito had told him to "go after the rats," in a conversation that began with Samsel telling Davidovich about the rat messages and figures that had been showing up in his work area. Davidovich told Samsel that "it could get much worse," and then that it was "going to get worse." In response to Samsel asking him what he meant by "it could get much worse," Davidovich listed a series of property crimes that "thankfully" no longer occur. I do not believe that Davidovich was suddenly moved to musings on discarded historical responses to unapproved employee activity. This was a not-so-veiled threat—a classic implicature—less direct but no less explicit in meaning. Davidovich was responding to Samsel's complaint that he was being harassed with messages accusing him of being a "rat"—i.e., disloyal and/or hostile to the Union. Davidovich's response was to threaten further reprisals against Samsel. These threats fall squarely within the ambit of threats that violate Section 8(b)(1)(A).[10]

However, I do not find and dismiss the allegation to the extent—and only to the extent—it alleges that Davidovich threatened physical bodily violence. As found, his threats related to damage to personal and company property, and other unspecified reprisals.

II. ANDREWS' ALLEGED EFFORT TO HAVE STASKO DISCIPLINED PARAGRAPH 7 OF THE COMPLAINT

The General Counsel and the Employer contend that the Union, through Andrews, violated Section 8(b)(2) by attempting to have Stasko disciplined by Bemis for two alleged safety violations: when Andrews reported Stasko for momentarily not wearing his ear muffs, and again when she reported him for cutting the pizza with his work knife. In addition, the General Counsel contends that this same conduct by Andrews violates Section 8(b)(1)(A) of the Act.

Section 8(b)(2) of the Act states, in relevant part, that

> [i]t shall be an unfair labor practice for a labor organization or its agents … to cause or attempt to cause . . . an employer to discriminate against an employee in violation of subsection (a)(3).

There is no requirement that an 8(b)(2) violation involve coercive efforts to "cause or attempt to cause" the employer to discriminate. An "efficacious request" is sufficient. *San Jose Stereotypers' and Electrotypers' Union No. 120 (Dow Jones & Co., Inc.)*, 175 NLRB 1066, 1066 fn. 3 (1969); *NLRB v. Jarka Corp. of Philadelphia*, 198 F.2d 618, 621 (3d Cir. 1952) ("This relationship of cause and effect, the essential feature of Section 8(b)(2), can exist as well where an inducing communication is in terms courteous or even precatory as where it is rude and demanding"); *Iron Workers Local 455 (Precision Fabricators)*, 291 NLRB 385, 387 (1988) ("statements which 'contain directions or instructions' . . . fall within the 'attempt to cause' language of 8(b)(2)").

Moreover, "[t]he Board has found that direct evidence of an express demand by the Union is not necessary where the evidence supports a reasonable inference of a union request" for discrimination. *Avon Roofing & Sheet Metal*, 312 NLRB 499, 499 (1993). This can occur when circumstantial evidence supports the conclusion that an express request, in fact, was made. *Avon Roofing*, supra at 499, 503. It can also occur when the union's conduct warrants an inference of an implied request to discriminate. See e.g., *Paperworkers Local 1048 (Jefferson Smurfit Corp.)*, 323 NLRB 1042, 1044 (1997) (union's report to employer of allegation of racial harassment by employee where union had "full knowledge of the Employer's rules concerning such conduct and of its policy of assigning strong discipline to violators of those rules [and other indicia] . . . warrants the inference of an implied request that [the employee] be disciplined").

In this case, the General Counsel's 8(b)(2) allegations must be dismissed. Even assuming Andrews' hostility to Stasko, there is insufficient evidence to prove that she attempted to cause Bemis to discriminate against Stasko.

First, in neither incident in which Andrews is alleged to have attempted to cause Bemis to discriminate against Stasko did Andrews explicitly request that Stasko be disciplined. Thus, there were no "directions or instructions" to discriminate against

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[9] I do not reach the issue of whether, had the Respondent merely threatened internal union discipline—such as barring of members from positions within the Union—it would have similarly amounted to an 8(b)(1)(A) violation. See *CWA Local 5795 (Western Elec. Co.)*, 192 NLRB 556 (1971); *Transit Union Local 1225 (Greyhound Lines)*, 285 NLRB 1051 (1987).

[10] I agree with the General Counsel that Davidovich's threats are attributable to the Union. He was vice president at the time he made the remarks. Stasko specifically reproached him for making the remarks in his capacity as vice president—something that Davidovich did not disavow—and Davidovich even referenced his instructions from President DeSpirito as the motivation for his remarks. As the Board explained in *Security, Police & Fire Professionals (SPFPA) Local 444*, 360 NLRB 430, 436 (2014):

> The Board regularly finds elected or appointed union officials to be agents of that organization. Although the holding of elective office does not mandate a finding of agency per se, it is persuasive and substantial evidence that will be decisive in the absence of compelling contrary evidence. [Internal case citations omitted.]

There is no contrary evidence.

Stasko. *Iron Workers Local 455*, 291 NLRB at 387.

Of course, efforts to have an employer discriminate against an employee are actionable even if indirect, so the fact that Andrews was not explicit is not dispositive. However, for there to be a violation of Section 8(b)(2), there must be union action from which a violation of Section 8(a)(3) would be a foreseeable consequence. *SEIU, Local 87 (Able Building Maintenance Co.)*, 349 NLRB 408, 412 fn. 10 (2007) ("If a foreseeable consequence of the communication is discharge, an explicit demand is not required"); *Longshoremen, Local 1332 (Philadelphia Marine Trade Assn.)*, 150 NLRB 1471, 1476 (1965) (there must be union action intended to cause a violation of Sec. 8(a)(3) and "reasonably calculated to bring about that result"); see also, cases cited below at fn. 11.

One thing is absolutely clear on this record—it is something that was known by Andrews, Stasko, Eisley, Pienkowski and Passler—and it is this: there was no chance—none—that Stasko was going to be disciplined or have any adverse action taken against him by Bemis for either or both of the two alleged safety violations for which Andrews reported him.

According to Bemis' own witnesses, the violations for which Andrews reported Stasko were not acts for which Stasko would be disciplined. The momentary failure to wear hearing protection is, by all evidence, a common occurrence, which, when brought to management's attention, results in the bargaining-unit safety advocate, or, possibly a manager, mentioning it to the offending employee and telling him or her to wear their hearing protection. Passler was very clear on this in his testimony. In addition, Eisley, unit employee who functioned as a safety advocate, passed on safety violations to management without naming names or with any anticipation of discipline—which again, highlights the nondisciplinary approach that Bemis took to minor safety violations. Eisley testified that she has talked to Stasko a-half-a-dozen times. There was no prospect of discipline. Stasko seemed to confirm this as his understanding too. By all evidence only in the most extreme case of repeated violations would an employee even end up in the progressive disciplinary system for these sorts of "PPE violations." Stasko was not even close with half-a-dozen "coachings" from Eisley. Notably, the General Counsel is in complete agreement that there was no prospect of discipline for this incident, pointing out (GC Br. at 33) that the record

> showed that Bemis' policy with regards to wearing PPE was to remind employees when they were not wearing their hearing protection to put it on, rather than seeking to discipline them for it.

The pizza incident was a little more unusual, but the evidence is clear that discipline was not even a consideration—indeed, the open question (that I have not resolved) is whether or not Passler literally laughed it off with a joke. In any event, he knew about it and took no action other than telling the bargaining unit safety coordinator Eisley to check with Stasko to make sure he threw the pizza-contaminated blade away. To quote Bemis' brief (CP Br. at 14–15), which accurately summarizes the record on these points:

> Ms. Pienkowski, Human Resources Manager, also testified that she was not aware of any employee ever being disciplined for that type of safety violation. (Tr. 42.) With regard to PPE, the Company typically does not engage in formal discipline for minor violations. (Tr. 55.) Typically, the Company will repeatedly coach an employee, and if there is a habitual offender, the Company will use progressive discipline. (Tr. 55.) Mr. Passler did request that the Safety Advocate, Denise Eisley, discuss the issue with Mr. Stasko, which is consistent with his typical response to such incidents. (Tr. 156.)
>
> Ms. Eisley confirmed that she was not aware of any employees receiving any formal discipline for minor safety violations such as PPE violations, within at least the past few years. (Tr. 212.)

Reporting an employee for a violation for which he will not be disciplined is not an attempt to have him disciplined.

Bemis brought this charge, alleged that the Union attempted to cause it to discriminate, yet asserts that the incidents for which the union reported Stasko are not offenses for which Bemis employees are disciplined. Is the contention that Union—reasonably but mistakenly—believed otherwise? Absent a finding that Andrews was totally ignorant of the management practices and policies with regard to safety violations in a plant where she has worked and represented employees for many years—and there is no evidence for such a finding—it is not tenable to contend that reporting Stasko for violations for which he will not be disciplined constitutes an "efficacious" attempt to have Bemis discipline him.

This is a fundamental fallacy in the General Counsel's theory. Andrews' and/or the Union's hostility to Stasko is not sufficient to prove this case. Without a finding of union "causation"—i.e., a finding that the union caused or attempted to cause the employer to take action against an employee—there is no case.

The General Counsel argues that "[t]he Board has found the necessary element of causation in a union's reporting of supposed employee misbehavior to an employer." (GC Br. at 28.) But the General Counsel ignores that the causation finding in such cases is rooted in and requires a finding that the union reasonably would know that discipline would likely result from reporting the employee. This is a crucial component of an 8(b)(2) violation based upon a finding of an implicit circumstantial union attempt to cause an employer to discriminate.[11]

[11] *Caravan Knight Facilities Management, Inc.*, 362 NLRB 1802, 1805 (2015) (finding that employer's past application of its rules meant that union caused discharge because when union filed statement incriminating employee in "major offense for which employees are subject to discharge without warning . . . they knew full well that doing so would in all likelihood result in Powell's discharge. Accordingly, we find that the Union effectively caused Powell's discharge"); enfd. in relevant part, 844 F.3d 590 (6th Cir. 2016); *Good Samaritan Medical Center*, 361 NLRB 1294, 1296 (2014) ("These facts support an inference, which the judge drew and with which we agree, that when the Union's representatives reported Legley's conduct to management, they reasonably would have foreseen that Legley would be disciplined (at least) for violating the workplace civility policy. . . . Based on the foregoing, we find that union conduct caused Legley's discharge"), enf. denied, 858 F.3d 617 (1st Cir. 2017); *Security, Police & Fire Professionals (SPFPA) Local 444*, 360 NLRB 430, 435 (2014) (union representative "knew that [employee] would be removed from worksite and suffer adverse employment action" based on union representative's disclosures to client, thus "the element

Here we have the diametrically opposite circumstance. Not only did Andrews not explicitly request that Stasko be disciplined, she had every reason to believe that Stasko would not be disciplined (or otherwise discriminated against) by the employer in any way) for the reported offenses. This was right, of course. The whole thing was kicked over to Eisley, in both cases, a coworker "safety advocate." It was, according to Passler and Pienkowski, Stasko, Bemis' posthearing brief, and the General Counsel's posthearing brief, Bemis' policy *not* to discipline employees for such matters. This significantly, fatally in my view, and undercuts the General Counsel's view that it is reasonable to interpret or infer Andrews' actions as a true attempt to cause Bemis to discriminate against Stasko.

In truth, this is obvious. Andrews was making a point. One does not have to endorse or agree with her point to recognize it. She was raising—and she was explicit about it—her view, shared by the Union and some employees, that Bemis had enlisted a "certain group" of employees in the termination of DeSpirito and that those employees were being protected by the employer. Andrews was making a point about favoritism and what she believed was disparate treatment by the Employer of the local union president. In the first incident, when she saw Stasko without his protective gear she walked into the press office and said "you know, he doesn't have his earmuffs on. None of you say anything." That's it. The second incident involved more—angry calls to the corporate safety hotline and to Passler and Pienkowski until they called her back—but she was acting on the urging of an angry unit employee—Hernandez—who, like Andrews, believed that Bemis played favorites and allowed some employees to ignore rules in front of the management without even a reproach. This is the substance of Andrews' complaint to management: "This all happened right in front of the safety director"; "you said nothing, absolutely nothing. He used a razor blade between his fingers and didn't have any protection on and you let that happen at a safety meeting? Unbelievable." One need not approve of Andrews' making her point by reporting Stasko. But in the context of Bemis' longstanding method of dealing with safety violations, none of this amounts to an attempt to cause Bemis to discipline or otherwise discriminate against Stasko.

Section 8(b)(2) is a protection for employees from union attempts to leverage its power or position to have an employer discriminate against employees. It is not a catch-all provision violated by any union hostility to an employee, however unjustified. It is not a trap for a union representative who complains to management about minor but valid safety violations carrying no risk of adverse action by the employer against the employee. Such careful "policing" of union action—in this case, instigated by the employer—is not within the ambit of 8(b)(2)'s prohibition. The Board should not be drawn into such an effort. I dismiss the 8(b)(2) allegation of the complaint.[12]

The General Counsel also contends that Andrews' reporting of Stasko violates Section 8(b)(1)(A). However, the General Counsel advances no argument for finding this to be an independent violation of Section 8(b)(1)(A). Neither does the Employer. Rather, the General Counsel contends only (GC Br. at 29) that "[a] derivative violation of Section 8(b)(1)(A) arises where an 8(b)(2) violation has been proven." In the absence of any argument from any party that Andrews' reporting of Stasko is an independent violation of Section 8(b)(1)(A), I decline to reach the issue. Based on the dismissal of the 8(b)(2) allegation, I dismiss any theory of derivative violation.[13]

CONCLUSIONS OF LAW

The Respondent Graphic Communications Conference/ International Brotherhood of Teamsters Local Union No. 735–S

of causation necessary to establish a prima facie case violation of Sec. 8(b)(2) is met by the aforementioned disclosures"); *Town & Country Supermarkets*, 340 NLRB 1410, 1430 (2004) (Rongers' "14 years as President of IEU taught him that Strack discharged employees for making threats to employees or customers. . . . [H]e did not deny that his experience as IEU President showed him the likelihood that upon learning of Peters' threat to "kick his ass" Strack would discharge her. Accordingly, I find that by Rongers' complaint, IEU was requesting Strack to discharge Peters for threatening him"). *Nationsway Transport Service*, 327 NLRB 1033, 1045 (1999) ("Even if [union representative] did not act for the specific purpose of causing the Employer to refuse to work Noweski, he nevertheless acted knowing that this particular result would follow. That is sufficient causation [under 8(b)(2)]"); *Paperworkers Local 1048 (Jefferson Smurfit Corp.)*, 323 NLRB 1042, 1044 (1997) ("the Union's representative, Rick Young, reported an allegation of racial harassment to the Employer with full knowledge of the Employer's rules concerning such conduct and of its policy of assigning strong discipline to violators of those rules [along with other similar indirect indicia] warrant[ ] the inference of an implied request that Ramsey be disciplined").

[12] I note that the General Counsel does not rely on or claim that Andrews' reporting of Stasko for "staring at [her]" in the parking lot the previous evening constituted an attempt to have Stasko disciplined. Andrews' description of the event contains nothing that Stasko could be disciplined for or that could reasonably be construed as "intimidation." Apparently, the Employer too, figured this one out ("there was no merit found"). Andrews' testimony that she "panicked" when she saw Stasko "because I thought if I say or do anything, it's more icing for his case," seems to be as close to an admission of Stasko's nondelinquency as one can expect. In any event, Andrews' reporting of this incident—which did not involve her asking for Stasko to be disciplined seems like a ham handed, unconvincing, and sure to be disbelieved effort to lodge a complaint of favoritism. I reiterate that the General Counsel does not rely on this incident as a basis for any violation.

[13] I note that while there are cases in which the Board has adopted without comment administrative law judge findings that a derivative violation of Sec. 8(b)(1)(A) arises where an 8(b)(2) violation has been proven (see e.g., *SPFPA Local 444*, 360 NLRB at 435 and *Postal Workers*, 350 NLRB 219, 222 (2007)) there are also longstanding unreversed Board cases holding otherwise. E.g., *Plumbers Local 669 (Lexington Fire)*, 318 NLRB 347, 347 fn. 4 (1995) ("It is well established that other 8(b) violations do not give rise to derivative violations of Sec. 8(b)(1)(A)"); *Local 340, International Association of Bridge, Structural and Ornamental Ironworkers (Consumers Energy Co.)*, 347 NLRB 578, 578 fn. 4 (2006) (reversing 8(b)(1)(A) finding based on 8(b)(2) finding because "It is well established that other 8(b) violations do not give rise to derivative violations of Sec. 8(b)(1)(A)"); *Truck Drivers Local 705 (Pennsylvania Truck Lines)*, 314 NLRB 95, 95 fn. 4 (1994) ("In adopting the judge's finding that the Respondent violated Sec. 8(b)(1)(A) and (2) by attempting to cause and by causing the Employer to deny the discriminatees' seniority, we do not rely on the judge's characterization of the 8(b)(1)(A) violation as 'derivative'"); *National Maritime Union*, 78 NLRB 971 (1948), enfd.175 F.2d 686 (2d Cir. 1949), cert. denied 338 U.S. 954 (1950). Given my conclusion that there was no 8(b)(2) violation, I need not treat with this conflict.

(Union) is a labor organization within the meaning of Section 2(5) of the Act.

The Respondent, on or about January 22, 2018, violated Section 8(b)(1)(A) of the Act, by posting a message in its publication, *The Communicator*, threatening to blacklist members from employment opportunities in retaliation for reporting union members to their employer for misconduct.

The Respondent, in or about late January 22, 2018, violated Section 8(b)(1)(A) of the Act by threatening employee Michael Samsel with reprisals including destruction of property in response to Samsel's complaint about hostile notes calling him a "rat" being left at his workplace.

The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall post an appropriate informational notice, as described in the attached Appendix. This notice shall be posted in the Respondent's offices or wherever the notices to members are regularly posted for 60 days without anything covering it up or defacing its contents. 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 customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. When the notice is issued to the Respondent, it shall sign it or otherwise notify Region 4 of the Board what action it will take with respect to this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

The Respondent Graphic Communications Conference/ International Brotherhood of Teamsters Local Union No. 735–S (Union), West Hazelton, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from:

(a) Threatening members with loss of employment opportunities in retaliation for reporting members for misconduct to their employer.

(b) Threatening employees with reprisals in response to complaints that they have received messages implying they are disloyal and/or hostile to the Respondent.

(c) 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) Within 14 days after service by the Region, post at its West Hazelton, Pennsylvania facility copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to 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 customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, deliver to the Regional Director for Region 4 signed copies of the notice in sufficient number for posting by the Employer at its West Hazelton, Pennsylvania facility, if it wishes, in all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. February 1, 2019

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

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