

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

PRINTPACK, INC.

and

TEAMSTERS GENERAL UNION LOCAL NO. 662

Cases 30-CA-16980
30-CA-17079
30-CA-17727

Andrew S. Gollin, Esq., for the General Counsel.
Robert H. Buckler, Esq., Sarah Pentz Bottini, Esq.,
and Fred Dawkins, Esq., of Atlanta, Georgia, and
Jonathan Swain, Esq., of Milwaukee, Wisconsin, for
the Respondent.
Scott D. Soldon, Esq., of Milwaukee, Wisconsin,
for the Charging Party/Union.

DECISION

Statement of the Case

MARK D. RUBIN, Administrative Law Judge. This case was tried in Rhineland, Wisconsin on December 4, 5, and 6, 2007,¹ January 29, and July 21 and 22, 2008, based on charges and amended charges filed against Printpack, Inc. (the Respondent) by Graphic Communications International Union Local 585-S (GCIU) on August 31, 2004 (30-CA-16980), January 7, 2005 (30-CA-17079), and February 8, 2005 (30-CA-17079 amended), and on a charge and amended charge filed by Teamsters General Union Local No. 662 (the Union) on April 18, 2007 (30-CA-17727), and June 20, 2007 (30-CA-17727 amended).

The Regional Director's order revoking approval of the settlement agreement and consolidated complaint dated July 31, 2007, alleges that the Respondent violated Section 8(a)(1) by impliedly threatening plant closure if employees did not withdraw support for and decertify GCIU, threatening detrimental investment decisions unless employees decertified GCIU, impliedly promising increased benefits if employees withdrew support for and decertified GCIU, threatening an employee that more work would be placed in nonunion facilities resulting in layoffs of GCIU-represented employees, threatening plant closure if employees continued union representation, threatening employees that the Respondent would not invest in new equipment for the plant if employees continued to be represented by a union, promising employees raises and increased benefits if they withdrew support for the Union, threatening employees with unspecified consequences for failing to resign from the Union, interrogating employees about their union activities, creating the impression among employees of surveillance of their union activities, and informing employees that retaining union representation was futile. The complaint further alleges that that the Respondent violated Section 8(a)(3) by granting a benefit to employee Harold Williams by restoring him to his

¹ Unless otherwise referenced, all dates herein pertain to 2007.

journeyman press operator position and pay rate, and violated Section 8(a)(5) by bypassing the Union and dealing directly with employees in respect to the restoration of Williams' journeyman press operator position and pay rate.²

5 The Respondent defends by denying the occurrence of most of the 8(a)(1) allegations and by arguing that if the alleged actions did occur they did not constitute violations of Section 8(a)(1). As to the 8(a)(3) and (5) allegations, the Respondent asserts that the restoration of Williams to journeyman status was unrelated to union activity, that the Respondent had no knowledge of Williams' union sympathies, that the management-rights clause of the expired
10 collective-bargaining agreement immunized the Respondent's unilateral restoration of Williams' status and that, in any case, the Respondent fulfilled its bargaining obligation by discussing the Williams' restoration during bargaining.

15 Findings of Fact

I. Jurisdiction

20 The Respondent, a corporation, maintains an office and place of business in Rhinelander, Wisconsin, where it has been engaged in the business of printing snack packaging. The Respondent, during the calendar year 2006, sold and shipped from its Rhinelander facility goods valued in excess of \$50,000 directly to points located outside the State of Wisconsin. I find, and it is admitted, that at all material times the Respondent has been an employer engaged in commerce within the meaning of Section 2(5) of the Act.

25 II. Labor Organization

I find, and it is admitted, that the Union and GCIU have been at all times material, labor organizations within the meaning of Section 2(5) of the Act.

30 III. Alleged Unfair Labor Practices

Background

35 The Respondent was founded by J. Erskine Love Jr. in 1956, and currently operates 26 plants, including 22 in the U.S., with approximately 4000 employees. The Rhinelander facility,³ employing about 100 production and maintenance employees, was acquired by the Respondent in 1989 from Daniels Packaging. At the time the Rhinelander facility was acquired, the production and maintenance bargaining unit was represented by the GCIU. In July 2006, GCIU merged with the Union, and since then the Respondent has recognized the Union as the
40 exclusive bargaining representative of the Rhinelander production and maintenance unit, which recognition has been embodied in a succession of collective-bargaining agreements, the most recent of which was effective from November 5, 2005 through December 1, 2006. Subsequent to the expiration of last agreement, the contract's terms have generally been honored by the Respondent, except for union-security checkoff and the manner in which holiday pay was
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² During the hearing, I granted the General Counsel's motion to amend complaint par. 7(b) by adding the words "or impliedly threatened" so that the allegation now alleges that "On or about August 18, 2004, Respondent, by a posting on its bulletin board, threatened or impliedly threatened detrimental investment decisions unless the employees decertified GCIU."

50 ³ Unless otherwise delineated, all references in this decision are to the Respondent's Rhinelander facility.

distributed.⁴ The only two provisions of the expired contract that the Respondent notified the Union that it was not honoring were the union-security checkoff and holiday pay distribution.

5 On January 11, 2007, a petition was filed to decertify the Union. The election was conducted on February 22 and 23, 2007, with the Union prevailing 51 to 49. The Board certified the Union on March 5 as representative of the bargaining unit (the unit) consisting of "all hourly production and maintenance employees, including working lead people, but excluding clerical, security, accounting, graphics, and management employees and supervisors as defined by the Act."

10 Prior to the events involved herein, Administrative Law Judge William N. Cates, on October 8, 1998, issued a bench decision in Cases 30-CA-12777 and 30-CA-14437, based on charges filed by GCIU and an individual, in which Judge Cates found the Respondent violated Section 8(a)(1) of the Act by soliciting signatures on behalf of a decertification petition, by 15 coercively interrogating employees about alleged unfair labor practices without following the guidelines set forth in *Johnnie's Poultry Co.*, 146 NLRB 770, 774 (1964), and by telling employees that if the GCIU was out the employees would make more money, that the GCIU served to protect lazy people, that employees were being laid off because of the GCIU, and that 20 if employees were unhappy about changes in scheduled working hours they could get rid of the GCIU. Judge Cates also dismissed certain other 8(a)(1) allegations and an allegation of an 8(a)(3) discharge. No exceptions were filed to this decision and the Board order issued December 16, 1998.

25 Settlement Agreement⁵

On March 31, 2005, the Respondent entered into an informal settlement agreement in Cases 30-CA-16980 and 30-CA-17079, which was approved unilaterally by the Acting Regional Director on June 30, 2005, and revoked by the Regional Director in his "Order Revoking Approval of the Settlement Agreement, Order Consolidating Cases, Consolidated 30 Complaint, and Notice of Hearing," dated July 31, 2007. The notice in the settlement agreement provided that the Respondent will not impliedly promise benefits, imply the plant will close, tell employees that the Respondent prefers to put new equipment into plants that don't have unions or that the chances of placing new equipment in Rhinelander will be better if the union is decertified, tell employees that it will transfer work or lay off employees because the plant is 35 union, or tell employees that other plants are the best place to reinvest in existing plant business because the other plants decertified their unions.

40 The Respondent contends that the Regional Director improperly revoked the settlement agreement because the Respondent has, assertedly, fulfilled the agreement and has not violated it, because, assertedly, the violations alleged in respect to Case 30-CA-17727 are not sufficiently related to the settlement, and because, assertedly, the Regional Director did not

4 Credited testimony of Union Steward Edward Bauer. As described by Bauer, the change in the method of distributing holiday pay implemented by the Respondent actually resulted in the Respondent applying the terms of the expired contract, rather than the way it had been handled in accordance with a subsequent supplementary agreement the parties had reached on the issue. Bauer is the only Union steward, and the highest ranking Union official in the plant.

5 In addition to the Regional Director's previous unilateral approval of a settlement agreement in Cases 30-CA-16980 and 30-CA-17079, I approved a unilateral settlement agreement in all of the instant cases on January 29, 2008. On May 14, 2008, the Board reversed my approval of the settlement and remanded the case to complete the hearing.

5 questions of management as to what was important to them, but he was going to stop right there because he didn't want any confrontation between union supporters and nonunion supporters. Someone in the audience then said that since "we were all in the room we might as well ask our questions," and various people present then asked questions, generally about the impact on employees if the plant were to become nonunion, which were responded to by the Respondent's managers present.

10 As to the questions and responses, Nelson testified that somebody mentioned something about wages sometimes being a little lower than at nonunion plants or, for some jobs a little higher, and asking what would happen if Rhinelander decertified, and that Marquart responded that he "had to be real careful on this point and couldn't make any promises whatsoever," but that the Respondent, historically, didn't take money away from people, that sometimes wages were frozen where they were until they got back to the same point nonunion plants were at and sometimes people were given raises right away to get to the nonunion wage scale. Nelson testified that somebody raised the subject of the 401(k) plan, and Marquart responded that the Respondent had a good 401(k) plan, and that depending on how much you put into the plan you could do very well, that he had put in a high amount of money and was going to "retire very, very well."

20 Nelson further testified that "people" mentioned that Rhinelander hadn't seen new equipment in a while such as entire new presses like other plants had, and that both Marquart and Unverzagt responded to those comments. As to Marquart, Nelson testified that "as best I can remember," Marquart said, "there was a plant that had just decertified and they had just gotten new equipment, a new press or some such, and that nonunion plants were getting new equipment and we could read the writing on the wall and just decide for ourselves what we thought would happen." As to Unverzagt, Nelson testified that he said that "Printpack as a company didn't really like unions and that his fear was that if Printpack kept the union how long Printpack would keep Rhinelander," and that "Other plants that were nonunion were getting new equipment. Plants that were decertifying were getting new equipment." Nelson testified that Unverzagt said his concern was that "we weren't getting any."

30 Finally, Nelson testified that at the meeting she was feeling "a little threatened," and that she stood up and said that "if Printpack wanted to shut down the ugly stepsister up north they were going to do that no matter what, union or nonunion," and that Marquart replied that he didn't believe that Printpack had any inclination to shut down the Rhinelander plant at this time. Nelson then left the meeting.

40 Glover, currently a quality inspector employed for the Respondent and employed at the Rhinelander plant for 35 years, testified that he went to the Rhinelander airport meeting with Nelson and Wiedeman, that a purpose of the union officials attending the meeting was to make their presence known, that the meeting room was arranged with two tables in an "L" shape with chairs facing the tables, that sitting at the tables were Marquart, Flannery, Ralph Blanchard, Denny Hastreiter, Jim Paquette, Bob Jorata, and Pat Marquart, that Goldbach and Unverzagt were also at the meeting, and that the union officers entered the meeting room as a group. Glover testified that Hastreiter said he was going to make a statement and was going to adjourn the meeting immediately, and that Hastreiter then said "they" were there to create a survey which was going to be sent out to the union members of the Rhinelander plant, that the results of the survey may lead to a decertification effort in October and November, that they had invited management to attend the meeting, and "they" were interested in finding out what management
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statement.

might offer people who were nonunion employees. According to Glover, when a number of people in the audience protested adjourning the meeting, Hastreiter said they would take questions from the audience.

5 Glover testified there was a question as to pay,¹¹ and that Marquart responded that the Respondent “can’t promise you anything legally...but they had compared job classifications in the Rhinelander plant to Hendersonville (nonunion)...and that the only job classification that paid less in Hendersonville was that of a packer, and normally what is done...in that case [is that] the person’s wage is frozen until the classification rate caught up.” Glover said that he didn’t remember Marquart making any other comments about employee pay.

10 Glover also testified that the subject of benefits came up and the one question he remembered had to do with the fifth week of vacation enjoyed by union Rhinelander employees. According to Glover, Marquart responded that at other plants employees only had four weeks of vacation, but that previously at Rhinelander, when the Respondent took ownership of the plant, it paid an employee for the fifth week, but didn’t allow the time off.¹² As to other benefits, Glover testified that Marquart mentioned that Printpack offered a 401(k) program rather than a defined benefit program, that he, personally, had done well with the 401(k), and that nonunion employees had a better short-term disability program than the union employees’ sick pay program.

15 Glover testified that during the meeting, “Unverzagt basically expressed his concern about the lack of new equipment—what appeared to be lack of new equipment in the plant and expressed his concern about the future and the viability of the Rhinelander plant if there was a lack of investment in the plant.” According to Glover, “Marquart basically responded to that. He said that the Love family¹³ preferred that their employees not have union representation and that Printpack tended not to install new equipment in union shops,” and on cross-examination Glover added that Marquart said it was “for business reasons.” Glover testified that Marquart “also made the comment of how the Elgin, Illinois, plant when they decertified, it expanded and grew tremendously.”

20 Finally, Glover testified that as to the issue of job security, Marquart said that he was not aware of any plans at the present time to shut the Rhinelander plant down but that if it happened he knew he would have a job in another Printpack plant where very many other people would not.” According to Glover, he, and Nelson and Wiedeman left the meeting before it ended.

Witnesses Called by the Respondent

25 In response to the above witnesses called by the General Counsel, the Respondent called Guski, Marquart, Unverzagt, and Goldbach as to the airport meeting. Guski, a journeyman press operator, employed at the Rhinelander plant for 9 years and formerly union chief steward, testified that the union committee, consisting of Guski, Nelson, Weideman, and

45 ¹¹ Glover testified he couldn’t remember the specific question.

¹² On cross-examination, Glover explained that prior to Printpack purchasing the Rhinelander plant, union represented employees and nonunit employees received five weeks of vacation, but that after the purchase, union represented employees continued to receive five weeks of vacation, but nonunit employees received a week’s pay rather than the fifth week of vacation.

50 ¹³ The Respondent’s owners.

Glover, found out about the meeting and decided as a group to attend “and see what it was about.” According to Guski, Hastreiter began reading a statement at the beginning of the meeting when a verbal confrontation occurred. Hastreiter said the meeting should stop because he didn’t want a conflict to break out, but the meeting continued because, according to Guski,
5 the union officials “talked amongst ourselves and decided that we weren’t going to do anything. We were just going to sit there, be calm and listen to what they had to say.”

Guski testified that when the meeting continued, Hastreiter said he would like the meeting to continue as a “question and answer session,” and the union officials, as a group,
10 agreed. Guski testified that Nelson commented that the Rhinelander plant was seen as the “evil stepchild...to the north, and asked why they were guaranteed jobs when “they don’t even come up here to see us,” and that Marquart replied, “Well, we make money for them. It would be foolish for them not to keep us here. Why would you cut your own throat when it comes to a company that is making you a profit?”

Guski testified that Ed Bauer, not on the union committee but, according to Guski, attending with the committee members, asked about other plants that went nonunion and received new equipment right away, and Marquart replied, “that it never has been policy for just
15 a company to go nonunion and get new equipment. That is something that is determined by the president’s team and is basically put in when the fiscal budgets are determined.” According to Guski, Glover mentioned that the Elgin plant went through decertification and received new equipment, and Marquart replied, “As far as I know there hasn’t been any new equipment that has gone into the Elgin plant.”

On direct examination Guski was asked whether there was any discussion of wage rates. He testified that Nelson asked about employees at other plants such as Hendersonville being paid higher rates for the same jobs, and that Marquart replied that he didn’t have that information at the current time, but he would be able to get it and make it available.
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Guski was asked on direct examination whether there was anything else he recalled about discussions and questions directed towards Marquart, Unverzagt, or Goldbach. Guski testified that Unverzagt was asked his opinion of how the Respondent felt about unions, and that Unverzagt responded that “I have worked for many jobs in the past that have been both union and nonunion and I can’t imagine any company wanting a union or anyone else telling
30 them how to run their plant.” Guski added that Unverzagt “never mentioned any names of businesses or anything. He pretty much left it open end.”
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Finally, on direct examination, Guski was asked whether Marquart said, in answer to a question as to new equipment, something to the effect that another plant had just been decertified and had received new equipment, that nonunion plants were getting new equipment and the employees should read the handwriting on the wall and decide for themselves. Guski answered, “No.” When asked how he was so certain as to his testimony as to statements made at a meeting that occurred over 4 years ago, Guski answered that the then president of the Union’s committee, Tom Jensen, had informed himself, Nelson, and Glover prior to the meeting
40 that they should make sure “they paid real good attention...and kept really good mental notes so we can get back to him to let him know. So basically the five of us kept some pretty good mental notes.” Guski said he made no written notes, but “some of the others did.”
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Marquart, currently the Rhinelander plant manager, at the time of the meeting was the plant’s production manager. He testified that at the start of the meeting Hastreiter was reading
50 a statement when a group of employees, mainly the Union’s committee, walked into the room, that words were exchanged between that group and some others in the room, that Marquart

spoke up and said that he was there on his own time to answer questions and if there weren't going to be any questions he would leave, that everybody then settled down, and that Hastreiter then completed his statement to the effect that the "only thing they were doing was asking what else was out there that Printpack offered to nonunion facilities that a union facility did not have."

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Marquart testified that before answering any questions at the meeting, he announced that he, Unverzagt, and Goldbach "were in a position that we were not allowed to promise anything. We could only explain what happens at other locations, or historically what has happened at other locations." He testified that he felt particularly concerned because of the presence of the Union's committee, and that he noticed Weideman with a video camera on his leg near the ground, that he asked Weideman to turn off the camera, and Weideman did so.

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On direct examination by the Respondent's counsel, Marquart was asked if he recalled any questions about wage comparisons between Rhinelander and other of Respondent's facilities. Marquart answered that somebody in the union committee group said that they knew the Hendersonville plant pay scale was lower than Rhinelander, and that Marquart responded that, "Once again I can't promise you anything, but I can tell you . . . the fact is that it is not true." Marquart testified that he told the group that the Hendersonville¹⁴ pay scale was different and that in most cases it was higher. When challenged by an individual about the "packer" classification, that it was, in fact, lower at Hendersonville, Marquart testified that he replied that he didn't know that for sure, that he didn't have the information with him, but that he could do some research and find out. Marquart testified that when "somebody" asked if it was true that the packer position paid less at Hendersonville and what would Printpack do about that, he replied "Again I can't promise you anything but historically what Printpack does is if your wages are lower in an area they will freeze your wages until your pay scale catches up to you through attrition."

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Marquart testified that in reply to a question as to how pay raises are "accomplished" in nonunion plants, he replied that he could not promise anything, but historically Printpack plants do periodic review and the pay scales were set from the reviews and target criteria. Marquart testified that he was asked about how the Respondent's 401(k) plan operated, and that he "explained to them that I was in the 401(k) and I thought it was an excellent plan in that I could . . . be very well off when I retired."

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Marquart testified, further, that somebody asked why the Respondent was not making any capital expenditures in Rhinelander, and that he replied, "That's not true. We are making capital expenditures in Rhinelander. We had just renovated press five. We had spent in the last two years almost two and a half million dollars in capital expenditures." In answer to a question on direct examination in which Nelson's testimony to the effect that Marquart had spoken about new equipment going into a plant which decertified the Union was quoted, and Marquart was asked if he recalled making the statement, Marquart answered, "Absolutely not." Marquart also denied making statements at the meeting that the Respondent tended not to install new equipment in union shops, or that the Elgin, Illinois plant expanded greatly after decertifying the Union.¹⁵

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¹⁴ Marquart said that Hendersonville (nonunion) and Rhinelander (union) were frequently compared to each other because they were "sister" plants, in the same division.

¹⁵ Marquart testified that Glover brought up the subject of the Elgin plant, and Marquart responded that he couldn't comment on what happened at Elgin, because it occurred before his employment with the Respondent.

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Marquart also testified that he recalled Nelson commenting, during the meeting, to the effect that if the Respondent wished to shut down the “ugly stepsister up north” it would do it, union or no union. Marquart testified that he replied that there were no initial talks or any talks at all about closing Rhinelander, that Rhinelander continued to be one of the top plants
5 producing for Printpack, and why would somebody want to close a facility that is actually making them money whether they were union or nonunion. Marquart admitted, that during the meeting, in response to a comment that the Union’s short-term disability plan was better than the Respondent’s, he expressed his opinion that the Respondent’s plan was much better than the Union’s, and made a statement “that the Love family preferred that their employees not be
10 represented by unions.” Marquart did not testify as to what Unverzagt said during the meeting.

Unverzagt, a Rhinelander shift supervisor since March 2003, was examined briefly on direct, and almost not at all on cross-examination, as to the Rhinelander airport meeting. On
15 direct examination, Unverzagt was asked whether any questions were asked and whether he provided any answers about new equipment or capital investment at Rhinelander, to which he answered yes, and he was asked to relate what he said. Unverzagt testified, “I said that to me capital equipment was an important thing and I was interested in having good equipment to make our product on.” Much of Unverzagt’s testimony consisted of the Respondent’s counsel asking whether he made certain statements at the meeting, testified to by the General
20 Counsel’s witnesses, and Unverzagt denying that he made the statements. Unverzagt did not testify as to what Marquart said at the meeting.

Unverzagt was specifically asked, and specifically denied, that he made a statement that other Printpack plants that were nonunion were getting new equipment. Unverzagt was asked
25 why he was certain that he hadn’t made such a statement, and testified, “I had only been there a short time and didn’t have knowledge of such things.” Unverzagt was specifically asked whether, during the meeting, he made “a statement that Printpack as a company didn’t really like unions,” or “you were afraid that if the union was kept in Rhinelander that Printpack wouldn’t stay in Rhinelander very long.” Unverzagt denied making either statement. Unverzagt was
30 asked whether he expressed any concern about the equipment then in the Rhinelander plant, and answered, “We discussed the fact it was older equipment, good older equipment, and that was about it.” Finally, Unverzagt was asked if he expressed any concern about the future viability of the Rhinelander plant, and answered, “No.”

Terry Goldbach, who retired from the Respondent in October 2007, was the
35 Respondent’s HR manager at Rhinelander from about 2001 to his retirement. Much of Goldbach’s direct examination consisted of the Respondent’s counsel asking whether certain things testified to by the General Counsel’s witnesses were said at the meeting by Unverzagt or Marquart, and Goldbach denying that they were said. Goldbach was asked if questions arose
40 as to the Respondent’s 401(k) plan, and testified that questions were asked as to the manager’s feelings about the plan and who could join it, and that when these questions, and others came up, “we mentioned any number of . . . times that we were not making any promises in regards to any benefits or wages.”

Goldbach testified that he did not recall any questions about new equipment or capital
45 investment in the Rhinelander plant, and when asked “Do you recall Mr. Marquart making the following statement during the course of the meeting: There is a plant that has just been decertified and they have gotten new equipment, a new press or some such, and nonunion plants are getting new equipment and you can read the handwriting on the wall and decide for
50 yourselves what you think will happen,” Goldbach said, “No. Pat did not say that.”

Goldbach testified that he didn't recall Nelson commenting that if the Respondent wanted to shutdown "the ugly stepsister up north," it would, union or no union, but he did remember questions asked of Marquart in the nature of whether or not he felt there was any thought of shutting down the Rhinelander plant. Goldbach testified that Marquart responded to the effect, "Not going to happen." When asked whether any questions were asked about wage comparisons between Rhinelander and Hendersonville, Goldbach testified that some such questions were directed at him, and that he responded that he did not have any of the information right with him at that time, but he had done an analysis and there were differences between Rhinelander and the other plants within the corporation.

Goldbach denied making any comment as to what would happen in respect to wages if there was no union at Rhinelander. He testified that he did not recall Marquart making a statement that the Respondent tended not to install new equipment in their union shops, didn't recall him making a statement that the Love family preferred that their employees operate nonunion, and was not aware of Marquart making a statement that the Elgin, Illinois plant expanded and grew tremendously when they decertified the Union. Goldbach denied that, in the course of answering questions, either himself, Marquart, or Unverzagt indicated in any way that the Respondent would not put new equipment into Rhinelander as long as it was unionized.

After being invited to the meeting, and before attending, Marquart and Goldbach participated in a conference call with the Respondent's attorney, Jonathan Swain. During the call, as to the invitation to speak at the meeting, Swain told them "You can answer questions about (what the Respondent provided to employees at other facilities) but you can only answer those questions factually. You have to make it very clear that you are not in any way promising that whatever happens at another plant would happen here if in fact this facility was some time in the future not unionized." Swain also advised Marquart and Goldbach that they could not threaten or make promises.¹⁶

Counsel for the General Counsel maintains in his brief that the following statements assertedly made by Marquart and Unverzagt at the airport meeting violated Section 8(a)(1), as alleged in complaint paragraphs 6, 7(a), and 8). By Marquart: "that the Respondent had a plant that just decertified and it got new equipment," and the employees "should look at the writing on the wall;" "that new equipment was going into plants that were decertified or had no union;" and that "the employees could draw their own conclusions." By Unverzagt: "If Rhinelander kept the Union how long would Printpack keep Rhinelander;" that the company does not like unions and that nonunion plants were getting the new equipment; that the plants that were decertifying were getting new equipment and Rhinelander has not had new equipment for a number of years; and that he was worried about his job.

Counsel for the General Counsel, in his brief, asserts that Unverzagt's comment as to Printpack keeping Rhinelander is an implied threat of plant closure as alleged in complaint paragraph 6, and that the balance of the cited comments by Marquart and Unverzagt constituted either threats of detrimental investment decisions as alleged in complaint paragraph 7(a) or implied promises of increased benefits if employees withdrew support of the Union, as alleged in complaint paragraph 8. Counsel for the General Counsel does not argue in his brief that testified-to comments as to the 401(k) plan, wages, short-term disability plan, or vacation were violative.

¹⁶ Credited testimony of Swain, Marquart, and Goldbach.

The following factual evaluations and conclusions as to the airport meeting are based on my assessment of the testimony and testimonial demeanor of all six witnesses, the overall circumstances and context, and the plausibility of the testimony. From my close observation, Nelson and Glover, who testified for the General Counsel, and Guski, who testified for the Respondent, all displayed the demeanor of witnesses earnestly attempting to truthfully answer questions, and all three were generally unhesitant in answering questions of all counsel, including on cross-examination. All three are current employees and former union officers with no readily apparent axes to grind by their testimony and none betrayed any outward appearance of favoring one side or the other.¹⁷ Glover and Guski were particularly impressive based on the strength of their recollections and their demeanor on the witness stand.

Marquart and Unverzagt, as current supervisors of the Respondent specifically named in the complaint as committing 8(a)(1) violations, clearly have a vested interest in the outcome, although this is not solely determinative of their credibility.¹⁸ In addition, other factors I've weighed in assessing the credibility of Unverzagt, Goldbach, and Marquart include testimonial demeanor, Marquart's status as a longtime HR manager (albeit retired) for the Respondent who displayed a clear affinity with his former longtime employer, the conclusionary and directed manner of the direct examination of both Unverzagt and Goldbach during which many of the

¹⁷ Adding to their credibility, both Glover and Nelson are current employees testifying adversely to the interests of their employer. See, *Georgia Rug Mill*, 131 NLRB 1304, fn.2 (1961). As to Nelson, however, while there is no perceived problem either with her honesty or sincerity, the quality of her recollections are problematic for reasons discussed in the decision.

¹⁸ For various reasons, including my observation of testimonial demeanor, I was not impressed with Marquart as a witness, and find his testimony generally unreliable. One particular occurrence during the trial gave me pause as to whether he fully understood his obligation to fully and truthfully answer the questions of all counsel, including counsel for the General Counsel.

Thus, on cross-examination by counsel for the General Counsel, when asked "is it a fair statement to say that you had numerous conversations with employees in which you expressed your preference that Rhinelander be union free," Marquart answered, "Actually on the contrary to that. I said as far as I was concerned I did not care if the Rhinelander facility was union or nonunion. I said my concern is that this plant, you know, continues to perform the way it performs. My wife is union. My dad is union. I had no theory either way." Counsel for the General Counsel then introduced, and later withdrew, an investigatory position statement from the Respondent's counsel which stated that Marquart acknowledged that he had numerous conversations with employees in which he expressed his preference that Rhinelander be union free.

On redirect examination, when the Respondent's counsel attempted to give Marquart the chance to explain the inconsistency between his testimony and the position statement, by asking whether the position statement was accurate, Marquart testified that it was accurate. Then the Respondent's counsel asked Marquart, "So you acknowledge that you...had conversations in which you expressed your opinion that Printpack would prefer to operate union free?" Marquart answered, "That would be my preference." The questions of both counsel to Marquart were crystal clear. So were his contradictory answers. There was no explanation on the record for this dramatically different testimony given within the space of a few minutes.

Based on this sequence and his general demeanor, it is clear to me that Marquart testified in a manner that he believed would be most favorable to the Respondent at any given moment, rather than simply responding to questions with full, forthright, honest answers. Consequently, I do not find him to be a credible witness, nor his testimony reliable.

questions called for a “yes” or “no” answer as to whether they made particular statements during the meeting, and the Respondent’s choice not to question Marquart or Unverzagt as to what the other said during the meeting. Based on said assessment, I’ve generally credited Guski, Glover, and Nelson over Marquart, Unverzagt, and Goldbach, where conflicts exist.

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Yet the recollections of all the witnesses are at least somewhat impacted by the about 3-1/2 that intervened between the meeting and their testimony. Further, because the alleged violation is Section 8(a)(1), the specific words used are significant as to whether said words constituted implied threats or promises. While Nelson and Glover took notes at the meeting, and such notes were Jencks-produced to the Respondent at trial, Guski credibly testified that, under instructions from the union president, he took mental notes of the meeting because of the impact it could have on the Union. All three impressed me as witnesses trying their best to give accurate answers to the questions of all counsel, rather than just answers that helped either the Respondent or the General Counsel. In sum, I have little doubt that Nelson, Glover, and Guski are honest witnesses, whose testimony differs simply because of the quality of their recollections.

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As to quality of recollections, I note that on direct examination, Nelson, when asked what Marquart said about the lack of new equipment in the plant (as opposed to nonunion plants), began her testimony as follows: “Pat Marquart said—as best I can remember he said” Such qualification at the inception of her answer, betrays a lack of confidence in her own recollections. Where particular words matter, as they do in deciding whether words violate Section 8(a)(1), I am reluctant to find a violation as to words uttered years ago, when the witness begins her testimony by stating “as best I can remember.” This is particularly true, where, as here, another credible witness, Guski, testified that the words were not used. Similarly, while Nelson testified that Unverzagt said “If Rhinelander kept the Union how long would Printpack keep Rhinelander;” no other witness directly supports said testimony. While I have no doubt as to Nelson’s honesty and her good-faith attempt to testify to the best of her recollection, I am not equally sanguine about the strength of her recollection as to comments made at a meeting some years ago.

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Further, while Glover testified that Marquart said the Respondent tended not to install new equipment in union shops for business reasons¹⁹ and that the Elgin, Illinois plant expanded when the union was decertified, his testimony did not support Nelson’s to the effect that Marquart also said that as to the lack of new equipment, “employees should read the writing on the wall and just decide for themselves what we thought would happen,” and Guski flatly denied that Marquart used those words. Guski and Glover are reliable witnesses. I, thus, decline to find that Marquart said that employees should read the writing on the wall or draw their own conclusions, at the airport meeting or that, for reasons also stated above, Unverzagt said, “If Rhinelander kept the Union how long would Printpack keep Rhinelander.” Indeed, it appears likely that Nelson and other employees may have thought that to themselves after Unverzagt and Marquart spoke. Such words may, thus, have been implicit rather than explicit.

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However, I do find that, as essentially testified to by Glover, Unverzagt said he was concerned over the future viability of the plant without new investment and equipment, and that Marquart then added that the Love family preferred that their employees not have union representation and that Printpack tended not to install new equipment in union shops. Nelson’s testimony to the effect that Marquart talked about nonunion plants getting new equipment is somewhat supportive of Glover’s testimony. While I have not credited Nelson as to certain of

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¹⁹ He added the “business reasons” qualifier on cross-examination.

her testimony for reasons set forth above, I also found that she was a truthful witness. Further, while Guski was asked whether “Marquart said that nonunion plants were getting new equipment and employees should read the handwriting on the wall,” he was not explicitly asked whether Marquart simply talked about nonunion plants getting new equipment or whether
 5 Marquart said that Printpack tended not to install new equipment in union shops. I also find that, during the course of the airport meeting, in response to an employee question, that Marquart said he was not aware of any plans at the present time to shut the Rhinelander plant down.²⁰

10 August 2004 Bulletin Board Posting²¹ and Magazine Article²²

The General Counsel’s Exhibit 16 is a memorandum signed by the Respondent’s vice president of operations for U.S. Flexibles, Stephen Eastham, dated July 30, 2004 at 4:08:59 p.m., which was thereafter posted by the Respondent on its Rhinelander plant bulletin board
 15 sometime in early August 2004. The memo is ostensibly to congratulate the new plant manager of the Respondent’s New Castle, Delaware plant, and states, in pertinent part, as follows:

As many already know, we have recently signed a new contract with New Castle’s important customer, Georgia-Pacific. The recent de-certification of the union makes New Castle the best
 20 place for reinvesting in that business. To handle the higher volume, the New Castle plant will go through dramatic changes in the coming year, including the recapitalization of their equipment, (the purchase of several new presses, and significant upgrades to their cast line and infrastructure).

The Respondent’s internal magazine, “Impressions,” distributed to all Rhinelander employees, contained an article in the edition distributed to Rhinelander employees in August 2004, which discussed the decertification election at the New Castle, Delaware plant. In the article, Eastham is quoted as follows in respect to the union’s decertification at New Castle:
 30 “This is an outstanding result. We are extremely pleased the associates in New Castle have placed that level of trust in Printpack. This result was aided by the fair treatment delivered by New Castle’s leadership and by the lack of value the New Castle associates felt being delivered by the union.” The article concludes as follows: “Printpack now operates 19 manufacturing sites within the United States, 16 of which are nonunion. The only 3 plants with associates who
 35 continue to be represented by a union are Greensburg, Indiana; Rhinelander, Wisconsin; and St. Louis, Missouri. Each of these plants had unions in place at the time they were acquired. We remain proud of the fact that Printpack has never had a union voted in by its associates.”

40 Marquart/Jensen Conversations Alleged in Complaint Paragraphs 9(a) and (b)

During 2004, the GCIU and the Respondent met several times as to a proposal by the Respondent to change the operating schedule of the Rhinelander plant from the then current schedule of 24 hours a day, 5 days a week to a new schedule of 24 hours a day, 7 days a week.

45 ²⁰ Based on the credited testimony of Glover and the similar testimony of Nelson.

²¹ Counsel for the General Counsel asserts, in his brief, that complaint par. 7(b), which alleges a posting which threatens detrimental investment decisions, refers to General Counsel Exhibit 16, the memorandum dated July 30, 2004.

50 ²² While the General Counsel introduced evidence as to the magazine article, the complaint contains no allegation referencing the article and, in his brief, counsel for the General Counsel does not argue that the magazine article violated the Act.

During the negotiations, the Respondent proposed that employees placed on the new schedule would receive an extra \$1 per hour while on the schedule, and told the Union that the new schedule was necessary for efficiency purposes and in order to avoid the possibility of work being transferred from the Rhinelander plant to other facilities and possible resultant layoffs.

5 The GCIU rejected the Respondent's proposal in July 2004. On July 13, 2004, the Respondent issued a memorandum to employees announcing layoffs effective July 19.

10 In December 2004, then GCIU President Thomas Jensen initiated a conversation on the plant floor with then production manager, now plant manager, Marquart. Jensen asked Marquart "why the Respondent was still laying people off and shipping business out when we can do the work, that we weren't at capacity?" Marquart responded, "Because they're only going to lay off people in union plants before nonunion plants and keep the nonunion plants at full production first." Jensen responded that "it was kind of horseshit."

15 Marquart and Jensen had a second conversation in January 2005. Jensen approached Marquart in his office and asked if he had a minute to talk. Jensen asked why there was still a problem. Jensen said, "There was a lot of people complaining about being laid off . . . and they wanted to know why they're still being laid off." Marquart responded that the Respondent was "going to lay people off in the union before they lay them off in nonunion plants."²³

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Unfair Labor Practices Alleged in Case 30-CA-17727

25 On January 11, 2007, Hastreiter filed a petition with the Board seeking decertification of the Union at Rhinelander, and an election was scheduled for February 22 and 23. The Respondent conducted a preelection campaign which included posting information on its Rhinelander bulletin board including comparisons of Rhinelander wages and benefits to nonunion plants, visits to the plant by employees from some of the Respondent's facilities at

30 ²³ My findings as to what was said during the December and January conversations are based on the credited testimony of Jensen. I credit Jensen based on my observations of his testimonial demeanor, his strength of memory, and the consistency of his answers, both on direct and cross-examination. Despite a vigorous cross-examination, Jensen's answers remained consistent, responsive and nonargumentative. When confronted with his affidavit on cross-examination, Jensen acknowledged that Marquart made differing statements during
35 certain group meetings, but credibly insisted that Marquart made the statements which Jensen testified to during their one-on-one conversations. Jensen is currently employed by the Respondent and testifying adversely to its interests. For reasons discussed elsewhere herein, I do not view Marquart, who essentially denied the comments attributed to him by Jensen, as a credible witness.

40 The Respondent argues, in its counsel's brief, that the layoffs were caused by the Union's failure to agree to the 7 day, 24 hour work schedule proposed by the Respondent, and the resultant inefficiencies and that, therefore, Marquart would not have made the comments testified to by Jensen. While I make no findings as to the cause of the layoffs, which are not at issue herein, and it's possible that the layoffs were a result of the Union's failure to agree to the
45 Respondent's schedule proposal, this would not render Jensen's testimony unbelievable, nor have precluded Marquart from telling Jensen that the Respondent would lay off employees in union plants before laying off employees in nonunion plants, simply in furtherance of the Respondent's campaign against the Union.

50 Similarly, Goldbach's testimony as to being present at a conversation during which he and Marquart told Jensen that the layoffs were caused by the plant's schedule, is not dispositive of what Marquart told Jensen during their one-on-one conversations.

which unions were decertified, during which they spoke to Rhinelander employees “to let the other employees know what it was like in other Printpack facilities,”²⁴ and a visit to the plant by the Respondent’s owners. None of this conduct is alleged to violate the Act. In early January 2007, the Respondent’s attorney, Robert H. Buckler, met at the plant with supervisors Marquart, Gauthier, Lewis, Freund, and Kraetsch, and instructed them, using the “TIPS” acronym, that is that they couldn’t threaten, interrogate, promise or conduct surveillance of employees.

Conversations Alleged as 8(a)(1) Violations or Otherwise Relevant

Patrick Marquart Conversations with Brian Haenel

Brian Haenel is a current Rhinelander employee of the Respondent, who has worked at the plant for 18 years, and has been a press operator for about the last 16 years. Haenel and Plant Manager Marquart are close personal friends.

Sometime in late March or early April 2007, after the Union prevailed in the decertification vote, Marquart approached Haenel while Haenel was operating his press, and asked Haenel if he was going to stop paying union dues.²⁵ Haenel responded that he was thinking about it. Marquart replied that the future of the plant is “very in doubt right now with the union. Our future . . . is going to be better if we get rid of the union.” Haenel did not respond.²⁶

Also in early April 2007, Haenel was working at his press when Marquart approached him and began a conversation. Employee Bob Duellman was also present.²⁷ Marquart turned the conversation to pay raises, used a piece of paper to show how raises were done in other plants, and said that a 2-percent raise would occur because if they pulled out of the union, they’d save on dues, that “as soon as the union was done the company would give us a 3% raise, and then raises go by performance reviews and every six months employees get up to a

²⁴ Marquart’s testimony. Marquart also testified that individuals came to Rhinelander from other Printpack plants which had decertified a union, and that they spoke to Marquart before speaking to anybody else at Rhinelander. Marquart’s testimony here, on cross-examination, was at least somewhat specious. When asked why the individuals from decertified plants visited Rhinelander, he testified, “Just to talk to other individuals.” When asked a second time, Marquart testified, “To let the other employees know what it was like in other Printpack facilities.”

²⁵ The Respondent, earlier, with the collective-bargaining agreement having expired, discontinued union dues checkoff.

²⁶ I credited Haenel as to this conversation. Marquart testified that he, in fact, asked Haenel if he was going to stop paying union dues, that Haenel responded that he hadn’t decided, and that Marquart told him that, in his opinion, he couldn’t understand why anybody would want to continue paying union dues around here. On direct examination, Marquart was asked by the Respondent’s counsel whether, in any conversation, he told Haenel that the future of the plant was very much in doubt with the union in the plant, and Marquart responded, “No.” For reasons stated earlier in this decision, I found Marquart’s testimony unreliable and, generally, not credible. Contrariwise, based on the demeanor I observed, consistency of testimony, strength of recollections, and the nonargumentative character of his answers, both on direct and cross-examination, Haenel is a credible witness whose testimony is generally reliable. The fact that Haenel testified to a different date and location for the conversation than pleaded in the complaint does not necessarily detract from Haenel’s credibility, but may simply indicate that the complaint is inaccurate as to these items.

²⁷ Duellman did not testify.

3% raise.” Haenel responded, “That would be great.” Marquart told Haenel that because he was one of the top operators in the plant, he would probably get an 11-percent pay raise right from the top in the first year.²⁸

5 About April 22 or 23, 2007, Marquart, once again, stopped by Haenel’s press, and spoke to him. Marquart asked Haenel if he had opted out of paying union dues yet, and Haenel responded, “Not yet I hadn’t.” Marquart told Haenel that he had to know “before I go to Atlanta next month—next week,” and that he was going to Atlanta to talk to Dennis Love (Respondent’s vice president of operations, and part of the family which owns the Respondent) about the future of the Rhinelander plant. Haenel said that he didn’t know what Marquart was talking about. Marquart responded, “Well, if things go down in the plant, you need to be on the right side of the street.”²⁹ Subsequently, on April 30, Haenel executed a document withdrawing from the Union. He testified that he withdrew from the Union because he was friends with Marquart and if Marquart thought the future of the plant was in “dire straits,” Haenel believed it.

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Pete Lewis Conversations with Haenel

20 Pete Lewis, currently, and for the past 4 years, the Respondent’s Rhinelander production scheduler, has been a supervisor since 1996, and has been employed at various jobs in the plant, including bargaining unit positions since about 1976. Lewis belonged to the GCIU for 15 years of his nonsupervisory employment. Sometime in late March or early April 2007, Lewis initiated a conversation with Haenel at the press Haenel was working on. Lewis mentioned the Union and said, “Well, we’re doomed. We’re done.” Lewis said that Dennis Love didn’t like unions, and the future of the plant is not looking too good right now. Love also said that “the company will not put any money into this plant or upgrade any machines as long

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²⁸ Findings based on Haenel’s credited testimony. Marquart testified that the conversation was initiated by Duellman, who asked Marquart how “things happen at other plants and how do reviews happen?” According to Marquart, he told Duellman that he couldn’t promise it would happen at Rhinelander this way, but at other plants, if an employee is not at the top of his pay scale, reviews are done every six months, and the review determines the pay raise. Marquart denied he told Haenel that he probably could get an 11 percent pay raise, but did say he “possibly” could get that much because he was a top performer, and the review system was all based on performance. I credit Haenel, not Marquart, for reasons set forth above.

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35 ²⁹ My findings as to this conversation are based on the credited testimony of Haenel, who I credited over Marquart for reasons discussed earlier herein. As to this conversation, Marquart testified that, in fact he asked Haenel, at Haenel’s press, if he had opted out of paying union dues, and that Haenel responded he hadn’t decided yet. According to Marquart, Haenel asked him if they could get together for dinner the following week, and that Marquart responded he was headed to Atlanta. When asked on direct examination, “Did you tell him anything other than that you were headed to Atlanta,” Marquart answered, “No.” Respondent’s counsel then asked, “Did you tell him that you needed to know how he stood on getting in or out of the union because you were headed to Atlanta next week to talk to Dennis Love about the future of the plant?” Marquart answered, “No. I don’t meet with Dennis Love. Dennis is a little above my—

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45 my range. My boss talks to Dennis. I don’t.”
In addition to the earlier set forth reasons for crediting Haenel, as to this particular conversation it is extremely unlikely that Haenel simply made up his testimony. First, from my close observation of his testimonial demeanor he simply displays no characteristics of somebody who takes lightly the oath to tell the truth on the witness stand. Second, it makes little sense that he would go to the extreme of lying under oath about such a conversation particularly where, as here, both participants agree that they are close friends.

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as we have a union.”³⁰ Within about a week, Lewis initiated a second conversation with Haenel at Haenel’s press. Lewis brought up the subjects of future of the plant, upgrades, and the union, and discussed them similarly to their first conversation.³¹

5 Michael Freund Conversation with Haenel

Michael Freund, employed at Rhinelander for 19 years, currently a shift supervisor, was a “nonunion lead” supervisor during March–May 2007.³² About March 9, 2007,³³ Freund approached Haenel who was working at his press, and initiated a conversation. During the

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³⁰ Haenel testified to Lewis’s last comment after a somewhat leading question from counsel for the General Counsel. Haenel had testified as to what Lewis’s initial comments were. Rather than ask whether anything else was said, counsel for the General Counsel asked “What, if any, reference was there to equipment?” In my view, counsel for the General Counsel simply inadvertently phrased the question in a somewhat leading manner. But, while the question suggested that something was said about “equipment,” it did not suggest the bulk of the answer, that is that the company would not put any money into the plant. I sustained the Respondent’s counsel’s objection, and counsel for the General Counsel re-asked the question, in a nonleading fashion. In my view, the inartfully worded question does not detract from the overall credibility of Haenel or from his answer to this particular question. As I find repeatedly herein, Haenel’s testimonial demeanor, strength of recollection, consistency of testimony, and nonargumentative answers to the questions of all counsel, demonstrated the attributes of a credible witness, whose testimony can be relied on.

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³¹ Lewis, on direct examination, was asked if he recalled having any conversations “whatsoever” in March or early April with Haenel about the Union. Lewis answered, “No.” The Respondent’s counsel then asked, “In March or early April of 2007 did you have any conversations with Brian Haenel in which you discussed the Union in any way?” Lewis answered, “No, sir.” In response to counsel’s further questions, Lewis denied, during the same time period having discussions with Haenel about the future of the Rhinelander plant, about Dennis Love’s view of unions, about whether or not the company would invest in the plant or upgrade machines as long as the Union was present, or about Lewis’s view of whether Printpack would put any money into the plant or upgrade the machines at all. Further, Lewis specifically denied telling Haenel that “we’re doomed” or “done,” that “Dennis Love don’t like unions,” or that the “future of the plant is not looking too good right now.”

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In weighing the credibility of Haenel and Lewis, who gave directly conflicting testimony, I found Haenel to be a credible witness, as discussed earlier, and am convinced he understood the significance of the oath to tell the truth, took it seriously, and would not make up testimony out of whole cloth. I note that while Haenel is a current employee who, arguably, places himself in jeopardy by testifying against the interests of his employer, Lewis is a longtime supervisor who is testifying in support of the interests of his employer. Further, as essentially argued by counsel for the General Counsel in his brief, Lewis’s denial that he knew whether the Respondent wanted to get rid of the Union, in the face of the overwhelming evidence in the record to the contrary as far as the level of the Respondent’s campaign against the Union, lends doubt to his veracity. Taking all of this into consideration, along with my observation of their testimonial demeanor, I credit Haenel as to Lewis’s two conversations with him.

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³² Respondent’s answer to the complaint admits Freund’s 2(11) and 2(13) status at least since December 2006. Freund testified that he exercised supervisory responsibility during 2007. Based on the pleadings and testimony, I find that Freund, during all times material herein, was a Section 2(11) supervisor and Section 2(13) agent.

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³³ Haenel testified that the conversation with Freund took place about two weeks after the decertification election.

conversation, Freund asked Haenel if he had withdrawn from the Union yet, or had stopped paying his dues. Freund told Haenel that the plant was in dire straits because if employees don't get rid of the Union the Respondent was not going to upgrade any machines, and mentioned that the Love family didn't like unions. Haenel testified that Freund said "pretty much the same thing as Pete [Lewis] but just in a different attitude towards it," and that he didn't say "much" to Freund, in return.³⁴

Mark Gauthier Conversations with Haenel

10 Mark Gauthier, currently a shift supervisor, has been employed at Rhinelander for 35 years, the last 17 as a supervisor. About March 9, 2007, Gauthier approached Haenel, who was working at his press, and initiated a conversation. Gauthier told Haenel that he felt the Respondent was a good company, that the upgrade of the machines wouldn't get done until the "unions" were out of the plant, and that the Printpack would go downhill "pretty soon" if employees didn't get the union out.³⁵ Haenel made little, if any, response. At some point during

20 ³⁴ My findings from the credited testimony of Haenel. Again, for the reasons set forth above, I find Haenel to be a trustworthy and credible witness. Freund, on direct examination, specifically denied that he made the statements to Haenel, which Haenel testified to. When asked, "In the March–April 2007 time frame, do you recall having any conversations with Brian Haenel about the union at the plant," Freund answered, "No sir, I did not." Additionally, Freund testified, and the plant logs confirmed, that Freund and Haenel did not work on the same shifts in March or April, 2007.

25 Nevertheless, Haenel is a credible witness, who would not, in my judgment, concoct his testimony. Further, Haenel is a current employee testifying adversely to the interests of his employer, while Freund is a current supervisor testifying consistently with the interests of his employer. Whether or not they worked on the same shift does not definitively establish whether or not the conversation took place. There are a myriad of reasons why Freund may have been in the plant, even if not scheduled. Finally, Haenel's testimony as to what Freund told him, is similar to the testimony of other witnesses as to what Freund told them. On balance, I credited Haenel.

30 ³⁵ Findings as to the conversations between Haenel and Gauthier are based on the credited testimony of Haenel. As set forth above, I found Haenel to be a credible and trustworthy witness. Gauthier, in response to questions on direct examination during which the Respondent's attorney essentially repeated Haenel's testimony as to what Gauthier said, denied making the statements. Gauthier further testified he and Haenel did speak about the Union, but Haenel approached Gauthier, not vice versa, that Haenel is the one who spoke about the Union, and that Gauthier simply listened, nodded, and walked away. Gauthier testified that during the February–May 2007 time period he met with Marquart and with the Respondent's attorney who talked about the TIPS acronym, which Gauthier testified he understood meant he should not promise or threaten employees. TIPS, from the testimony, is an acronym for "threaten, interrogate, promise, spy."

45 Like others here, the Haenel-Gauthier conversations present the simple stark issue of one-on-one credibility. If one is testifying truthfully, the other isn't. If Gauthier was testifying truthfully, then Haenel made up his testimony. Based on my careful observation of his testimonial demeanor, it is extremely unlikely that Haenel simply concocted his testimony. Indeed, it appears that Haenel's testimony as to what Gauthier told him fits a pattern as to what employees were told by supervisors. Haenel is a current employee testifying adversely to his employer's interests, while Gauthier is a long time supervisor testifying in support of his employer's interests. For the reasons set forth herein, including my observations of testimonial demeanor, I credited Haenel. While Gauthier, and other supervisors, were instructed by the

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March, Gauthier approached Haenel a second time at Haenel's press, and a similar conversation ensued.³⁶

Dennis Love Conversation with Haenel

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In January 2007, prior to the February decertification vote, and prior to Haenel's conversations with supervisors set forth above, the Respondent's president, Dennis Love, visited the Rhinelander plant. As Love was walking through the plant, he and Haenel spoke. Haenel asked Love if there was any possibility that the Respondent would close the plant if the Union was not voted out. Love responded, "Why would we do that? You guys are one of the best running plants we have. Why would we cut our head off to spite our nose?" Haenel told "a lot" of other employees in the plant that Love told him the plant wasn't going to close if the Union was not voted out.³⁷

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Dennis Love Conversation with Edward Bauer

During Love's predecertification vote visit to the plant, he also spoke with Union Steward Edward Bauer. Bauer, with his supervisor, Fletcher Bowman, also present, told Love that there had been rumors that the plant would close if the Union stayed. Love replied, "This plant is profitable. There would be no reason to close it." Bauer told other employees on his shift, about 20, about his conversation with Love.

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After speaking with Love, Bauer and Bowman walked away and engaged in further conversation, along with unit employee Curt Baker. Bauer told Baker that Love had said that regardless of union affiliation, the plant would not close. Bowman responded, "Well, Mr. Love has to say that."³⁸

Michael Freund Conversations with William Freudenberg

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William Freudenberg is a material handler/forklift operator currently employed by the Respondent, who has worked at the Rhinelander plant for 20 years. Shift Supervisor Freund is Freudenberg's immediate supervisor.

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Sometime in the middle of April 2007, while Freudenberg was working in the shipping office, Freund initiated a conversation with Freudenberg. Freund asked Freudenberg how things were going, and Freudenberg didn't respond. Freund then said, "Off the record, don't you realize things would be better off without the union in here?" Freudenberg responded, "You have made your choice and I have made mine." Freund replied, "Don't you realize that the union can't do anything more for you?" When Freudenberg didn't respond, Freund continued speaking. Freund said, "Don't you realize that you are paying into something that can't do anything more for you? They will upgrade the machines in this place and put new machines [in] if the Union is gone." Freudenberg replied, "With or without the union in here the company will decide what is best. We will see. We don't know what it's going to be like without the union in

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Respondent's counsel, and others, as to the TIPS acronym, Gauthier's understanding appeared to be limited to the concept that he couldn't make promises to, or threaten, employees. Conceivably, he could have thought he was doing neither during his conversations with Haenel.

³⁶ Haenel testified that both conversations were "pretty much the same thing."

³⁷ These findings based on Haenel's credited testimony.

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³⁸ Findings as to Bauer's conversations with Love and Bowman based on Bauer's credited, uncontroverted testimony.

here. We all have our jobs to do and whatever takes place here with the outcome we will just have to deal with it.” Freund responded, “I am not here to put pressure on you.”

Sometime in late April 2007, Freund initiated another conversation with Freudenberg, this time in the pressroom.³⁹ Freund asked Freudenberg if he had resigned from the Union yet. Freudenberg replied that he had not. Freund asked why he hadn’t resigned. Freudenberg replied that he had his own personal reasons.⁴⁰

³⁹ In addition to Freund and Freudenberg, an unnamed operator and helper Matt Skinner were present. Neither testified.

⁴⁰ Findings as to the Freund conversations with Freudenberg based on the credited testimony of Freudenberg. Freund denied having any conversation in mid-April with Freudenberg in the shipping office, denied telling him he would be better off without the union, denied telling him that the Union was not doing anything for him, denied telling him that the Respondent will upgrade machines and put new machines in if the Union is gone, and denied asking him if he had resigned from the Union yet. Freund testified that he believed Freudenberg to be a union supporter, that Freudenberg had told him so, and that Freudenberg’s father was a strong union member.

Once again, the conversations between Freudenberg and Freund present a stark issue of one-on-one credibility. Freudenberg is a current employee testifying adversely to his employer. Freund is a supervisor testifying in support of his employer. Freudenberg testified consistently on direct and cross-examination, even when asked confusing questions, or interrupted by the bench, testified thoughtfully rather than by rote answer or argumentatively, displayed excellent recall of detail, and otherwise displayed the demeanor of a witness attempting to truthfully answer the questions of all counsel. In order to credit Freund, I would have to believe that Freudenberg made up his testimony. Nothing in the level of detail in his testimony or his demeanor suggests such a possibility.

I note that the Respondent introduced affidavits signed by Freudenberg on June 26, 2007, and August 29, 2007, and prepared by one of its attorneys, in which Freudenberg denies he heard or witnessed certain actions alleged in the complaint or charge. In the affidavits Freudenberg says, in pertinent part, that no supervisor promised or provided him with anything of value to withdraw from the Union, that he had not heard any supervisor promise anything of value to any employee to withdraw from the Union, that he had not heard any supervisor encourage any employee to withdraw from the Union, that he had not heard any supervisor say the Respondent would not put money into the plant while there was a union, that he never heard any supervisor say words to the effect “our only future is if we get rid of the Union,” that at no time had he personally heard Freund, and other named supervisors, “threaten” that the Respondent would not put money or new equipment into the plant if the Union was present, that he had not heard Freund, or other named supervisors, “interrogate” himself or other employees about their union membership, and that he had not personally heard Freund inform him or other employees that it would be “futile” to retain the Union. There is no allegation that the Respondent violated the Act in questioning Freudenberg or taking his affidavit.

While I am troubled that the Respondent-produced affidavits of Freund contain statements apparently inconsistent with some of his testimony, I am also mindful that the affidavits are phrased in conclusionary terms, that they don’t pretend to contain any details of any purported conversations, that the wording is essentially that of the Respondent’s attorneys with Freund simply answering “yes” or “no,” and that they contain conclusionary statements utilizing words such as “futile,” “promise,” or “interrogate” which labor lawyers, but probably not laymen, understand in the context of labor law. (Freudenberg testified that even now he didn’t understand some of the terms.) Contrariwise, Freudenberg’s live testimony put flesh on the bones of the conversation. On direct examination, Freudenberg was simply asked what was

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Glen Kraetsch Conversation with Gary Michel

5 Gary Michel, a member of the Union, is employed by the Respondent as a plate
 department employee, a bargaining unit position, and has worked at the Rhinelander plant for
 20 years, the last 5 years in the plate department. In April 2007, Glen Kraetsch, Michel's
 immediate supervisor, initiated a conversation with him at Michel's workstation. At the end or
 the workday, as Kraetsch was leaving, he said to Michel, "I wouldn't want to be the last one to
 sign out of the Union." Michel asked if that was a "threat." Kraetsch responded, "No, I'm just
 10 telling you as a friend." Michel, at the time, told one other, unnamed, employee about what
 Kraetsch said, and Michel and the unnamed fellow employee laughed about it.⁴¹

Michel testified that he and Kraetsch have known each other for a long time, are friends,
 and have taken a trip together, along with others from the plant. Michel also testified that he
 15 didn't view Kraetsch's comment as a threat.

Marquart Conversation with Brian Johnson

20 Brian Johnson is currently employed by the Respondent as a core cutter, a bargaining
 unit position, and has worked at the Rhinelander plant for 20 years. Johnson was a union
 member at the time of the decertification election, but was not at the time he testified.
 Sometime between mid-January and May 2007, while Johnson and a group of employees were
 conversing in the lunchroom at the plant, Marquart walked up to them and asked why "we
 wouldn't withdraw from the Union." Johnson testified that he doesn't remember whether he
 25 responded. On cross-examination, Johnson testified that he and Marquart have been friends
 for about 18 years, and that he did not take offense at Marquart's question. Respondent's
 counsel asked, "Now this comment that you said Mr. Marquart made, did you take it as a
 serious question by him, why wouldn't you get out of that Union? Johnson answered, "Not
 really, no."⁴²

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35 said, and so answered. Unlike the Respondent's affidavits, he was not asked to characterize
 statements as to whether or not they were "threats" or "promises" or categorize statements as to
 whether or not they constituted "interrogation" or "futility." For reasons set forth above, I find
 that Freudenberg is a credible witness and his testimony reliable. I rely on his live testimony as
 to what was actually said in his conversations with Freund, not on the conclusionary statements
 in his affidavits as to whether words may or may not have constituted "promises" "threats,"
 "interrogation," or "futility."

40 ⁴¹ Credited testimony of Gary Michel. Kraetsch did not testify. Michel fully answered the
 questions of all counsel in a nonargumentative fashion, displayed excellent recall, and the
 demeanor of a witness striving to truthfully answer the questions of all counsel. His testimony is
 uncontroverted and reliable.

45 ⁴² Findings based on Johnson's credited testimony. Marquart denied that, in the presence
 of other people, or on any other occasion, he asked Johnson why he wouldn't withdraw from the
 Union. Johnson testified in a straightforward manner with good recollection, answered the
 questions of all counsel in a nonargumentative fashion and, based on such and my
 observations of his testimonial demeanor, I found him to be a credible witness. Further, as
 Marquart and Johnson are friends, it is unlikely that Johnson would lie about the conversation.
 50 As discussed above, I do not rely on Marquart's testimony. Accordingly, I credited Johnson's
 testimony as to Marquart's question.

Marquart Conversation with Daniel Barlog

Daniel Barlog is currently employed by the Respondent as a press assistant, a bargaining unit position, and has worked at the Rhinelander plant since about November 2006. Barlog testified that he found the atmosphere in the plant following the decertification vote very contentious and argumentative, and that he decided to speak to Marquart directly to “hopefully direct any of the conversations away from me.” So, about “a couple of weeks after the decertification vote,” Barlog approached Marquart in Marquart’s office. Barlog told Marquart that the “fight” wasn’t his, that he was going to stick with the Union. Marquart responded that it was up to the “new guys” to get through with this and that “the future of the company depended on us.” Marquart then performed some calculations on a calculator, and told Barlog that if he worked at the Hendersonville plant he would earn about 90-cents-per-hour more. The Hendersonville plant is nonunion. Marquart also told Barlog that even if he wasn’t in the Union, it would still have to represent him. Barlog responded that he’d stick with the Union and vote on the contract. Marquart responded that “there wasn’t going to be a contract.”⁴³

Freund Conversations with Barlog

About a week after his conversation with Marquart, Barlog’s immediate supervisor at the time, Freund, approached Barlog while he was working at his press, and asked him why he was in the Union. Barlog replied that he “walked into a union shop and was going to stay until it goes.” About a week later, Freund again approached Barlog while Barlog was working, and told Barlog that he was the “last of the new hires that hadn’t signed out of the union,” and that he had asked Barlog to be a leader, not a follower. Barlog did not respond.

About a week later, Freund again approached Barlog while Barlog was working. Freund told Barlog that he was the last one in the pressroom to be left in the Union. Barlog responded, “I guess that would make me a leader and not a follower.” Freund did not respond, but testified that Freund walked away with “body language that told me that he wasn’t happy with me.” About a week later, at his workstation, Barlog asked Freund why he was harassing him. Freund responded that he wasn’t harassing Barlog, he was just doing his job. Barlog then walked away.⁴⁴

⁴³ Based on his demeanor, strength of recollection, and generally nonwavering, consistent answers during a vigorous cross-examination, I found Barlog to be an impressive and credible witness. For reasons discussed elsewhere herein, I did not find Marquart to be a reliable witness. I, thus, credited Barlog’s testimony in respect to his conversation with Marquart. Marquart testified that Barlog brought up the subject of the pay at Hendersonville, that he told Barlog that it wasn’t a promise as to what would happen at Rhinelander but that Hendersonville press assistants made 90-cents-per-hour per hour more than at Rhinelander, that Barlog mentioned that he lost his job at Home Depot because he didn’t have union representation, and that Marquart responded that the “union still has to represent you whether you’re in or out of the union.”

⁴⁴ Findings based on the credited testimony of Barlog. As discussed earlier, I found Barlog to be an impressive and credible witness. Freund, a less impressive witness based on his testimonial demeanor, is a supervisor testifying in furtherance of his employer’s interests. Barlog is a current employee testifying adversely to his employer’s interests. Further, Barlog’s testimony is consistent with the credited testimony of other witnesses as to similar remarks Freund made to other employees. Under these circumstances, I credited Barlog’s testimony as to his conversations with Freund.

Freund and Gauthier Conversation with Barlog

5 About February 22, 2007, about a week after the last Freund/Barlog conversation detailed above, Barlog went to the foreman's office to speak to Freund and fellow supervisor Mark Gauthier. Barlog testified that he decided to go to the office to place the foremen "into an uncomfortable spot as they had done to me so many times and show them basically how I felt about it." Barlog initiated the conversation by asking Freund if he believed in God.⁴⁵ Freund responded that he believed in God, but didn't believe in the church or the money "they make." Barlog responded that the churches use the money for good works. Gauthier interrupted Barlog, and said, "Why don't you do God a favor and get out of the Union." Barlog ended the conversation by responding, "I had prayed about it and the answer I got back was to stay in the Union."⁴⁶ Barlog told two fellow employees about the conversation.

15 Marquart Conversation with Thomas Nolda

15 Thomas Nolda is employed by the Respondent as a press helper at the Rhinelander plant, where he has been employed for over 32 years. In the spring of 2006, Nolda was demoted from press operator, a position he had held for the previous 30 years or so. At that time a dispute arose as to whether Nolda would retain his 30 odd years of plant seniority or whether his seniority would start anew with the job change. According to Nolda, he "talked to our union rep and they stepped in and took care of it."

25 ⁴⁵ Barlog testified that he is a religious person and it is not uncommon for him to talk about religion. The sense of his testimony was that by bringing up religion it would place the foremen in the uncomfortable position of talking about a private subject, so that they would understand why it was uncomfortable for Barlog to be approached about the Union, a subject he considered to be private.

30 ⁴⁶ Findings based on Barlog's credited testimony. For reasons stated above, I found Barlog, as opposed to Freund and Gauthier, to be a credible, eminently trustworthy witness. Gauthier testified that he and Freund were having a conversation about "God, religion, and church" when, in the course of the conversation, Barlog entered the office and exchanged comments about God, religion, and church with Freund, and that as Barlog was leaving the office, Gauthier said 35 "Maybe God can help you decide what you want to do with the Union." Gauthier testified that he made the comment, "jokingly," and that he didn't recall Barlog making a response. Freund testified that he didn't know what started the conversation, but he and Gauthier were talking about religion and Freund commented to Gauthier that he had faith, but didn't go to church, that 40 Barlog entered the office during the conversation, that he and Barlog exchanged viewpoints on church and religion, that as Barlog was leaving the office, Gauthier said "Something to the effect about asking Dan to ask God to help him decide whether or not he should be part of the Union," and that he didn't recall Barlog responding.

45 Barlog's testimony that he went to the foreman's office for the specific purpose of initiating a conversation about religion so as to attempt to make the supervisors understand he was uncomfortable being approached about the Union, which he considered a private subject, makes sense in context. Gauthier's and Freund's testimony that Barlog just happened into a conversation about religion between the two of them in the foreman's office is dubious. If Barlog had some other purpose for his visit to the office, other than to raise the subject of religion, it is likely that said topic would have been discussed during the conversation. There is no testimony 50 that it was. Could Barlog, intending to discuss religion, have entered the office at the very moment that Freund and Gauthier were already discussing religion? Not likely.

In mid-May 2007, Marquart approached Nolda while he was working by the roll inspector's table. Marquart asked Nolda if he was thinking about signing a Union withdrawal card. Nolda responded, "No," and told Marquart that it was because of "what they [the Respondent] tried to do to me with my seniority." There was no further conversation at that point.

About an hour later, Marquart called Nolda into his office, where the Respondent's human resource manager, Terry Goldbach, was also present. Marquart read to Nolda portions of the minutes from a meeting that the Union and the Respondent had as to Nolda's seniority. Nolda told Marquart that "that was why I wouldn't do it." Nolda then left the office. Nolda told "a couple" of employees about the conversations with Marquart.⁴⁷

Freund Conversation with Thomas Hitter

Thomas Hitter is employed by the Respondent as a journeyman press operator, a bargaining unit position, at the Rhinelander plant, where he has worked since 1988. Hitter had been vice president of the GCIU in the past for about 12 years, although the record does not detail which 12 years.

About May 20, 2007, Hitter was working on the press with his press assistant, Steve Schumacher, and the two of them were chatting while working. Schumacher mentioned that he had been asked by Marquart "to get a feel for guys to try and get them to opt out of the Union."⁴⁸ Hitter's press is located in front of the foreman's office, with windows facing the work floor. Foreman Freund left the office, approached Hitter, and asked, "Is Steve talking your ear off?" Hitter responded that it was "all good." Freund asked Hitter if he "was thinking about opting out of the Union." Hitter responded, "Yeah. Well, the only thing that appealed to me was the long-term disability." Hitter told Freund that he didn't know what the Respondent's disability plan entailed. Freund responded that the plan was on Hitter's workstation computer, and Freund then pulled up the Respondent's employee handbook for nonunion facilities on the

⁴⁷ Findings based on Nolda's credited testimony. Marquart testified that he and Nolda were standing by the "draw-up table" "just chitchatting along talking about different beers and different flavors because Tom likes his beer." According to Marquart, in the midst of the conversation, without prompting, Nolda suddenly said, "I'm going to stick with the Union because they saved my seniority." Marquart responded that it was the Respondent's side that wanted to preserve Nolda's seniority, and Nolda said, "Well, that's not what I've been told." According to Marquart, he left, went to his office, found the minutes of the meeting with the Union, and paged Nolda to his office. According to Marquart, he told Nolda he could read the minutes for himself. Marquart testified that during neither conversation did he ask Nolda if he was thinking of signing out of the Union.

Nolda testified in a straightforward manner, answering the questions of all counsel in a nonargumentative fashion, and displayed the demeanor of a witness attempting to fully answer questions truthfully. He is a current employee testifying adversely to the interests of his employer, and with nothing material to gain by his testimony. It doesn't appear likely that, in context, Nolda would have suddenly and spontaneously brought up the subject of his union membership in the midst of a conversation about beer flavors. For reasons discussed above, I do not rely on Marquart's testimony. Accordingly, I credited Nolda as to his conversations with Marquart. Goldbach was not asked about, and did not testify as to, the conversation in Marquart's office.

⁴⁸ Credited testimony of Hitter, who I found a trustworthy witness, as discussed below. I note there was no objection to the question or testimony, and Schumacher did not testify.

computer, and scrolled through the information to the long-term disability plan. Freund told Hitter that the nonunion plants had the long-term disability plan, and that “we would have it here if we had been nonunion.” The Respondent did not provide long-term disability coverage at the Rhinelander plant.

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Later that day, Hitter and Freund spoke again. Hitter told Freund that the only thing that scared him about resigning from the Union was his distrust of Marquart and Goldbach, emanating from his experience when he was GCIU vice president. Freund responded that in nonunion plants they have committees similar to grievance committees, which decide discharge and reprimand issues. Later during the same shift, Freund paged Hitter over the loudspeaker to come to a press that Freund was working on. When Hitter arrived, Freund told him that he thought he would be better off without the Union. When Hitter didn’t respond, Freund again mentioned the committees in nonunion plants that “would be similar to what we have now.”⁴⁹

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Marquart Conversation with Hitter

Hitter began a short-term disability leave on May 23, 2007. On June 1, about 5 p.m., Marquart called Hitter at home. Marquart had never before called Hitter at home. After Marquart identified himself, his first words were “I’ll bet you wish the vote had gone the other way so you could get long term disability.” Hitter responded that he had been on short-term disability leave a couple of years before for surgery, that he made it through that time, and he would be all right. Hitter explained further that he was care-giving for his father who was ill, that his father had a pension, and they would be fine.⁵⁰

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⁴⁹ Credited testimony of Hitter. Hitter displayed excellent recall of the detail of events, impressive testimonial demeanor, and noncombative and consistent answers to the questions of all counsel. His testimony as to comments made and questions asked by Freund, was similar to other conversations testified to by other witnesses, and reinforces the probability that Freund made the comments and asked the questions. Hitter is a current employee testifying adversely to the interests of his employer, with nothing material to gain from his testimony, while Freund is a supervisor testifying in the interests of his employer.

30

Freund testified that Hitter initiated the first conversation as to long-term disability, that Hitter was already looking at the Respondent’s employee handbook on the computer by his workstation, and that Hitter inquired of Freund as to how the Respondent’s long and short-term disability worked, and that Freund then directed Hitter to talk to the Respondent’s human resources department about that. Freund denied that he told Hitter that if there was no union at Rhinelander, there would be long-term disability coverage or that the nonunion plants had such coverage and Hitter would have it at Rhinelander if there was no union. Freund testified that he did not tell Hitter that if there were no union at Rhinelander, he would have the same grievance procedure available to him as at Printpack’s nonunion plants and implied he couldn’t have told Hitter this because “I would have no way of knowing that.”

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As indicated above, Hitter was an impressive witness with no apparent motive to be untruthful. His testimony as to Freund’s comments and questions, along with the testimony of other witnesses, presents a consistent picture of Freund’s behavior during this period, and is believable. Freund’s testimony that Hitter was perusing the Respondent’s benefits on the internet when he was supposed to be working and that Freund said nothing about Hitter’s usage of worktime doesn’t ring true. For the reasons discussed herein, Hitter is the more reliable witness, and I credited his testimony as to his conversations with Freund.

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⁵⁰ Findings based on the credited testimony of Hitter. Hitter is a reliable witness for reasons discussed above. I do not rely on Marquart’s testimony for reasons discussed above. Marquart testified that he called Hitter at home because he had known Hitter for 17 years, and “found out

Continued

Marquart Conversation with John Edwardson

5 John Edwardson is currently employed by the Respondent in the moss type department (preparation of printing plates), a bargaining unit position, at the Rhinelander plant, where he has worked for 17 years. On a Monday, during May 2007, Edwardson's supervisor, Brian Karnosky, told Edwardson that Marquart wanted to speak to him about a reprimand he was receiving for failing to sufficiently trim some print plates.

10 Edwardson reported to Marquart's office, a place he had only rarely been to before. Marquart asked Edwardson what happened. Edwardson explained that the mistake happened at the end of his shift, and that he had just missed "trimming it off." Upon Edwardson's explanation, Marquart changed the subject to Edwardson's son, Ben, who also worked at the plant as a new employee still on probation. Marquart told Edwardson that Ben "was struggling
15 along and he was going to give him another chance," but that because of the union contract there was nowhere else to move Ben to." Marquart added that without a union there, he could put people where he wanted.

20 Marquart then interjected that he had found out a new benefit that Printpack gives, that is that they give \$250 to somebody who quits smoking. Marquart then asked Edwardson "What do you think?" Edwardson responded that he didn't want to opt out of the Union because his wife worked at the credit union, and the union and nonunion people both get loans through there, that he didn't want the bickering in the plant getting to her, and that he wanted to stay neutral. Edwardson testified that following the conversation, he told employees Terry Pipgras,
25 Keith Kennedy, and Ed Bauer about the interchange.⁵¹

30 that Tom was going to be listed as permanently disabled and would not be returning to work." Marquart admitted that during the conversation he made the statement Hitter testified to, but denied he began the conversation with that statement.

35 ⁵¹ Findings generally based on Edwardson's credited testimony. Edwardson is a current employee of the Respondent, with nothing material to gain if the General Counsel prevails. He demonstrated good memory for detail, was nonargumentative in answering the questions of all counsel, and displayed the demeanor of a witness attempting to truthfully answer questions. For reasons discussed above, I concluded that I could not rely on Marquart's testimony. Here,
40 however, I do credit Marquart as to his telling Edwardson that because of the union contract there was nowhere else to move Ben to. While Edwardson did not testify (nor deny) that Marquart said this, it makes sense in context, especially with Marquart then commenting that without a union he could put people where he wanted.

45 In response to a question on cross-examination, Edwardson testified that he didn't say anything in the affidavit he gave the Board on June 6, 2007, during the unfair labor practice charge investigation, about Marquart telling him that "if the Union wasn't there, he could do anything he wanted." The affidavit was never introduced into evidence, nor was that portion read into the record. Consequently, it is not clear which events were covered in the affidavit and
50 which were not. Thus, I cannot determine whether, or to what extent, the affidavit may be inconsistent or consistent with Edwardson's testimony. Further, Edwardson did not testify that Marquart said "he could do anything he wanted" [if there were no union in Rhinelander] as was posited in the question of the Respondent's counsel, but that Marquart said that "without a union there, he could put people where he wanted." These are two different things. In sum, I generally credited Edwardson because he demonstrated by demeanor and otherwise that he was a reliable witness.

Kraetsch Conversation with Edwardson

5 The day after his conversation with Marquart, while Edwardson was performing his job, his immediate supervisor, Glen Kraetsch, called Edwardson to come to a hallway area, by the graphics office and main office. In the hallway area, Kraetsch told Edwardson, "Pat wants to know your opinion; I know you talked to him yesterday." Edwardson responded that he told Pat Marquart that he didn't want to opt out of the Union because his wife worked at the credit union. Kraetsch asked, "Do you think it would be better without a union here?" Edwardson replied, "Maybe." Kraetsch responded that he's "a little worried because they won't fix the copy machine over there"; that "the graphics department has to come down and use ours." Kraetsch added, "They don't want to put no money into it—into the company," and that he's "a little worried about that." At some point during the conversation, Edwardson mentioned peer pressure as to why he was reluctant to resign from the Union. Kraetsch ended the conversation by telling Edwardson that he would tell Marquart that Edwardson didn't want to opt out of the Union because of "peer pressure." Edwardson testified that he told employees Terry Pipgras, Keith Kennedy, and Ed Bauer about his conversation with Kraetsch.⁵²

Restoration of Harold Williams to Journeyman Status/Pay

20 Harold Williams, currently employed by the Respondent as a journeyman press operator, a bargaining unit position, has worked at the Rhinelander plant for 17 years.⁵³ A press operator's duties include operating the press, overseeing an assistant who helps with the press operation, and turning out the finished product.

25 Because of productivity problems, Williams was placed on a 30-day probation on June 8, 2006. At the end of the probationary period, Williams' production remained at about 85 percent, with 100 percent being considered the minimum required to be successful, and he was, consequently, placed on a second 30-day probation. At the end of the second 30-day probation, Supervisor Gauthier told Williams that he had failed the probation because his production remained approximately 85 percent.

30 On September 27, 2006, Marquart issued a memo to Williams, with the subject line "Classification Status." The memo described Williams' production during 2005 of 90.2 percent and 2006 of 86.5 percent as being unacceptable, that his production during his two probations of 85.6 percent and 85.5 percent was also unacceptable and that, as a result, he was being demoted from "Journeyman Press Operator," and being reclassified as an "AP 2."⁵⁴ As to future performance, Marquart's memo specified, "If your performance as an AP 2 press operator is acceptable you could advance to AP 3 and AP 4. You will not be permitted to advance unless you can operate Presses 4, 5, and 6 completely and your press operation performance meets the Company's performance expectations." Marquart's memo also warned that if Williams failed to reach an acceptable level, the Respondent could be placed on probation again or assigned to a different classification. Williams spoke to various supervisors about his unhappiness with the demotion and expressed his thought that "it had been done unfairly." The response was, generally, that they were sympathetic, but there was nothing they could do.

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⁵² Findings based on the credited testimony of Edwardson. I found Edwardson to be a credible and trustworthy witness, for reasons stated above. Supervisor Kraetsch did not testify.

⁵³ There are five levels of the press operator job at the Respondent's Rhinelander plant. They are, in ascending order: apprentice 1, 2, 3, 4, and a journeyman level.

⁵⁴ "AP" apparently referring to apprentice.

On September 28, 2006, Union Chief Steward Edward Bauer sent an e-mail to Marquart in which he requested that the Respondent provide Williams with “all reasonable training, guidance, and information to allow him to improve with reasonable effort as set forth in 20.4 of the agreement.” In the e-mail, Bauer stated he was making the request in hopes of avoiding the grievance procedure. On November 19, 2006, Bauer, on behalf of the Union, filed a grievance over the Williams demotion. On December 27, 2006, Bauer e-mailed Human Resources Manager Goldbach, informing him that the Union wanted to move the Williams grievance to the second step, and schedule all outstanding grievances to be discussed the same day. Goldbach responded by e-mail, “That would work for me. Let’s get the contract settled and then we can set up a date to discuss grievances.” Meanwhile, Williams’ production improved, and the Respondent’s records show that for October, November, and December 2006, and January 2007, respectively, his production was: 100.3 percent, 105.6 percent, 118.3 percent, and 112.3 percent.⁵⁵

The subject of Williams’ demotion also came up during contract negotiations between the parties in October and November. The Union raised the demotion as an issue during the first bargaining session in October, and the parties discussed “what had happened there and why and what impact it might have on negotiations.”⁵⁶ The subject of the demotion was again raised by the Union a few sessions later, and the parties engaged in general discussion, but no agreement was reached,⁵⁷ and there is no evidence that either side proposed a resolution.

In January 2007, prior to the February 23 decertification election, the Respondent’s president, Dennis Love, and his mother Gay Love, the Respondent’s chairman of the board, visited the Rhinelander plant. As Dennis Love was walking through the plant, Williams initiated a conversation with him. Williams began the conversation by telling Love that he was not interested in selling his vote, and then presented his views on his demotion to him. In essence, Williams told Love he didn’t think his demotion was fair, and presented excusable reasons to him as to why his performance had been subpar and why, in his view, circumstances beyond his control caused him to fail his probations. Love responded that his concern was that all associates were treated fairly in the process, that he would look into the situation with local management, and “I can’t make you any promises but I’ll take a look at it.”⁵⁸

About 20 minutes after speaking to Love, Williams initiated a conversation with Marquart, near a press. Williams told Marquart that he didn’t want him to be “blindsided” by his

⁵⁵ Counsel for the General Counsel, in his brief, said, “There is no dispute that Williams’ performance in October, November, and December 2006, and January 2007 met or exceeded expectations.”

⁵⁶ Credited and uncontroverted testimony of Jonathan Swain. Swain is one of the Respondent’s attorneys. He served as co-counsel during the instant litigation, and represented the Respondent during contract negotiations.

⁵⁷ Credited testimony of Swain.

⁵⁸ Findings based on the credited testimony of Williams. On cross-examination by the Respondent’s counsel, Williams testified that he may also have told Love that Williams knew Love was not there to buy his vote. Williams did not testify to this on direct examination, and only hesitantly conceded on cross-examination that he may have said that. Williams is a credible witness based on his demeanor, strength of recollection, and noncombative answers to the questions of all counsel, but I did not credit this testimony as to what he *may have told* Love because he did not seem confident in that particular answer. In any case, I do not view this small piece of testimony as to his opinion of what Love was there for, as being significant to any determination I have made in this decision.

conversation with Dennis Love because Williams didn't know whether Love had talked to Marquart about the demotion. Williams expressed to Marquart his side of the probation and demotion, essentially that it was unfair, and told Marquart that he had told Love that he deserved to be reinstated to his journeyman position. Marquart told Williams that in the future
 5 "we could go back and revisit the probation or try to get you back up to the journeyman level again." Williams responded that he should be reinstated to journeyman "now." Marquart, paused a moment, then responded, "All right. We'll reinstate you to your journeyman and we'll go back and revisit that with the understanding . . . you are going to have to get that 100% up and you are going to have to maintain it." Williams said, "Okay." The Respondent reinstated
 10 Williams' journeyman wage rate on February 18, 2007. The decertification election took place on February 22 and 23, and Williams resigned from the Union in the summer/fall period of 2007.⁵⁹ The Respondent never formally notified the Union of Williams' reinstatement to journeyman status.

15 As noted, Bauer brought up the subject of the Williams demotion grievance at contract negotiation meetings with the Respondent in October 2006, challenging the demotion, but there was no substantive discussion of the grievance.⁶⁰ Bauer testified that he had never experienced a situation as steward where the Respondent demoted an employee, the Union grieved the demotion, and the Respondent then unilaterally reinstated the employee, without
 20 discussion and without informing the Union.

Analysis and Conclusions (Case 30-CA-17727)

25 The evidence, as reflected in the facts found above, demonstrates that the Respondent, in the run-up to the decertification election, campaigned to defeat the Union and, when the Union prevailed, waged a campaign to weaken and eventually defeat the Union by discouraging union membership and/or the payment of union dues. The Respondent may legally campaign against a union and inform its employees of its views on union representation, and the complaint contains no allegations as to the Respondent's campaign in respect to the
 30 decertification election. But an employer's campaign against a union crosses the line into illegality when it involves threats, interrogation, promises, and the like.

I have concluded herein that the facts found above establish that in many, but not all, instances alleged in the complaint, the Respondent crossed the line and violated Section
 35 8(a)(1), and, in respect to Williams, 8(a)(3) and (5), in addition. I am not persuaded by the Respondent's argument to the effect that because the Respondent's attorney, in January 2007, instructed Rhinelander supervisors not to violate the law, using the "TIPS" acronym, it is unlikely its supervisors would have engaged in the alleged 8(a)(1) conduct.

40 In support of its argument, the Respondent, in its counsels' brief, cites *Comcast Cablevision*, 313 NLRB 220, 223 (1993), and quotes the administrative law judge's⁶¹ decision as having found that such training has an "ameliorative value," and "makes violations less probable." The balance of the Judge's quote, not mentioned in the Respondent's brief, is instructive: "However, I also believe that supervisors, like employees, sometimes violate
 45 instructions. Specifically, I believe that supervisors sometimes violate instructions such as

⁵⁹ Williams testified that he resigned about three or four months prior to December 5, 2007, the date of his testimony.

⁶⁰ Question to Bauer on cross-examination: Q: "But you do acknowledge that during the negotiation sessions you challenged the demotion of Harold Williams?" A: "Correct."

⁶¹ Administrative Law Judge David L. Evans.

those given here, whether because implicitly conflicting instructions have been issued, or because the instructions are misunderstood, or because, in a given case, a supervisor simply thinks he can get away with it. Therefore, in each case, although I have carefully considered the fact that the supervisors received instructions not to violate the law, I have not considered that fact to be controlling.” While I have also carefully considered the effect of the instructions on the supervisors, in addition to the factors mentioned by the judge in Comcast, I have also considered the fact that the supervisors are not labor lawyers, and, in many of the conversations set forth above, may have thought, incorrectly, that they were not threatening, promising, or interrogating.

Applicable Law

Employer interference, restraint, or coercion of employees who exercise their statutory right to form, join, or assist unions is unlawful under Section 8(a)(1) of the Act. An employer may freely speak to his/her employees regarding issues involved in a union campaign, so long as the statements do not contain a threat of reprisal or force or promise of benefit. *Oahu Refuse Collection Co.*, 212 NLRB 224, 226 (1974). The test, under Section 8(a)(1) does not turn on the employer’s motive or whether the coercion succeeded or failed, but whether the employer engaged in conduct which it may be reasonably said tends to interfere with the free exercise of employee rights under the Act. *Gissel Packing Co.*, 395 U.S. 575 (1969); *Almet, Inc.*, 305 NLRB 626 (1991); *American Freightways Co.*, 124 NLRB 146, 147 (1959). Thus, it is violative of the Act for the employer or its supervisor to engage in conduct, including speech, which is specifically intended to impede or discourage union involvement. *F. W. Woolworth Co.*, 310 NLRB 1197 (1993); *Williamhouse of California, Inc.*, 317 NLRB 699 (1995). The test of whether a statement or conduct would reasonably tend to coerce is an objective one, requiring an assessment of all the circumstances in which the statement is made as the conduct occurs. *Electrical Workers Local 6 (San Francisco Electrical Contractors)*, 318 NLRB 109 (1995); *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 706 F.2d 1006 (9th Cir. 1985).

Marquart Conversations with Haenel

I found that in late March or early April 2007, Marquart asked Haenel if Haenel was going to stop paying union dues, and told Haenel that the future of the plant was “very in doubt” with the union and that “our” future would be better if we get rid of the union. I further found that in early April 2007 Marquart initiated a conversation with Haenel at his workstation, told him that the Respondent would grant a 3 percent raise when the Union was gone, that employees would receive further raises by performance review every six months, and that Haenel, because he was a top performer, “would probably get an 11% raise right from the top in the first year.”⁶² Finally, I found that on April 22 or 23, 2007, Marquart again initiated a conversation with Haenel at his workstation in which he again asked Haenel if he had opted out of paying union dues, and told Haenel that he needed the answer before meeting with Dennis Love about the future of the plant because if “things go down in the plant, you need to be on the right side of the street.”

The General Counsel asserts that Marquart’s comments to Haenel violated Section 8(a)(1) as follows: the questioning of Haenel on April 22 or 23 constituted coercive interrogation,⁶³ as alleged in complaint paragraph 15(b); the comments to Haenel on April 22 or

⁶² Marquart said that this would include a 2 percent raise from not having to pay union dues.

⁶³ Counsel for the General Counsel does not argue that Marquart’s questioning of Haenel during the first conversation constituted coercive interrogation.

23 constituted a threat of unspecified consequences if he failed to resign from the Union, as alleged in complaint paragraph 14(b); the comments to Haenel in early April constituted a promise of pay increases, as alleged in complaint paragraph 12(b), and increased benefits (via performance reviews) as alleged in complaint paragraph 13(a), all if employees withdrew support from the Union ; and that his comments to Haenel during their first conversation in late March or early April constituted a threat of plant closure as alleged in complaint paragraph 10(a).

I conclude that Marquart's comments to Haenel in late March or early April to the effect that the future of the plant was very much in doubt and that said future would be better if employees got rid of the Union would reasonably be viewed by employees as a threat, or at least prediction, of plant closure if the Union remained their collective-bargaining representative. As a threat, Marquart's comments coerced Haenel in the exercise of Section 7 rights. *Frances House, Inc.*, 322 NLRB 516 (1996). As a prediction, Marquart's comments that the future of the plant was very much in doubt if the Union remained, fell far short of the carefully reasoned objective prediction permitted by the Court in *NLRB v. Gissel Packing Co.*, 395 U.S. supra at 618.⁶⁴

The Respondent's argument, to the effect that Love's comments to Haenel, that the plant would not close, "negated" any coercive impact that Marquart's comments may have had is not persuasive. It fails to take into account the relative timing of the two conversations. Love's comments occurred one to two months prior to Marquart's, and do not serve to inoculate whatever later coercive comments are made by the Respondent's managers. *Evergreen America Corp.*, 348 NLRB 178, 181 (2006). Further, while Love is the Respondent's president, Marquart is the Respondent's highest manager at the plant, and is the highest manager employees see on a routine basis. Finally, supervisor Bowman's comment to Haenel immediately after the conversation with Love, that Love had to say what he said, at least implies the possibility to Haenel that Love's words were empty. Accordingly, I conclude that Marquart's comments were a threat of plant closure which coerced employees in their exercise of Section 7 rights, and violated Section 8(a)(1) as alleged in complaint paragraph 10(a).⁶⁵

I further conclude that Marquart's questioning of Haenel on April 22 or 23 constituted coercive interrogation and violated Section 8(a)(1) as is alleged in complaint paragraph 15(b). Interrogation of employees is not unlawful, per se. In determining whether or not an interrogation violates Section 8(a)(1) of the Act, the Board looks at whether under all the circumstances the interrogation reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Rossmore House*, supra; *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985). "In the final analysis, our task is to determine whether under all the circumstances the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act." *Westwood Health Care Center*, 330 NLRB 935, 940 (2000).

⁶⁴ An employer "may even make a prediction as to the precise effects he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived to close the plant in case of unionization." *Gissel*, supra at 618. Here the prediction, or threat, was bald, with no objective evidence presented in support.

⁶⁵ The complaint alleges the conversation occurred in February. Based on record testimony, I concluded that the conversation occurred in late March or early April.

Factors I considered include that the interrogation was not isolated, that it occurred during the course of other unfair labor practices, that it occurred during the course of a conversation during which other violations took place including a threat of unspecified consequences, that the information sought involved membership in the Union, that the words were uttered by the Respondent's highest ranking manager at the facility, and that the Respondent had repeatedly made known its hostility to the Union. As to the significance of these factors see, for example, *Emery Worldwide*, 309 NLRB 185, 186 (1992), where the Board relied on the absence of these factors in finding no violation.

Under the totality of the circumstances, including Marquart's previous questioning of Haenel, I find that Marquart's interrogation reasonably tended to coerce Haenel so that he would feel restrained from exercising Section 7 rights. While the testimony of both witnesses unequivocally demonstrates that Marquart and Haenel were good friends, that relationship would reasonably lead Haenel to rely on the veracity of comments made by his close friend in management and, indeed, Haenel so testified. *Acme Bus Corp.*, 320 NLRB 458 (1995); *Wichita Eagle & Beacon Publishing Co.*, 199 NLRB 360 (1972).

Additionally, Marquart's explanation to Haenel on April 22 or 23, that the reason he needed to know whether Haenel had stopped paying union dues was because Marquart was about to speak to Dennis Love, and "if things go down in the plant, you need to be on the right side of the street," was a threat of unspecified consequences if Haenel did not stop paying dues to the Union. The fact that this warning to Haenel was provided by Marquart, Haenel's friend in management, would serve to underscore its seriousness to Haenel. That the threat accompanied the interrogation, further demonstrates the coercive nature of the interrogation. Accordingly, I conclude that Marquart's comments violated Section 8(a)(1) as alleged in complaint paragraph 14(b).

Finally, I conclude that Marquart's comments to Haenel in early April to the effect that when the Union was gone, the Respondent would grant a 3 percent raise, that employees would receive further raises by performance review every six months, and that Haenel, because he was a top performer, would probably get an 11 percent raise right from the top in the first year, constituted promises of increased wages and benefits if employees were no longer represented by the Union, and violated Section 8(a)(1) as alleged in complaint paragraphs 12(b) and 13(a). Promising benefits to employees if they resign from the union violates Section 8(a)(1). *Wehr Constructors, Inc.*, 315 NLRB 867 (1994).

Based on my credibility findings herein, I reject the Respondent's argument that Marquart was only discussing the wages and benefits provided by the Respondent at nonunion plants and that he was not promising such would happen at Rhinelander. Based on the credited findings, and in the context of the Respondent's campaign against the Union which continued after the failed decertification effort, and which included threats and interrogation, Marquart's comments impliedly promised that Rhinelander employees would receive the superior wages and benefits received by the Respondent's nonunion facility, if the Union were removed from the equation. See *Westminster Community Hospital, Inc.*, 221 NLRB 185 (1975).⁶⁶ Section 8(c),

⁶⁶ In *Westminster*, the Board held as follows: "We find in [the supervisor's] comparison of Respondent's wage rates with the higher rates at other hospitals, which had no union representation and which were owned and operated by the same parent organization which owns and operates Respondent, an implied promise to increase employee benefits if the employees rejected the Union. Considered in the context of [the supervisors] other remarks, this unfavorable comparison of wage rates was obviously designed to highlight the potential of

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which sanctions neither threats nor promises, provides the Respondent no defense here. *Schenk Packing Co.*, 301 NLRB 487, 489 (1991). Further, in the context of the Respondent's campaign and other violations found herein, even if Marquart expressed on this occasion, or others, that he couldn't make promises, as is argued by the Respondent, it would not detract from the clear message to employees that if the Union were gone, these benefits would be theirs. As the Board has stated in similar circumstances, "we conclude that Respondent's oft-repeated stock phrase of "no promises" was a mere formality, serving only as an all-too-transparent gloss on what is otherwise a clearly implied promise of benefit." *Raley's, Inc.*, 236 NLRB 971, 972 (1978).

Lewis Conversation with Haenel

Counsel for the General Counsel, in his brief, points to the conversations between supervisor Pete Lewis and Haenel as the basis for complaint paragraphs 10(c) and 11(b). I found that sometime in late March or early April, Lewis initiated a conversation with Haenel at his workstation, that Lewis mentioned the Union and said that "we're doomed," that Dennis Love didn't like unions, that the company will not put any money into the plant or upgrade machines⁶⁷ as long as the Union was present, and that the future of the plant did not look good right then. I further found that Lewis initiated a second similar conversation the following week with Haenel.

The comments by Lewis to Haenel crossed the line from Section 8(c) free speech into coercive language. By telling Haenel that the plant was doomed and that one of the Respondent's principals didn't like unions, Lewis was threatening employees with plant closure if employees continued to have union representation, as is alleged in complaint paragraph 10(c). By telling Haenel that the Respondent would not put money into the plant or upgrade machines as long as the Union was present, Lewis engaged in further threats, as alleged in complaint paragraph 11(b). Accordingly, I conclude that in said manner the Respondent violated Section 8(a)(1).

Freund Conversation with Haenel

Counsel for the General Counsel points to the conversation between Freund and Haenel as the basis for the allegations in complaint paragraphs 10(d) (threatened employees with plant closure if the Union remained) and 11(c) (threatened employees that no money or new equipment into the plant if the Union remained). While not argued by the counsel for the General Counsel, it would appear that the Haenel/Freund conversation also served as a basis for the allegation in complaint paragraph 15(a) (Freund coercively interrogated employees on two occasions in April). Based on my assessments of credibility, I found that about March 9 supervisor Freund initiated a conversation with Haenel at his workstation, asked Haenel if he had withdrawn from the Union or stopped paying dues, and told Haenel that the plant was in dire straits if employees didn't get rid of the Union because the Respondent wasn't going to upgrade any machines and the Love family didn't like unions.

employee benefits without union representation."

⁶⁷ The Respondent introduced evidence that, in fact, the Respondent had spent considerable sums upgrading plant equipment, and argues that, therefore, Lewis could not have accurately told Haenel that the Respondent would not invest in the plant with the Union present. Whether or not the comment by Lewis to Haenel was accurate, I found, based on my credibility resolutions that Lewis made the comments to Haenel. The fact that the Respondent had invested in the plant, does not ameliorate the seriousness of Lewis's threat as to what the Respondent may do in the future.

Based upon the above, I conclude that the Respondent, by Freund's threat about March 9, that the Respondent wouldn't upgrade machines if the Union remained, coerced employees in their exercise of Section 7 rights, as alleged in complaint paragraph 11(c). This is particularly so where, as here, the Respondent, through numerous supervisors, was conducting a campaign to cause employee disaffection with the Union and pressing employees to resign from the Union or to stop paying dues. As discussed earlier, Freund's comment was not in the mode of an objective fact-based prediction, but simply connected the Union's presence to a Respondent choice not to upgrade machines.⁶⁸ I do not find that Freund's comments also threatened plant closure, as alleged in complaint paragraph 10(d). Based on my factual findings above, and while Freund told Haenel that the plant was in "dire straits," essentially because the Respondent would not upgrade machinery with the Union present, he did not threaten that the Respondent would close the plant.

Finally, in the context of a conversation during which Freund told Haenel that the Love family didn't like unions and that the Respondent wouldn't invest in upgrading machinery with the Union present, Freund's questioning of Haenel as to his union membership and dues-paying status was coercive. Said interrogation of employees was not isolated, as found herein, and occurred in the context of the Respondent's campaign to cause employee disaffection with the Union. Under all these circumstances the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he would feel restrained from exercising rights protected by Section 7 of the Act. *Westwood Health Care Center*, supra. The questioning, thus, violated Section 8(a)(1) as coercive interrogation, as alleged in complaint paragraph 15(a).

Freudenberg Conversations with Freund

Counsel for the General Counsel asserts that the conversations between supervisor Freund and Freudenberg are the basis of the allegations contained in complaint paragraphs 11(d) (threat to not put money into new equipment), 15(a) (coercive interrogation), and 17 (futility of retaining union representation). I found that Freund engaged Freudenberg in two conversations in April, the first while Freudenberg was working in the shipping office, the second in the pressroom. During the first conversation, in mid-April, Freund asked Freudenberg if he realized that things would be better off without the Union, if he realized that the Union couldn't do anything more for him, and if he realized that he was paying into something that can't do anything more for him. During the conversation, Freund told Freudenberg that the Respondent will upgrade the machines and put new machines into the Rhinelander facility if the Union was gone.⁶⁹ During the second conversation, in late April, Freund asked Freudenberg whether he had resigned from the Union yet, and then asked why he hadn't resigned.

The Board has repeatedly held that when an employer informs employees that obtaining, or maintaining, union representation is futile, it coerces employees in the exercise of their Section 7 rights, and violates Section 8(a)(1). See, for example, *American Directional Boring, Inc.*, 353 NLRB No. 21, slip op. 2 (2008). Here, Freund implied such futility of continued union representation by the series of rhetorical questions he asked Freudenberg during their first conversation. Those rhetorical questions, which really didn't call for an answer, conveyed to Freudenberg that there was no purpose to continued union representation because there was

⁶⁸ Again, whatever the Respondent had done in the past as to machine upgrades, Freund's comment was directed as to what the Respondent would do in the future.

⁶⁹ As found, despite what he said earlier in the conversation, Freund concluded the conversation by telling Freudenberg that "I am not here to put pressure on you."

restrained, or coerced employees in the exercise or rights guaranteed in Section 7, and violated Section 8(a)(1) as alleged in complaint paragraph 14(a).

Marquart Conversation with Johnson

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Counsel for the General Counsel asserts that the conversation between Marquart and unit employee Brian Johnson serves as the basis for the allegation in complaint paragraph 15(c) (coercive interrogation in May 2007). I found that sometime between mid-January and May, Marquart walked up to Johnson, who was conversing with a group of employees in the lunchroom, and asked why he wouldn't withdraw from the Union. I further found that Johnson and Marquart had been longtime friends, and that Johnson testified that he did not take Marquart's comment as a "serious question."

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I find that, in the context of the Respondent's campaign against the Union, which included attempts to cause employees to either withdraw from the Union or stop paying dues as described herein, and other unfair labor practices, the questioning of Johnson by Marquart, the highest ranking manager at the plant, in front of other employees, would reasonably and objectively coerce employees in their exercise of Section 7 rights to belong to the Union and pay union dues. The interrogation was not isolated and did not occur in a vacuum. As discussed above, the fact that Marquart and Johnson were friends does not necessarily lessen the impact of the interrogation, particularly because it occurred in the presence of other employees. The fact that Johnson testified that because they were friends he did not take Marquart's statement as a "serious question" does not moot the illegality because alleged 8(a)(1) violations are viewed objectively, not subjectively. *American Freightways Co.*, supra.

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Marquart Conversation with Barlog

Counsel for the General Counsel asserts that the conversation between Marquart and bargaining unit employee Daniel Barlog serves as the basis for the allegation in complaint paragraph 12(a) (promising a pay raise). I found that in early March Barlog approached Marquart and told him that the "fight" wasn't his and he was "going to stick with the Union." Marquart responded that, in essence, the future of the plant was up to the "new guys." Marquart then performed calculations on a calculator and told Barlog that if Barlog worked at Hendersonville (nonunion plant), he would earn about 90 cents an hour more. Marquart added that even if Barlog wasn't in the Union it would still have to represent him and, when Barlog replied that he would stick with the Union and vote on the contract, Marquart responded that "there wasn't going to be a contract." Marquart's final comment to Barlog, as to the contract, was not alleged as a violation.

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Here, Barlog approached Marquart for the specific purpose of avoiding what he felt was the contentious atmosphere in the plant over the Union. Instead, Marquart used the opportunity to lobby against the Union by comparing Barlog's wage unfavorably to what he would earn at the Respondent's nonunion plant and telling Barlog that the Union would still have to represent him if he didn't belong, thereby suggesting that Barlog resign from the Union. While Marquart's explicit words as to the wages at the nonunion plant did not constitute a promise of such wages at Rhinelander should the Union depart, said words taken in the context of the balance of Marquart's comments to Barlog, and in the context of the overall campaign against the Union including the numerous unfair labor practices found herein and the repeated interrogation and solicitation to quit the Union or stop paying dues, would reasonably and objectively lead an employee to believe that the higher wages were being promised in exchange for getting rid of the Union. Thus, Marquart's words to Barlog coerced employees in their exercise of Section 7 rights, and violated Section 8(a)(1) as alleged in complaint paragraph 12(a).

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Freund Conversation with Barlog

5 Counsel for the General Counsel asserts that Freund's conversation with unit employee Barlog serves as the basis for the allegations in complaint paragraphs 15(a) (interrogation) and 16(a) (impression of surveillance). I found that Freund, Barlog's immediate supervisor, initiated three conversations with Barlog, the first about a week after Marquart's conversation with him, described above. I found that during the first conversation, Freund asked Barlog why he was in the Union. About a week later, Freund told Barlog that he was the last of the "new hires" that hadn't signed out of the Union, and that Barlog should be a "leader," not a "follower." A week later, Freund told Barlog that he was the last person in the pressroom left in the Union. About a week later, Barlog initiated a conversation with Freund, asking him why he was harassing him. Freund responded that he wasn't harassing him, he was "just doing his job."

15 The Board's test for determining whether an employer has created an impression of surveillance of union activities, is whether the employee would reasonably assume from the statement in question that employee union activities had been placed under surveillance. "The rationale behind finding an impression of surveillance as a violation of Section 8(a)(1) is that employees should be free to participate in union organizing activities without the fear that members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways." *Grouse Mountain Associates II*, 333 NLRB 1322 (2001). To find a violation, the Board does not require that the employer's words, on their face, reveal that the employer acquired its knowledge of employee activities by unlawful means. *United Charter Service*, 306 NLRB 150, 151 (1992). While the instant case does not involve union organizing, the Respondent's campaign against the Union, described herein, involved analogous circumstances.

30 I conclude that Freund's words to Barlog, which communicated to Barlog the alleged union status of the other employees in the pressroom and the status of other "new hires," clearly implied to Barlog that the Respondent was watching the union activities, status, and affiliations of its employees, and would objectively and reasonably coerce an employee in the exercise of Section 7 rights. This is particularly true where, as here, the words were spoken in the context of the repeated interrogation of Barlog, and the Respondent's campaign against the Union. Accordingly, I conclude that by Freund's words to Barlog, the Respondent created an impression that the Union activities of its employees were under surveillance, and violated Section 8(a)(1) as alleged in complaint paragraph 16(a).

40 I further conclude that as a result of Freund's questioning of Barlog as to why he was still in the Union, in the context of the repeated attempts by the Respondent to pressure Barlog and other employees to leave the Union or stop paying dues, and the Respondent's ongoing campaign against the Union including the other unfair labor practices found herein, an employee would objectively and reasonably feel restrained and coerced in the exercise of Section 7 rights and, in particular, in respect to membership in the Union. The Respondent's questioning of Barlog was not isolated, but part of an established pattern. Under these circumstances, Freund's questioning of Barlog violated Section 8(a)(1) as alleged in complaint paragraph 15(a). Even if Barlog were an open supporter of the Union, such would not validate what otherwise would be coercive interrogation, under the instant circumstances. *Cardinal Home Products*, 338 NLRB 1004, 1007 (2003).

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Gauthier and Freund Conversation with Barlog

5 Counsel for the General Counsel asserts that comments made by Gauthier, during a conversation between Gauthier, Freund and Barlog, served as the basis of the allegation contained in complaint paragraph 16(b) (created impression of surveillance). I found that about February 22, about a week after the last Freund conversation with Barlog, described above, Barlog went to the foreman's office to confront Gauthier and Freund, for the avowed purpose of making them "uncomfortable" as Barlog believed they had made him by approaching him about the Union. Barlog initiated a conversation by asking Freund if he believed in God. At some point Gauthier responded, "Why don't you do God a favor and get out of the Union."

10 In these circumstances, I do not find that Gauthier's comment was coercive. As argued by the Respondent, here Barlog, on his own initiative, walked to the foreman's office for the admitted explicit purpose of causing a confrontation and irritating the supervisors. Even if the purpose of Barlog's visit to the foreman's office was to "teach them a lesson" so that they wouldn't bother him with talk about the Union (some of it coercive), as essentially testified to by Barlog, the incident would not have occurred but for Barlog's aggressiveness. Gauthier's comment, rather than suggesting to Barlog that the Respondent was surveilling his union activities, was simply an unpleasant, spontaneous response to Barlog's bringing up the subject of religion, and well within the confines of Section 8(c). Further, finding a violation as to Gauthier's comment would simply be redundant in view of my other findings herein, and would have no effect on the remedy. Accordingly, I conclude that Gauthier's comment did not violate Section 8(a)(1) as alleged in complaint paragraph 16(b).

25 Marquart Conversation with Nolda

Counsel for the General Counsel asserts that the conversation between Marquart and unit employee Thomas Nolda served as the basis of the allegation contained in complaint paragraph 15 (d) (coercive interrogation). I found that in mid-May Marquart initiated a conversation with Nolda while Nolda was working, and asked Nolda if he was thinking of signing a "union withdrawal card." Nolda responded, "No," and added that it was because of the Respondent's actions concerning his seniority. An hour later Marquart called Nolda into his office and argued that it was the Union, not the Respondent, who took a position adverse to Nolda.

30 Under these circumstances, and in the context of the Respondent's campaign against the Union, and numerous other unfair labor practices found herein, including other instances of coercive interrogation, I conclude that Marquart's questioning of Nolda as to whether he had withdrawn from the Union to be coercive. Thus, Marquart, the highest management official at Rhinelander, approached Nolda at his workstation. Marquart's later continuation of the conversation in his office demonstrates that Marquart's purpose in initially approaching Nolda was to persuade him to drop out of the Union, if he hadn't yet. The natural effect of such questioning by the Respondent's highest official at the plant, would be to reasonably and objectively coerce an employee in the exercise of his Section 7 right to maintain membership in the Union. Accordingly, I find that Marquart's questioning of Nolda violated Section 8(a)(1) as alleged in complaint paragraph 15(d).

Freund Conversations with Hitter

50 Counsel for the General Counsel asserts that the conversations between Freund and bargaining unit employee Thomas Hitter served as the basis for the allegations contained in complaint paragraphs 13(b) (promise of increased benefits) and 15(e) (coercive interrogation). I

found that about May 20,⁷¹ while working on his press, a fellow employee, Steve Schumacher, told Hitter that he had been asked by Marquart “to get a feel for guys to try and get them to opt out of the Union.” Shortly thereafter, Freund, whose office window overlooks Hitter’s workstation, approached Hitter and asked, “Is Steve talking your ear off?” Freund then asked Hitter if he was “thinking about opting out of the Union?” Hitter responded that what appealed to him was long-term disability coverage. After using the workstation computer to pull-up information as to the Respondent’s long-term disability plan at nonunion facilities, Freund told Hitter that nonunion plants had a long-term disability plan, and “we would have it here if we had been nonunion.”

I further found that later that day, Hitter told Freund that the only thing that scared him about resigning from the Union was his distrust of Marquart and Goldbach. Freund responded by telling Hitter that the nonunion plants had committees similar to the grievance process, which decided discharge and reprimand issues. Still later in the day, Freund paged Hitter, told him that he would be better off without a union, and again mentioned the committees, saying that it “would be similar to what we have now.”

Under all the circumstances herein, I conclude that Freund’s questioning of Hitter objectively and reasonably would coerce an employee in exercising the Section 7 right to belong to a union. The interrogation occurred in the midst of the Respondent’s widespread campaign against the Union and in the context of the other unfair labor practices found herein, and Hitter’s answers to Freund were utilized by Freund as a basis to make promises, the object of which was to encourage Hitter’s disaffection with the Union. Freund’s questioning of Hitter was designed to ascertain Hitter’s position on the Union, and to provide Freund with a basis to further lobby Hitter to resign. *Manimark Corp.*, 301 NLRB 599 (1991). The questioning had no legitimate purpose. Accordingly, I find that Freund’s questioning of Hitter was coercive and violated Section 8(a)(1) as is alleged in complaint paragraph 15(e).

I further conclude that Freund’s discussion of the Respondent’s long-term disability plan and committee procedure at the Respondent’s plants explicitly and implicitly promised that such would be available to Hitter should the Union be removed from the scene. Freund’s words went beyond Section 8(c) speech because he explicitly told Hitter that the Rhinelander plant would have long-term disability if it was nonunion, and that the committees “would be similar to what we have now.” Employer promises made for the purpose of discouraging union activity violate the Act. *Tufo Wholesale Dairy, Inc.*, 320 NLRB 896 (1996); *Reliance Electric Co.* 191 NLRB 44, 46 (1971).

While the context here is not preelection, the evidence that Respondent was engaging in a campaign to cause employee disaffection, including resignations from the Union and dues revocation is overwhelming. Utilizing illegal means to eliminate the Union by depriving it of members and dues, is just as violative in the instant context as it is during a preelection campaign. Freund’s interrogation of Hitter that enabled him to learn what promises to make, and then implicitly and explicitly making those promises as to long-term disability and a nonunion grievance procedure, all for the purpose of encouraging Hitter’s resignation from the Union, is reasonably and objectively coercive and violative of the Act. Accordingly, I conclude by Freund’s words to Hitter, the Respondent violated Section 8(a)(1), as is alleged in complaint paragraphs 13(b) and 15(e).

⁷¹ The complaint alleges the conversations occurred on May 13. The evidence demonstrated that the correct date is May 20.

Marquart Conversation with Hitter

5 Counsel for the General Counsel asserts that the telephone conversation between Marquart and Hitter served as the basis of the allegation in complaint paragraph 13(d) (promise of increased benefits). I found that on June 1, 2007, shortly after Hitter began a short-term disability leave, Marquart called him at home and told him, "I'll bet you wish the vote had gone the other way so you could get long-term disability."

10 In the context of the other unfair labor practices found herein and the Respondent's continuing campaign against the Union, I conclude that Marquart's comments to Hitter objectively implied a promise that if the Union were to be decertified, long-term disability would be forthcoming. This is particularly true where, as here, Marquart's promise as to long-term disability was setup by Freund's prior interrogation during which he learned that Hitter was desirous of long-term disability coverage. Accordingly, I conclude that the Respondent violated
15 Section 8(a)(1), as alleged in complaint paragraph 13(d).

Marquart Conversation with Edwardson

20 I found that on a Monday in May,⁷² bargaining unit employee John Edwardson was told by his supervisor to report to Marquart's office, that Marquart wanted to speak to him about a reprimand he was receiving concerning a work problem. Upon reporting to the office, Marquart first asked Edwardson about the production mistake, and then changed the subject to Edwardson's son Ben, a new employee in the plant. Marquart commented that Edwardson's son was struggling, but because of the union contract there was nowhere else to move him to,
25 but without a union, he could move people where he wanted. Marquart then changed the subject and commented that he just learned of a new benefit Printpack provided, that is \$250 to employees who quit smoking. Marquart asked Edwardson what he thought, and Edwardson responded that he didn't want to opt out of the Union.

30 While counsel for the General Counsel's brief factually discusses the Marquart conversation with Edwardson, it does not argue to what complaint paragraph the testimony relates, or how Marquart's words violated the Act. There is no complaint allegation that in May, Marquart promised employees benefits if they withdrew from the Union. Complaint paragraphs 15(c) and (d) allege coercive interrogation by Marquart during May, but counsel for the General
35 Counsel, in his brief, cites Marquart's conversations with Johnson and Nolda, respectively, as the genesis of those allegations.

40 In any case, I do not find Marquart's asking Edwardson "what he thought" to constitute coercive interrogation. In addition to there being no apparent complaint allegation alleging Marquart's question as such a violation, and while Edwardson answered Marquart's question as if Marquart was seeking information about Edwardson's status with the Union, the wording of the question mentioned nothing about the Union, and followed immediately Marquart's comment about the \$250 bonus for quitting smoking. Thus, I conclude that Marquart was asking what Edwardson thought about the bonus, not about Edwardson's status with the Union. In addition,
45 I have already concluded that, on various occasions, the Respondent violated Section 8(a)(1) by questioning employees. A further finding as to Marquart's question to Edwardson would be cumulative and would provide no additional remedy.

50 ⁷² Based on the record, I am not able to more explicitly pinpoint the date of the conversation, other than it occurred in May.

Similarly, I do not find Marquart's words to Edwardson as to the bonus for quitting smoking to violate Section 8(a)(1). There is no apparent complaint allegation alleging such words by Marquart to be a violation and counsel for the General Counsel does not argue such in his brief. Further, such a finding would simply be cumulative of other promise of benefit violations found herein, and would not provide an additional remedy.

Kraetsch Conversation with Edwardson

Counsel for the General Counsel asserts that this conversation serves as the basis for the allegations in complaint paragraphs 10(e) (threaten plant closure), 13(c) (promise of benefits), and 15(f) (interrogation). I found that in May, about the day after Marquart's conversation with Edwardson, Kraetsch, Edwardson's immediate supervisor, initiated a conversation with Edwardson while he was working, taking him to a nearby hallway area. Kraetsch told Edwardson that he knew Edwardson had spoken to Marquart the day before, and that Marquart "wanted to know his opinion." Edwardson responded that he told Marquart that he didn't want to opt out of the Union. Kraetsch responded by asking if Edwardson thought it would be better without a union. When Edwardson responded, "Maybe," Kraetsch said that he was a little worried because they won't fix the copy machine and "they didn't want to put no money into it . . ."

The above facts do not establish that Kraetsch either threatened plant closure or promised a benefit during the conversation. In his brief, counsel for the General Counsel, essentially, concedes that Kraetsch did not explicitly promise or threaten, but argues that his words implied the threat that the plant would close if the Union remained, and a promise that the Respondent "will fix or upgrade the equipment if the Union is gone." While I have found that the Respondent's supervisors, including Kraetsch, have engaged in just such threats and promises on other occasions described herein, on this occasion Kraetsch neither mentioned nor implied that the plant would be shut during his conversation with Edwardson, nor did he promise anything. In these respects, Kraetsch's comments to Edwardson were within the limits of Section 8(c) speech because they did not threaten or promise, and, I conclude, were not violative of Section 8(a)(1) as alleged in complaint paragraphs 10(e) and 13(c).

However, Kraetsch's questioning of Edwardson, one day after his conversation with Marquart, and in the circumstances of the Respondent's campaign against the Union, the other unfair labor practices found herein, and the balance of Kraetsch's words including his expressed worry because the Respondent wouldn't fix the copy machine, is coercive. An employee, when pulled away from his workstation by his immediate supervisor and then questioned in a hallway, in these circumstances would objectively, reasonably feel coerced in the exercise of Section 7 rights to maintain union membership. Accordingly, I conclude that the Respondent violated Section 8(a)(1) by Kraetsch's questioning of Edwardson, as alleged in complaint paragraph 15(f).

Mark Gauthier Conversations with Haenel

Counsel for the General Counsel asserts that the conversations between Supervisor Mark Gauthier and Haenel served as the basis for the allegations in complaint paragraphs 10(b) (plant closure threats) and 11(a) (threats not to invest put money or new equipment in plant). I found that about March 9, Gauthier initiated a conversation with Haenel, who was working at his press. Gauthier told Haenel that the Respondent was a good company, that the upgrade of the machines wouldn't get done until the "unions were out of the plant," and that Printpack would "go downhill pretty soon" if employees didn't get the Union out. I further found that at a later date in March, Gauthier had a second similar conversation with Haenel.

Gauthier's comments to Haenel were not fact based objective predictions allowed under Section 8(c), but were instead explicit threats to Haenel that unless the employees removed the Union, there would be no upgrading of plant machinery. Further, in the context of other similar threats by the Respondent's supervisors to other employees and the Respondent's aggressive campaign against the Union, Gauthier's comment as to what would happen if employees didn't remove the Union, was a clear threat to the existence of the Rhinelander plant. Neither threat was protected by Section 8(c) or isolated, and both would objectively and reasonably coerce an employee in the exercise of Section 7 rights. Accordingly, I find that by Gauthier's comments to Haenel, the Respondent violated Section 8(a)(1) as alleged in complaint paragraphs 10(b) and 11(a).

Restoration of Harold Williams

The complaint alleges that by restoring unit employee Harold Williams to the journeyman press operator pay rate, the Respondent violated Section 8(a)(1) by granting a benefit, Section 8(a)(3) by granting a benefit so that Williams would refrain from assisting the Union and to discourage other employees from doing so, and Section 8(a)(5) by direct dealing with the employee. The General Counsel argues that given the Respondent's demonstrated animus and the timing and context of the restoration of Williams' status, a violation of both Section 8(a) (1) and (3) has been established. Contrariwise, the Respondent maintains that it restored Williams' journeyman status and pay rate because he earned it, and that such was unrelated to the Union.

The Board views an employer's grant of a promotion or pay increase to an employee to convince him to vote against the Union to violate Section 8(a)(1) and (3). *Evergreen America Corp.*, 348 NLRB 178 (2006). In determining whether the Respondent's restoration of journeyman status and pay violated Sections 8(a)(1) and (3), I apply a *Wright Line*⁷³ analysis, which the Board requires be utilized in these circumstances. *Clock Electric, Inc.*, 338 NLRB 806 (2003).

There is no evidence here that Williams participated in union activities or any activities in support of or opposed to the Union. But when the Respondent's president, Dennis Love, visited the plant prior to the decertification election, Williams initiated a conversation with him for the purpose of regaining his journeyman status, and began the conversation by raising the subject of the upcoming decertification election. While the words used by Williams professed that he wasn't selling his vote, the implicit message was quite different. It was Williams who began the conversation by reminding Love of the upcoming election and that Williams had a vote. Despite Williams' disclaimer that he wasn't selling his vote, the message to Love was clear: "there is an election coming up in which you have a great interest; I have a vote in the election; and I want my demotion reversed." Marquart's decision that same day to restore Williams to journeyman status demonstrates that the message was received by the Respondent. Further, Williams' comment to Love about his vote, indicated to Love that Williams intended to vote in the decertification election, a protected activity.

The *Wright Line* analysis is employed by the Board when an employer's motivation for an action it has taken becomes of issue. Here, Respondent's animus is demonstrated not only by its aggressive campaign against the Union, which included seeking to have employees stop

⁷³ *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

5 paying dues to, and withdraw from, the Union, but also by the numerous unfair labor practices found herein. While there is no evidence, other than membership in the Union at the time of the alleged unfair labor practice, that Williams engaged in activities in support of, or opposed to, the Union, or that the Respondent was aware of such activities, I conclude that by his words to Love, Williams made it clear that he was going to exercise his Section 7 right to vote in the decertification election. In respect to the 8(a)(3) allegation, I conclude that the General Counsel has met his initial *Wright Line* burden.

10 The Respondent, in its counsel's brief, citing Williams' improved production statistics in October, November, and December of 2006, and January of 2007, argues that Williams earned the restoration of his status, and cites the Board's decision in *American Sunroof Corp.*, 248 NLRB 748, 749 (1980), modified on other grounds, 667 F.2d 20 (6th Cir. 1981) for the proposition that where the employee "received her pay raise for good job performance, at a time when she was entitled to it, expected it, and requested it, we cannot say that [the employer] was obligated to postpone payment of this benefit because of the union election."

20 While *American Sunroof* is analogous to the instant case in some respects in that it involves a pay raise close in time to an election, a key factor there, is lacking here; that is that in *American Sunroof*, the Board found that the employee "had recently received a favorable evaluation from her supervisor and, as a result, was *entitled* to the raise." *Supra* at 749 (emphasis supplied). Here, while there is evidence that Williams' production had improved, there is no evidence from which I could conclude that he was *entitled* to the restoration he received. Indeed, the evidence here is to the opposite.

25 Thus, when Williams was demoted, he was informed by memorandum from Marquart that if his performance as press operator AP2 was acceptable, he could advance to AP3 and AP4, but that he wouldn't be permitted such advance unless "you can operate Presses 4, 5, and 6 completely and your press operation performance meets the company's performance expectations." Thus, at the time of demotion, the Respondent informed Williams that demonstrated acceptable performance would only garner him promotion through higher apprentice levels, and mentioned nothing about even the possibility of immediate restoration of journeyman status. Further, the record contains no evidence that Williams, in fact, demonstrated that he could "operate presses 4, 5, and 6 completely."

35 If the Respondent had simply promoted Williams one classification to AP3, as described by Marquart in his demotion memo to Williams, then the facts here would arguably be analogous to *American Sunroof*, *supra*. But, instead, the Respondent restored Williams to his journeyman classification and pay rate immediately, neither of which was contemplated by Marquart at the time of the demotion. In fact, when, in answer to Williams' request for restoration, Marquart suggested a more gradual path, Williams rejected the idea and demanded restoration immediately. And Marquart, by way of response, complied.

45 The Respondent has not, thus, demonstrated that it would have restored Williams to journeyman status when it did, even absent the decertification election. Thus, the Respondent has failed to demonstrate that notwithstanding protected activity, it would have restored Williams to journeyman status. Accordingly, I conclude that by restoring Williams to journeyman status, the Respondent discriminated in regard to the terms and conditions of employment of its employees thereby discouraging membership in a union, and violated Section 8(a)(3) as is alleged in complaint paragraphs 18(b) and 23.

50 In respect to the 8(a)(1) benefit allegation as to the restoration of journeyman status, "the Board will infer that an announcement or grant of benefits during the critical period is coercive,

but the employer may rebut the inference by establishing an explanation other than the pending election for the timing of the announcement or bestowal of the benefit.” *STAR, Inc.*, 337 NLRB 962 (2002). The Board has long recognized that “the danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.” *NLRB v. Exchange Parts Co.*, 375 U.S. 404, 409 (1964),

For the reasons set forth above, essentially that there is no evidence in the record that the Respondent had any intention of restoring Williams to journeyman status, even upon improved production, without Williams progressing, step by step, through the various apprentice grades, I conclude that the Respondent’s asserted reason for restoring journeyman status is pretextual, and that it has failed to rebut the inference. Based on this record, the only logical conclusion is that the Respondent restored Williams to journeyman status in order to influence his vote, and others, in the upcoming decertification election. Accordingly, I conclude that by restoring Williamson to journeyman status, the Respondent coerced employees in the exercise of their Section 7 rights, as alleged in complaint paragraph 18(a).

In respect to the 8(a)(5) direct dealing allegation as to the restoration of journeyman status, counsel for the General Counsel, citing *Southern California Gas Co.*, 316 NLRB 979 (1995), argues in his brief that the Respondent communicated directly with a bargaining unit member as to changing the terms and conditions of employment or undercutting the Union’s role in bargaining, and that the communications were made to the exclusion of the Union, and thereby violated Section 8(a)(5). The Respondent, in its counsel’s brief, maintains that under the management’s rights clause⁷⁴ of the expired collective-bargaining agreement it had the right to unilaterally promote Williams, that the parties had continued to operate under the contract’s provisions, and that, in any case, the Respondent and the Union had previously discussed Williams’ situation during bargaining negotiations.

The Act requires an employer to meet and bargain with the exclusive bargaining representative of its employees. An employer who deals directly with its unionized employees regarding their terms and conditions of employment violates Section 8(a)(5). *Medo Photo Supply Corp. v. N.L.R.B.*, 321 U.S. 678 (1944). Direct dealing need not take the form of actual bargaining but, rather, occurs when the employer’s conduct in dealing with employees is likely to erode the union’s position as exclusive bargaining representative. *Allied-Signal, Inc.*, 307 NLRB 752, 753 (1992). But, as argued by the Respondent, a union may contractually waive bargaining as to certain mandatory subjects so as to permit unilateral action by an employer. See *Allied-Signal, Inc.*, supra at 754.

The essence of the alleged 8(a)(5) violation here, is that the Respondent chose to grant Williams his sought remedy in direct conversation with Williams, rather than in discussions with the Union as to his grievance. The unilateral adjustment of a grievance without honoring the Union’s statutory right to be present at the settlement discussion violates Section 8(a)(5). *Blast Soccer Associates*, 289 NLRB 84 (1988).

The lesson demonstrated by the Respondent’s unilateral adjustment of the grievance, both to Williams, and to other unit members, is that it is the Respondent who has the power to

⁷⁴ “control of all operations and the direction of all working forces of the employer, including the power and the right to...promote [and] demote...are vested solely and exclusively in the company....”

provide remedies to employees' grievances and problems, and that the Union is irrelevant or powerless. Such conduct is likely to erode the Union's position as the exclusive collective-bargaining representative, and in the context of the Respondent's aggressive campaign against the Union and the other unfair labor practices found herein, such was likely an intended result.

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The Respondent's argument as to the Union's asserted contractual waiver of the mandatory subjects of demotions and promotions is not persuasive. As conceded by the Respondent, the contract containing the asserted waiver language had expired. The Board has repeatedly held that absent agreement of the parties, a contractual reservation of management rights does not survive the contract's expiration. *Long Island Head Start Child Development Services, Inc.*, 345 NLRB 973 (2005).

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The Respondent, however, relies on the testimony of Union Steward Edward Bauer to argue that the parties had continued the terms of the contract, so that the management rights waiver still applied. But Bauer did nothing more than testify that since the contract expired the Respondent has continued to apply its terms except for union security, dues checkoff, and holiday pay. There is no evidence that the parties reached any agreement to extend any provisions of the expired contract and there is no evidence that it was the specific intention of the parties to continue the asserted bargaining waiver provided by the management-rights clause.

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Thus, while Bauer testified on cross-examination that the parties, in dealing with each other, treated contractual provisions "as if they were still in effect," there is no testimony that the parties intended contractual waivers such as the management-rights clause to continue. In short, there is no evidence from which I could fairly conclude that it was the intent of the parties that the management-rights clause survive the expiration of the contract. In the absence of evidence of such specific intent, I conclude that the clause did not, in fact, survive the expiration of the contract. See *Furniture Rentors of America*, 311 NLRB 749, fn. 14 (1993).

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Finally, while the parties did discuss the demotion of Williams during two bargaining sessions in October and/or November, there is no evidence that either side discussed a resolution. Indeed, the Respondent did not discuss its unilateral decision to reinstate Williams to journeyman status with the Union, either before or after it made the decision. The Respondent's failure to discuss the grievance resolution with the Union either before or after it was implemented, and its failure to honor the Union's statutory right to be present at the settlement discussion, were in dereliction of the Union's status as the exclusive bargaining representative of unit employees and constituted dealing directly with employees. I, thus, conclude that by such action, the Respondent violated Section 8(a)(5) of the Act, as alleged in complaint paragraph 19.

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The Regional Director's Revocation of the Settlement Agreement

The Respondent maintains that the Regional Director improperly set aside the 2005 settlement agreement in Case Nos. 30-CA-16980 and 30-CA-17079. The Respondent argues that it fully complied with the settlement agreement, that the General Counsel failed to prove the post-settlement allegations in Case No. 30-CA-17727, that the Regional Director failed to comply with "the Board's rules governing any attempted revocation or rescission of a settlement agreement and did not comply with the explicit terms of the 2005 informal settlement agreement," and the allegations in the post-settlement case are too remote and unrelated to the allegations in the settled cases. Counsel for the General Counsel argues, in his brief, that the Respondent is wrong in each of its arguments, and that the Regional Director properly set aside

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the settlement as the Respondent has continued to engage in unfair labor practices similar to the ones set forth in the prior settlement agreement.

5 “The Board has long held that a settlement agreement may be set aside and unfair labor practices found based on presettlement conduct if there has been a failure to comply with the provisions of the settlement agreement or if postsettlement unfair labor practices are committed.” *Nations Rent, Inc.*, 339 NLRB 830, 831 (2003) quoting *Twin City Concrete, Inc.*, 317 NLRB 1313 (1995). In *Nations Rent*, quoting *Deister Concentrator Co.*, 253 NLRB 358, 359 (1980), the Board went on to say, “Moreover, we have noted that the issue of whether to give effect or rescind a settlement agreement cannot be determined by a mechanical application of rigid a priori rules but must be determined by the exercise of sound judgment based upon all the circumstances of each case.” All of the above conduct found to be unfair labor practices here and offered by the General Counsel as a basis for setting aside the settlement agreement, occurred after the effective date of the settlement agreement. See, *K & W Electric, Inc.*, 327 NLRB 70 (1998). Under all the circumstances, I conclude that the Regional Director’s action in rescinding the settlement agreement reflected the exercise of sound judgment.

20 In respect to the Respondent’s argument, I, first, conclude that the unfair labor practices found in respect to Case 30-CA-17727 are neither too remote nor unrelated to the allegations in the settled cases. Thus, the settlement required the Respondent to refrain “from anything” which interferes with, is a reprisal for, or which coerces or restrains employees’ exercise of Section 7 rights. Virtually all of the unfair labor practices which I found in respect to Case 30-CA-17727 involve coercion and restraint of employees in their exercise of Section 7 rights.

25 Further, in the settled case, the Respondent agreed that, among other things, it would not impliedly promise benefits, imply that the Rhinelander plant would close, tell employees that it would prefer to put new equipment into plants without a union or that the chances for placing new equipment in the Rhinelander plant would be better, or tell employees that work would be transferred or employees laid off because of the presence of the Union. These are all identical or similar to unfair labor practices I concluded that the Respondent committed in Case 30-CA-17727.⁷⁵ Further, the unfair labor practices found were not isolated or insubstantial, and included threats to the existence of the Rhinelander plant. They were committed by a number of supervisors, including the highest management official at the Rhinelander plant, and numerous employees were the subject of coercion. cf. *Coopers International Union (Independent Stave Co., Inc.)*, 208 NLRB 175 (1974).

40 The settlement was approved by the Regional Director on June 30, 2005, and the notice posted on September 6, 2005. The earliest unfair labor practices alleged in the complaint in case 30-CA-17727 occurred in February 2007, about 17 months after the notice was posted, 15 months after the 60 day compliance/notice posting period ended, and about 19 months after

45 ⁷⁵ In his brief, the Respondent’s counsel concedes that some, but not all, of the pre-settlement conduct is linkable to the post-settlement allegations, and appears to argue that there must be an identity of allegations pre and post settlement. No case law is presented for this proposition and I decline to so find. I further reject the Respondent’s argument, unsupported by case law, that the individuals named as the victims of illegal conduct must be the same pre and post-settlement. Finally, the Respondent’s argument that the pre-settlement conduct occurred in the context of a decertification campaign while the post-settlement conduct did not, simply points out a distinction without a substantive difference. My findings herein document that most of the Respondent’s post-settlement conduct occurred in the context of a campaign, albeit not a decertification campaign, against the Union.

the Regional Director's approval of the settlement agreement. Neither the Respondent nor the General Counsel cite any Board case setting forth any specific rule as to time limits for the setting aside of settlement agreements based on post-settlement conduct alleged as new unfair labor practices.⁷⁶

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In deciding this issue, I will apply the Board's test set forth in *Deister Concentrator, Inc.*, supra, to the effect that the answer is provided not by the mechanical application of rigid a priori rules, but by the exercise of sound judgment under all the circumstances. Under the circumstances here, with a substantial identity of unfair labor practices, with the Respondent's highest-ranking official at the plant, Marquart, committing similar unfair labor practices in both the settled case and the newer cases, with the same locale in the cases, and with the object of both series of unfair labor practices being the elimination of the Union, the Regional Director's decision to vacate the settlement agreement about 15 months after the end of the compliance period and 19 months after his approval of the settlement agreement, was reasonable and sound. The passage of said time did not preclude a fair and complete litigation of the issues presented in the settled case, and both sides presented witnesses present during the actions alleged as violations.

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The Respondent's argument as to whether the Regional Director followed the proper procedure set forth in the Board's ULP Casehandling Manual for the revocation of the settlement is not persuasive. The Respondent, here, argues that Manual section 10152.1 provides that "with respect to settlement agreements without default language, the charged party should...be advised that failure to fully comply with the settlement agreement will result in revocation of the approval of the agreement and the issuance or reissuance of the complaint."

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As discussed above, the Board has long held that there are two bases for revocation of a settlement agreement. First, if there has been a failure in complying with the agreement's provisions. Second, if post-settlement unfair labor practices are committed. My findings above are based on the Respondent's commission of post-settlement unfair labor practices. The Manual section cited by the Respondent appears to be in contemplation of a failure to comply revocation, rather than a revocation generated by post-settlement unfair labor practices. In situations where, as here, new unfair labor practice charges have been filed, the filing of the charge would, in my view, put a respondent on notice as to potential ramifications, including revocation of a settlement agreement. Thus, even if the Regional Director failed to advise the Respondent, as is set forth in the Manual, I would not find that the Respondent was prejudiced under the instant circumstances. In any case, although some evidence was introduced at hearing, this issue was not fully litigated by the parties, and I make no factual finding as to whether the Regional Director gave such notice or not.

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However, even if I were to find that the Manual instructed the Regional Director to give notice to the Respondent under the circumstances here, which I do not, I would not find that the asserted failure of the Regional Director to comply with the Manual fatally flaws his revocation of the settlement agreement. The procedures outlined in the Manual provide assistance to Agency personnel in processing matters before them, and do have the force of law, so that failure to follow them does not, *ipso facto*, invalidate subsequent action taken by a Regional Office. See

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⁷⁶ But the Board has found a five year old settlement agreement too remote in the circumstances, *Utrad Corp.*, 185 NLRB 434, 441 (1970), and a 14-month old settlement not precluded from revocation under the circumstances, *Sheet Metal Workers Local 80 ((Sise Heating and Cooling Co)., 236 NLRB 41 (1978).*

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the discussion by Administrative Law Judge Peter E. Donnelly, in a decision affirmed by the Board in *Today's Man*, 263 NLRB 332, 339 (1982).⁷⁷

5 Finally, I am not persuaded by the Respondent's argument that the Regional Director has failed to comply with the terms of the settlement agreement because the agreement required that the Regional Director take no further action against the Respondent once the parties had notified the Regional Director, in writing, of compliance with the settlement agreement's terms, and that such notification had been given here. The actual language contained in the "Notification of Compliance" paragraph of the Board's informal settlement agreement form, in pertinent part, states: "Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in this case."

15 While the paragraph also contains language as to the parties notifying the Regional Director of compliance with the agreement's terms, it would be absurd to read the paragraph, as a whole, as is argued by the Respondent, as meaning that the Regional Director could take no further action once he is notified by the Respondent of its compliance, even if the Respondent immediately engages in further unfair labor practices. The Board, as in cases cited above, has repeatedly held that settlement agreements may be revoked based on post-settlement unfair labor practices. The Respondent's argument would, essentially, limit the period for said revocation to unfair labor practices taking place during the 60 day compliance period. The Board has not held such to be the case.

ANALYSIS AND CONCLUSIONS (CASES 3-CA-16980 AND 17079)

25 As to the allegations concerning the meeting at the Rhinelander airport, contained in complaint paragraphs 6, 7(a), and 8, I found that supervisor Unverzagt told the employees present that he was concerned over the future viability of the Rhinelander plant without new equipment and investment. I further found that Marquart then buttressed Unverzagt's comment by telling employees that the Love family, the Respondent's owners, preferred that their employees not have union representation and tended not to install new equipment in union shops.

35 Unverzagt's expression of concern over the future viability of the plant without new equipment, taken together with Marquart's statement as to the owners' attitude towards union representation, and the impact union representation has on the Respondent's investment decisions, clearly implied a threat to the very existence of the plant if union representation continued, and implied a promise that new equipment would be installed if there was no union. Marquart's statement to the effect that he was not aware of plans at the present time to shut the plant, does not serve to ameliorate the implied threat nor alleviate resultant employee concerns because Marquart's reassurance was specifically limited to the "current time," leaving open what might happen in the future.

45 ⁷⁷ The Manual section entitled "Purpose of the Manual," contains the following: "The Manual is not a form of binding authority, and the procedures and policies set forth in the Manual do not constitute rulings or directives of the General Counsel or the Board." And, further: "Although it is expected that the Agency's Regional Directors and their staffs will follow the Manual's guidelines in the handling of cases, it is also expected that in their exercise of professional judgment and discretion, there will be situations in which they will adapt these guidelines to circumstances."

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The Supreme Court has held, “an employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a threat of reprisal or force or promise of benefit.”

N.L.R.B. v. Gissel Packing Co., supra at 617 (1969). While Marquart’s statement as to what the Respondent’s owners prefer falls within the Court’s language as to permitted speech, the balance of his words as to installing new equipment, combined with Unverzagt’s comments about his concern about the viability of the plant without new equipment, steps beyond general or specific views about unions or the Union, and into the area forbidden by the Court, that is that they implied a threat to the existence of the plant if the Union remained and the implied promise of new equipment if the Union departed.

In its *Gissel* decision, the Court further stated, “If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation or coercion, and as such without the protection of the First Amendment. Supra at 617. Here, Unverzagt’s words, by themselves, are simply First Amendment protected opinion. But when combined with Marquart’s words, they become a threat, not a reasonable prediction based on available facts. These words are simply the Respondent’s *ipse dixit*. *Crown Cork & Seal Co., Inc.*, 308 NLRB 445, 446 (1992). As such, I conclude that by the above set forth comments of Unverzagt and Marquart during the March 20, 2004 meeting at the Rhinelander airport, the Respondent violated Section 8(a)(1) by impliedly threatening employees with plant closure and detrimental investment decisions if the Union remained, and impliedly promising increased benefits including new machinery if the Union departed, as alleged in complaint paragraphs 6, 7(a), and 8.⁷⁸

The General Counsel alleges, in complaint paragraph 7(b) that the Respondent also threatened detrimental investment decisions by a notice it posted on a Rhinelander plant bulletin board on August 18, 2004. I found that the memorandum at issue, dated July 30, 2004, was posted on the plant bulletin board in early August 2004. The Respondent, in its counsel’s brief, argues that the posting is a factual report of events at another plant, it doesn’t mention the Rhinelander facility, and no threats are contained therein. Counsel for the General Counsel, argues in his brief, citing *Crown Cork & Seal Co.*, supra at 462, that tying capital investments or improvements to the elimination of a union violates Section 8(a)(1), and that in the context of other events such as the Rhinelander airport meeting, the words in the notice serve to convey a threat of detrimental investment decisions.

If not for a single sentence in the notice, I would agree with the Respondent’s argument that the notice is merely a straightforward report of events at another plant, protected by the First Amendment, as set forth in *N.L.R.B. v. Gissel*, supra. But the sentence, “The recent decertification of the union makes New Castle the best place for reinvesting in that business,” explicitly ties decertification to plant investment and gives notice to Rhinelander employees as to how they can secure the Respondent’s investment in their plant. In the context of the Respondent’s campaign against the Union including the earlier and later unfair labor practices

⁷⁸ I am not persuaded by the Respondent’s argument to the effect that Marquart and Unverzagt were instructed prior to the meeting that they couldn’t make promises, and that the “TIPS” acronym had been employed to remind them that they couldn’t threaten, interrogate, promise, or spy. The problem with this argument is that it could well be that by using the words I found they employed and that violated the Act, Unverzagt and Marquart may well have thought that they were not making promises or threats.

found herein, including threats not to invest in the plant unless the Union was removed, the message conveyed to Rhinelander employees was clear and coercive, that is that if you want the Respondent to invest in the plant, decertify the Union. Accordingly, I find that by the posting of the notice in the Rhinelander plant, the Respondent violated Section 8(a)(1) as alleged in complaint paragraph 7(b).

Finally, complaint paragraphs 9(a) and (b) allege that Plant Manager Marquart on December 21, 2004 and again on January 4, 2005, threatened an employee that more work would be placed in nonunion plants, as opposed to union facilities, resulting in the layoff of employees represented by the GCIU. I found that during 2004, the Respondent proposed to change the Rhinelander plant's hours of operation to 7 days, 24 hours and told the GCIU that the change was necessary for efficiency and to avoid the possibility of work being transferred from the plant with resultant layoffs. The Union finally rejected the proposal in July 2004, and the Respondent announced layoffs on July 13, 2004, effective on July 19.

I further found that in December 2004, GCIU President Jensen initiated a conversation with Marquart and asked him, "Why the Respondent was still laying people off and shipping business out" when the plant wasn't at capacity. Marquart responded "Because they're only going to lay off people in union plants before nonunion plants and keep the nonunion plants at full production first." I also found that Jensen also initiated a conversation with Marquart in January 2005. Jensen told Marquart that a lot of people were complaining about being laid off, and they wanted to know why they're being laid off. Marquart responded that the Respondent was "going to lay people off in the union before they lay them off in nonunion plants."

The Respondent defends these allegations by arguing that Jensen's testimony is false, and that Marquart did not say what Jensen testified to. However, as is set forth above, I found that Jensen is a credible witness as opposed to Marquart and that, in fact, Marquart made the comments to Jensen in their one on one conversations, as testified to by Jensen.

Having found that Marquart made the comments to Jensen, such words, informing the GCIU's president that the Respondent intended to discriminate against union-represented plants when it came to deciding from which plant to layoff employees, clearly are coercive and violate the Act. Accordingly, I conclude that by Marquart's comments, the Respondent violated Section 8(a)(1) of the Act, as alleged in complaint paragraphs 9(a) and (b).

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union and GCIU are labor organizations within the meaning of Section 2(5) of the Act.

3. By the following actions, on about the dates set forth below, the Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

(a) On March 20, 2004, impliedly threatening employees with plant closure and detrimental investment decisions unless the employees decertified GCIU.

(b) On March 20, 2004, impliedly promising increased benefits if they withdrew support for and decertified GCIU.

(c) On August 18, 2004, by a posting on the Rhinelander plant bulletin board, impliedly threatening detrimental investment decisions if employees did not decertify GCIU.

5 (d) On about December 21, 2004, and January 4, 2005, threatening an employee that more work would be placed in nonunion facilities as opposed to union-represented facilities, resulting in layoffs of union-represented employees.

10 (e) On multiple occasions from February through April 2007, threatening employees with plant closure if they continued to be represented by a union.

(f) On April 23, 2007, and multiple dates in April and May 2007, coercively interrogating employees concerning their union membership, sympathies, and desires.

15 (g) On April 23, 2007, and another date in April 2007, threatening employees with unspecified consequences for failing to resign from the Union.

(h) On dates in March, April, and May 2007, promising employees increased benefits and wages if they withdrew support for the Union.

20 (i) On multiple occasions from February through April 2007, threatening employees that it would not put money or new equipment into the plant if employees continued to be represented by a union.

25 (j) On a date in April 2007, informing employees that continued representation by the Union would be futile.

(k) On a date in April 2007, creating the impression that it was keeping its employees' union activities under surveillance.

30 (l) About February 18, 2007, granting a benefit to Harold Williams by restoring him to journeyman status prior to the decertification election.

35 4. By restoring Harold Williams to journeyman status about February 18, 2007, discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) of the Act.

40 5. By dealing directly with an employee and bypassing the Union, in restoring Harold Williams to journeyman status about February 18, 2007, failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) of the Act.

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

7. The Respondent did not violate the Act as alleged in paragraphs 16(b), 10(e), and 13(c) of the complaint, or in any other manner other than that specifically found herein.

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The Remedy

5 The General Counsel seeks a broad order addressing the unfair labor practices found, apparently on the grounds that the Respondent has demonstrated a proclivity to violate the Act. The Respondent argues that to the extent a remedy is necessary, I should simply reinstate the 2008 unilateral Board informal settlement agreement I previously approved in this matter, but which was rejected by the Board, and should not impose a broad cease and desist order.

10 In *Hickmott Foods*, 242 NLRB 1357 (1979), the Board explained the criteria utilized in determining whether a broad cease and desist order is appropriate as follows: "Such an order is warranted only when a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights. Accordingly, each case will be analyzed to determine the nature and extent of the violations committed by a respondent so that the Board may tailor an appropriate order." In *Five Star Manufacturing, Inc.*, 348 NLRB 1301 (2006), the Board expanded upon its reasoning as follows: "In either situation [proclivity to violate the Act or egregious or widespread misconduct] the Board reviews the totality of the circumstances to ascertain whether the respondent's specific unlawful conduct manifests an attitude of opposition to the purposes of the Act to protect the rights of employees generally, which would provide an objective basis for enjoining a reasonably anticipated future threat to any of those Section 7 rights."

25 Here, in respect to Case 30-CA-17727, I found that the Respondent committed one violation of Section 8(a)(3), one violation of Section 8(a)(5), and a wide variety of 26 independent violations of Section 8(a)(1). These violations were committed by six different supervisors, including the Respondent's highest manager located at the Rhinelander plant, Marquart. In Cases 30-CA-16980 and 30-CA-17079, I found that the Respondent committed five violations of Section 8(a)(1), including by Marquart.

30 Thus, most of the violations involve Section 8(a)(1). The Section 8(a)(3) violation involves a promotion and pay raise rather than discipline or discharge. The 8(a)(5) violation involves direct dealing as to one grievance, rather than a widespread pattern of refusing to bargain with the Union. Nevertheless, certain of the violations, threatening plant closure, withholding of investment in the plant, and laying off employees in union plants before nonunion plants, because they involve threats of job loss, are regarded by the Board as serious unfair labor practices, which are "hallmark" violations of the Act. *ADB Utility Contractors, Inc.*, 353 NLRB No. 21 (slip opinion at p. 2) (2008).

40 Based on the serious nature of the hallmark violations committed by the Respondent, and their widespread occurrences as demonstrated by the sheer number of violations, the variety and magnitude of supervisors involved, and the numerous employees who were directly subjected to the illegal conduct, I conclude that the Respondent's unfair labor practices here were both egregious and widespread and that, therefore, the *Hickmott Foods*, supra, criteria is met for a broad cease and desist order. While the Respondent has been found to have committed one unfair labor practice at Rhinelander prior to the cases involved here, the focus of this remedial finding is not on the Respondent's proclivity to violate the Act, but rather the egregious and widespread nature of its misconduct. See, *Five Star Manufacturing, Inc.*, supra at 1302.

50 The prior unilateral informal settlement agreement which I approved, for reasons explained on the record, does not provide for such a broad remedy. Further, the posting undertaken by the Respondent pursuant to said settlement does not reflect the findings herein

accurately in respect to certain allegations, and would not reflect that the notice was posted after findings that the Respondent violated federal labor law, rather than voluntarily pursuant to a settlement agreement, and for that reason is inadequate. Accordingly, I deem said posting does not suffice for the normal posting required after the issuance of a Board order requiring one, and it will, thus, be ordered that the Respondent be ordered to post a remedial notice.

As to the 8(a)(3) and 8(a)(5) allegations, I will not recommend an order returning Williams to the status quo ante as such would be clearly detrimental to Williams and would not afford a greater measure of remedy herein. See, for example, *Blast Soccer Associates*, supra.

On these findings and conclusions of law, and on the entire record, I issue the following recommended⁷⁹

ORDER

The Respondent, Printpack, Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening or impliedly threatening employees with plant closure, detrimental investment decisions, withholding of new equipment, placing more work in nonunion plants, unspecified consequences, or laying off employees unless the employees decertify their union or unless employees resigned from a union.

(b) Promising, impliedly promising, or granting increased benefits, pay raises, or promotions to employees if they withdraw support for a union.

(c) Coercively questioning employees concerning their union activities, support, membership or dues-paying status.

(d) Telling, or implying to, employees that continued representation by a union is futile.

(e) Creating the impression that its employees' union activities are under surveillance.

(f) Promoting employees, or resolving their grievances on a basis favorable to them, because they oppose the union, or otherwise discriminating in respect to any employee for opposing or supporting the Union or any other labor organization.

(g) Dealing directly with employees as to their grievances and bypassing the Union as exclusive collective-bargaining representative of its employees.

(h) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

⁷⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the Board shall, as provided in Sec. 102.48 of the Rules, adopt the findings, conclusions, and recommended Order and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

5 (a) Within 14 days after service by the Region, post at its Rhinelander,
Wisconsin facility copies of the attached notice marked "Appendix."⁸⁰ Copies of the notice, on
forms provided by the Regional Director for Region 30, 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 are
10 customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the
notices are not altered, defaced, or covered by any other material. In the event that, during the
pendency of these proceedings, the Respondent has gone out of business or closed the facility
involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a
copy of the notice to all current employees and former employees employed by the Respondent
at any time since March 20, 2004.⁸¹

15 (b) Within 21 days after service by the Region, file with the Regional Director 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.

20 Dated, Washington D.C. February 24, 2009

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Mark D. Rubin
Administrative Law Judge

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⁸⁰ 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."

50 ⁸¹ The triggering date for the provisional notice mailing obligation is the date of the first
unfair labor practice. *Excel Containers*, 325 NLRB 17 (1997).

APPENDIX

NOTICE TO EMPLOYEES

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.
- Choose representatives to bargain on your behalf.
- Act together with other employees for your benefit and protection.
- Choose not to engage in any of these activities.

WE WILL NOT coercively question you about your union activities, support, membership, or dues-paying status.

WE WILL NOT imply that we are keeping your union activities or membership under surveillance.

WE WILL NOT remedy your grievances or promote you, or otherwise discriminate against you, in order to discourage your support of the Union.

WE WILL NOT threaten to close the plant, if you do not decertify the Union.

WE WILL NOT threaten to not invest in the plant or not buy new machines unless the Union is removed as your collective-bargaining representative.

WE WILL NOT tell you that we lay off employees at nonunion plants before we lay off employees at union plants.

WE WILL NOT threaten you with unspecified consequences unless the Union is decertified.

WE WILL not promise you that new machines will be placed in the plant, or other benefits provided, if the Union is removed as your bargaining representative.

WE WILL NOT tell you, or imply, that continued representation by the Union is futile.

WE WILL NOT bypass the Union and deal directly with employees as to grievances.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed in Section 7 of the Act.

PRINTPACK, INC.

(Employer)

Dated _____

By

(Representative)

(Title)

JD-10-09
Rhineland, WI

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

310 West Wisconsin Avenue, Federal Plaza, Suite 700

Milwaukee, Wisconsin 53203-2211

Hours: 8 a.m. to 4:30 p.m.

414-297-3861.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 414-297-1819.