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PPG Aerospace Industries, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO. Cases 10–CA–36530 and 10–RC–15611

September 30, 2008

DECISION, DIRECTION, AND ORDER
REMANDING

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

On October 19, 2007, Administrative Law Judge Lawrence W. Cullen issued the attached decision. He issued an erratum on November 14, 2007. The Respondent filed exceptions, a supporting brief, and a reply brief; the Charging Party filed an answering brief.

The National Labor Relations Board¹ has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings, and conclusions only to the extent consistent with this decision.

I. INTRODUCTION

On October 18, 2006, an election among the Respondent’s production and maintenance employees resulted in a tally of ballots showing 210 votes in favor of the union representation, 214 votes against union representation, and 32 challenged ballots. The Union filed timely objections and unfair labor practice charges. The Regional Director directed a hearing on the challenges and objections, issued a complaint alleging 8(a)(1) violations, and consolidated the representation and unfair labor practice cases for hearing before an administrative law judge.

The principal issue regarding the challenged ballots is whether 16 lead persons (leads)² are supervisors. The judge found that the leads are supervisors and, on this basis, recommended that the challenges to their ballots be sustained. For the reasons explained below, we re-

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board’s powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

² Donnie Black, Tim Childers, Jimmy Cloud, Manda Dupree, Bill Everett, Denny Franchiseur, Bill Hopper, James Holder, David Knoer, Jackie Lackey, Monty Little, Vivian Lyle, David McNeal, Peter Mullen, Ronnie Steakley, and Curtis Zimmerman.

verse the judge and find that the Union did not prove that the leads are supervisors.

Among the issues regarding the unfair labor practice allegations and objections is whether Respondent Supervisor Sue Cooper unlawfully told employee Iva Jayne Mayes, who supported the Union, that (1) Mayes could not join a conversation with other employees because Cooper “couldn’t let two Union people gang up on a non-union person” and (2) that the employees would “probably lose [their salary continuance benefit] with all this Union stuff.” Mayes testified that Cooper made the alleged statements; Cooper testified that she did not make the alleged statements. The judge credited Mayes, found that Cooper made the alleged statements, found that the Respondent thereby violated Section 8(a)(1), and recommended that objections based on the statements be sustained.³ As explained below, we remand these issues to the judge for further consideration.

II. WHETHER THE LEADS ARE SUPERVISORS

The judge found that the leads are supervisors because they have authority to prioritize and make changes to employees’ work assignments. The Respondent contends that the leads, in changing and prioritizing work assignments, do not exercise independent judgment but rather simply follow directions from admitted supervisors. We agree.

The party alleging supervisor status must prove not only possession of one of the supervisory authorities enumerated in Section 2(11), but also that the putative supervisor uses independent judgment in the exercise of that authority. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). To prove independent judgment, it must be shown that, when the putative supervisor makes a decision exercising the supervisory authority, that decision is “free of the control of others” and “not . . . dictated or controlled by detailed instructions” including “the verbal instructions of a higher authority.” *Id.* at 693. Where the putative supervisor serves as a conduit relaying assignments from management to the employees, the independent judgment standard is not met. See *Shaw, Inc.*, 350 NLRB 354, 355 (2007); *Golden Crest Healthcare Center*, 348 NLRB 727, 729 (2006).

The Union, as the party alleging supervisory status here, did not establish that the leads use independent judgment when they change or prioritize work assignments. To the contrary, the evidence shows that admit-

³ The judge also found that the Respondent violated Sec. 8(a)(1) by other conduct and recommended that objections based on this other conduct be sustained. The Respondent has excepted to these findings. We do not address these findings or exceptions at this time and will do so upon our review of the judge’s supplemental decision on remand.

ted supervisors make the decisions at issue and that the leads relay the supervisors' decisions to the employees.

Lead Tim Childers was the only lead who testified, and the parties stipulated that the other leads, if called, would have testified as Childers did. With regard to prioritizing work assignments, Childers testified: "I would probably go to my supervisor and say I have these priorities here, make him make a decision. Then I may go to the people and say we're going to do this." With regard to changing work assignments, Childers testified: "We may have a meeting . . . with a supervisor and I'll sit down and have a meeting and, if our work assignments change, then it's directed by him at that point to change the work assignment. . . . This [meeting] would be my immediate supervisor and our crew and myself."

The job description for Childers' lead position is further evidence that admitted supervisors control the leads' assignment decisions. It states: "Based on Supervisor instructions, [the lead] assigns duties to crew members at the beginning of each shift."

Neither the judge nor the Union cites, and the record does not include, evidence affirmatively demonstrating that the leads make assignment decisions free of the control of admitted supervisors.⁴ In view of the absence of evidence demonstrating that the leads make work assignments without supervisory control, we reverse the judge, find that the Union did not prove the leads are supervisors, and overrule the challenges to the leads' ballots.⁵

III. THE JUDGE'S CREDITING OF MAYES

The judge found that Supervisor Sue Cooper made two unlawful statements to employee Iva Mayes—(1) that Mayes (who supported the Union) could not join a conversation involving an employee who supported the Un-

⁴ Although some of the evidence concerning the assignments is silent as to whether admitted supervisors, rather than leads, make the underlying assignment decisions, there is no evidence affirmatively showing that leads, rather than admitted supervisors, make the underlying decisions.

⁵ In addition to the 16 leads listed in fn. 2 above, the Union challenged the ballots of two other employees—Michael Hill and Morris Neal Hill—contending that they too were leads. In his decision, the judge did not address Michael Hill's status, but did find that the Respondent showed that Morris Neal Hill was a lead. The undisputed evidence shows, however, that the two employees are not leads, and that their positions are within the unit description. Accordingly, we overrule the challenges to the ballots of Michael Hill and Morris Neal Hill.

In the absence of exceptions, we adopt the judge's recommendations to overrule the challenges to the remaining 14 challenged ballots: the ballots of Timothy Bragg, Lea Anne Collins, Denise Gossett, Kenny Grant, Morgan Jensen, David Kimbrough, Jennifer Newman, Leroy Green, Michael McAllister, Beverly Moon, John Reed, Joe Simpson, Ken Dawson, and Clarence Zimmerman.

ion and an employee who opposed the Union because Cooper "couldn't let two Union people gang up on a non-union person" and (2) that the employees would "probably lose [their salary continuance benefit] with all this Union stuff." In finding that Cooper made these statements, the judge credited and relied on Mayes' testimony that Cooper made the statements. Cooper testified that she did not make either of the statements.

In crediting Mayes' testimony regarding the no-gang-up statement, the judge explained: "I credit the testimony of Mayes . . . who [was a] current employee[] at the time [she] testified in this regard." The judge did not note Cooper's testimony denying the statement. In crediting Mayes' testimony regarding the lose-salary-continuance statement, the judge noted Cooper's testimony denying the statement and explained: "I credit Mayes' testimony who was a current employee at the time she testified and was not an alleged discriminatee. Her testimony was likely to be true."

We find that the judge has not adequately explained why he credited Mayes over Cooper and that it is unclear to what extent, if any, the judge considered witness demeanor in making these credibility determinations. Further, the judge, in crediting Mayes over Cooper, did not address the discrepancies between Mayes' testimony and an incident report Mayes submitted to the Union shortly after the conversation in which Cooper allegedly made the statements. As the Respondent notes, Mayes' account of the conversation in the incident report does not include the alleged statements. On cross-examination, the Respondent confronted Mayes with her incident report and Mayes offered no explanation for her failure to include the alleged statements in the incident report.

Accordingly, we shall remand Case 10-CA-36530, in part, to the judge for the limited purposes of (a) reconsidering his crediting of Mayes over Cooper regarding these two statements, (b) explaining, more fully, the basis for his credibility determinations upon reconsideration, and (c) modifying, if necessary, his credibility based findings that Cooper's disputed statements violated Section 8(a)(1).⁶

DIRECTION

IT IS DIRECTED that the Regional Director for Region 10 shall, within 14 days from the date of this Decision, Direction, and Order Remanding, open and count the 32

⁶ In remanding these cases, we are holding in abeyance the remaining 8(a)(1) allegations in Case 10-CA-36530 and we are not addressing at this time the election objection issues. Following the judge's supplemental decision on remand, we will address the 8(a)(1) issues and, if the revised tally of ballots shows that a majority of votes have not been cast for the Union, we will address the election objection issues.

ballots cast under challenge and serve on the parties a revised tally of ballots. If the revised tally shows that the Petitioner has received a majority of the valid ballots cast, the Regional Director shall issue a certification of representative. If the revised tally shows that the Petitioner has not received a majority of valid ballots cast, the Regional Director shall transfer the representation proceeding back to the Board for consideration of the remaining issues.

ORDER

IT IS ORDERED that Case 10–RC–15611 is severed and remanded to the Regional Director for Region 10 for the limited purposes described in the above Direction.

IT IS FURTHER ORDERED that Case 10–CA–36530 is severed and remanded, in part, to the judge for the limited purposes described above.

IT IS FURTHER ORDERED that the judge shall prepare and serve on the parties a supplemental decision containing credibility resolutions as more fully explained on remand, findings of fact, conclusions of law, and a recommended Order. Following service of the supplemental decision on the parties, the provisions of Section 102.46 of the Board’s Rules and Regulations shall be applicable.

IT IS FURTHER ORDERED that the final disposition of all other issues raised in this proceeding shall be held in abeyance pending our receipt of a supplemental decision from the administrative law judge.

Dated, Washington, D.C. September 30, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Gregory Powell, Esq., for the General Counsel.
John J. Coleman, III, Esq., and *Amy K. Jordan, Esq.*, for the Respondent, Employer.
George N. Davies, Esq., for the Charging Party, Petitioner.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This consolidated complaint and representation case was heard before me on April 30 and May 1–2, 2007, in Huntsville, Alabama. The complaint in Case 10–CA–36530 is based on a charge filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO (the Charging Party, the Petitioner, or the Union) on No-

vember 3, 2006. The Charging Party Union has alleged and it is alleged in the complaint that PPG Aerospace Industries, Inc., (the Respondent, the Employer, or PPG) violated Section 8(a)(1) of the National Labor Relations Act (the Act). The complaint is joined by the answer filed by the Respondent wherein it denies the commission of any violations of the Act.

On January 23, 2007, the Regional Director of Region 10 of the National Labor Relations Board (the Board) filed in Case 10–RC–15611 his report on challenged ballots and objections, order directing hearing, order consolidating Case 10–RC–15611 with Case 10–CA–36530 and order transferring cases to the board and notice of hearing.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The complaint in Case 10–CA–36530 alleges, Respondent admits, and I find, that at all times material, Respondent has been a Pennsylvania corporation with an office and place of business located in Huntsville, Alabama, where it has been engaged in the manufacturing of aircraft transparencies, that during the past 12-month period, Respondent sold and shipped goods valued in excess of \$50,000 directly to customers located outside the State of Alabama, and that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint further alleges, Respondent admits, and I find, that at all times material the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE REPORT ON CHALLENGED BALLOTS AND OBJECTIONS

Pursuant to a Stipulated Election Agreement approved by the Regional Director on September 8, 2006, an election by secret ballot was conducted on October 18, 2006, among the employees in an appropriate unit¹ to determine a question concerning representation raised by a petition filed by the Petitioner on August 30, 2006.

On conclusion of the balloting, a tally of ballots was made available to the parties showing that of approximately 474 eligible voters, 210 cast valid votes for and 214 cast valid votes against the Petitioner. In addition there was 1 void ballot and 32 challenged ballots. The challenged ballots are sufficient in number to affect the results of the election. On October 25, 2006, the Petitioner filed timely objections to conduct affecting the results of the election.

Pursuant to the provisions of Section 102.69 of the Rules, an investigation was conducted under the direction and supervision of the Regional Director who concluded that the issues raised by the challenges and Objections 1, 3, 5, 8, and 10 can best be resolved by a hearing. Accordingly, the Regional Di-

¹ The appropriate unit as set forth in the Stipulated Election Agreement is:

All production and maintenance employees employed by the Employer at its Huntsville, Alabama facility, but excluding all technicians, senior technicians, office clerical employees, professional employees, guards, step-up supervisors and all other supervisors as defined by the Act.”

rector directed that the issues raised by the challenges and by Petitioner's Objections 1, 3, 5, 8, and 10 be resolved by a hearing.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that Respondent violated Section 8(a)(1) of the Act as follows:

Paragraph 7 of the complaint—Since on or about September 1, 2006, and continuing thereafter, Respondent, acting through its supervisors and agents, Sue Cooper, Greg Campbell and Paul Rigsby at its facility, more closely scrutinized and monitored the movements and conversations of employees because they supported the Union's organizing campaign.

In his report on objections, the Regional Director found that paragraph 7 of the complaint alleges conduct which purportedly occurred during the critical period² preceding the election and is substantially coextensive with the conduct alleged in Objection 1.

Paragraph 8 of the complaint—On or about September 1, 2006, Respondent, acting through its supervisor and agent, Sue Cooper, at its facility, threatened its employees with loss of benefits because they supported the Union.

In his report on objections the Regional Director found that paragraph 8 of the complaint alleges conduct which purportedly occurred during the critical period preceding the election and is substantially coextensive with the conduct alleged in Objection 3.

Paragraph 9 of the complaint—Alleges that Respondent, acting through its supervisor and agent, Greg Campbell, engaged in the following conduct:

(a) On or about the week of September 25, 2006, at its facility, threatened employees with the inevitability of a strike if they selected the Union as their bargaining representative.

(b) On or about the week of September 26, 2006, at its facility, threatened its employees with replacement if they went on strike in support of the Union.

(c) On or about the week of September 25, 2006, at its facility, informed employees that it would be futile for them to select the Union as their bargaining representative because the Union would never get a contract from the Respondent.

In his report on objections the Regional Director found that paragraphs 9(a), 9(b), and 9(c) of the complaint allege conduct which purportedly occurred during the critical period preceding the election and is consistent with the conduct alleged in Objection 5.

Paragraph 10 of the complaint—Alleges that Respondent, acting through its supervisor and agent, Sue Cooper, and other agents presently unknown on or about October 16 and 17, 2006, in the finishing department, created the impression among employees that their union activities were under surveillance.

In his report on objections, the Regional Director found that paragraph 10 of the complaint concerns conduct which allegedly occurred during the critical period preceding the election

and is substantially coextensive with the conduct alleged in Objection 8.

In *Objection 10* petitioner asserts that the Employer abused the election process by harassing employees about how and when they were to vote. The employer denies engaging in any misconduct. The Regional Director found that in light of the conflicting evidence and positions of the parties, this objection raises substantial and material issues of fact which can best be resolved through record testimony.

In light of the conflicting evidence and positions of the parties, the Regional Director found that the issues raised by the challenges and by Petitioner's Objections 1, 3, 5, 8, and 10 can best be resolved through record testimony and directed a hearing be held to resolve these issues.

The Challenged Ballots

The report on challenged ballots by the Regional Director shows that the ballots of Timothy Bragg, Lea Anne Collins, Denise Gossett, Kenny Grant, Morgan Jensen, David Kimbrough, and Jennifer Newman were challenged by the Petitioner on the ground that they were hired after the cutoff date of August 27, 2006. The Employer contends these employees were hired and commenced orientation on August 21, 2006, and that they were eligible to vote in the election.

The report on challenged ballots shows that the ballots of Leroy Green, Michael McAllister, Beverly Moon, and John Reed were challenged by the Petitioner on the ground that they are process monitors and supervisors excluded from the unit. Petitioner contended that they are process monitors who oversee the work of the GCA temporary employees. At the hearing the Petitioner withdrew the challenges to the process monitors. The Petitioner originally challenged the ballot of Joe Simpson on the ground that he was a supervisor.

The Petitioner has challenged the ballots of Donnie Black, Tim Childers, Jimmy Cloud, Kenneth Dawson, Manda Dupree, Bill Everett, Denny Franchiseur, Morris Hill, Michael Hill, Bill Hopper, James Holder, David Knoer, Jackie Lackey, Monty Little, Vivian Lyle, David McNeal, Peter Mullen, Ronnie Steakley, Curtis Wales, and Clarence Zimmerman as supervisors. The report shows that the Petitioner contends they are lead persons who instruct employees, correct improper performance, move employees when necessary, decide the order in which work will be performed and effectively recommend discipline. The report shows that the Employer contends that these employees do not possess any supervisory authority and that the Petitioner did not challenge all persons working as lead persons, that it is picking and choosing employees to challenge on the basis of their perceived support for the Petitioner.

At the hearing, the Charging Party withdrew the challenge to the ballot of Joe Simpson and the challenges to the ballots of the process monitors and the challenge to the ballot of Ken Dawson. Charging Party did not withdraw its challenge to the ballot of Morris Neal Hill who Respondent showed was a lead person, at the hearing. Respondent contended that Clarence Zimmerman is a process monitor whereas Petitioner contended he was a lead person.

Respondent offered un rebutted testimony from Step Up Supervisor Kevin Bailey, that Clarence Zimmerman was a process

² The critical period in this matter is the period between August 30, 2006, the date the petition was filed, and October 18, 2006, the date of the election. *Goodyear Tire & Rubber Co.*, 138 NLRB 453 (1962).

monitor over the strip buff area, which testimony I credit.

The Union has challenged the ballots of two categories of employees whom it refers to as “temporary employees,” whom are not eligible to vote because they were not permanent employees, and “lead employees,” whom it contends are not eligible to vote because they are supervisors under the Act. In its brief, with respect to the “temporary” or “new employees” the Union contends that Timothy Bragg, Lea Anne Collins, Denise Gossett, Kenny Grant, Morgan Jensen, David Kimbrough, and Jennifer Newman were hired after the cutoff date of August 27, 2006, and were thus not eligible to vote in the election held on October 18, 2006. The Union contends that these employees must have successfully completed a 30-day entry level training period before they will be considered for permanent hire. It notes that they are referred to as “production temporary” employees on the employer’s payroll records and that they are only hired for a permanent position if they successfully complete the training program. The production temporary employees were paid \$10 per hour, but had to complete the training program before they received the higher “entry level” wage rate. Personnel Manager Michael Willey, testified that this group of production temporary employees was only the second group whose seniority dates and probationary dates were co-extensive with the date they began the training program. Prior to this group and one in July 2006, the employees’ probationary period and seniority date did not take effect until they had completed the training program. The Employer contends that although the names and pictures of these employees were posted on the bulletin board as new employees, this is not determinative. In July 2006, the employer hired all new production employees into trainee positions at \$10 per hour. They completed the paperwork within a day of their hire and from that date forward, were directed by supervisors in their work, schedules and work hours. Their payroll taxes were cut. They began their probationary period and worked in the training positions the first month of the 6-month probationary period. The Union did not challenge anyone hired into the training positions in July but did challenge those hired on August 21, 2006. One of these individuals who did not successfully complete the training program was terminated whereas another’s employment continued and he was assigned to a different area of the plant. The remaining individuals were probationary employees until the completion of 6 months. They received a raise at the end of the 4-week training program and at the end of their probationary period. The Employer contends that these employees are employees at will as are all other of its employees. I credit the foregoing testimony of Willey which was un rebutted.

The newly hired employees who were hired on August 21, 2006, were employees before the August 27, 2006 cutoff date as every aspect of PPG employment attached to these individuals the date they were hired. In *Regency Services Carts*, 325 NLRB, 617, 627 (1998). The Board held that the “party seeking to exclude an individual from voting has the burden of establishing that the individual is, in fact, ineligible to vote.” These employees were placed on PPG’s payroll and earned wages beginning on August 21, 2006, and worked under the supervision of PPG supervisors who controlled the details of their work prior to the August 27, 2006 cutoff date. The Em-

ployer contends that the 30-day training period in the instant case did not involve mere “preliminaries.” The Employer asserts that the challenged ballots were not merely orientation and preliminaries. In *CWM, Inc.*, 306 NLRB 495, 496 (1992), the Board held that employees in a 1-week training program were eligible. In *Firesafe Builders Products Corp.*, 57 NLRB 1803, (1944), 5-day training program members were held to be eligible voters. In *Dynocorp/Dynair Services*, 320 NLRB 120, 121 (1995), the Board distinguished between mere orienting and preliminaries. The fact that the employees were erroneously shown on a poster as “new hires” on September 15, 2006, does not make them ineligible to vote.

I find that the challenge to the “temporary” or “new” employees should be overruled. In *Golden Fan Inn*, 281 NLRB 226, 230 fn. 24 (1986), the Board held that “the burden of proof rests on the party seeking to exclude a challenged individual from voting.” I find the Union has not sustained its burden of proof. The evidence adduced at the hearing does not support a finding that these employees are ineligible to vote. There is no evidence that the hiring of the employees on August 21, 2006, was a sham designed to pack the unit with recently hired employees whom the Employer might consider to, be more supportive of the employer’s position and thus designed to defeat the Union in the upcoming election. Rather, they were hired prior to the cutoff date of August 27, 2006, and had all the indicia of “employees” and were not excluded from the unit. Accordingly, I find that these employees were properly included in the unit and eligible to vote and their votes should be counted.

I find that the “lead persons” are supervisors under the Act and should properly be excluded from in the unit as ineligible to vote and that their ballots should not be counted. The Union has challenged a number of employees classified as lead persons who it contends are in reality supervisors and ineligible to vote in the election. In *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006); *Croft Metals, Inc.*, 348 NLRB 717 (2006); and *Golden Crest Healthcare, Inc.*, 348 NLRB 727 (2006), referred to as the “Oakwood Trilogy,” the Board determined to “refine the analysis to be applied in assessing supervisory status . . . and endeavors to provide clear and broadly applicable guidance for the Board’s regulated community.” *Oakwood*, above at 686. The Board adopted definitions for the terms “assign,” “responsibly to direct” and “independent judgment” as those terms are used in Section 2(11) of the Act. *Id.* at 688. In *Oakwood*, the Board construed the term “assign” “to refer to the Act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e. tasks, to an employee.” *Id.* at 689. The Board held the term did not encompass “choosing the order in which the employee will perform a discrete task” or “ad hoc instruction that the employee perform a discrete task.” With regard to “responsibility to direct,” the Board in *Oakwood*, supra, held “if a person on the shop floor has ‘men under him’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible’ . . . and carried out with independent judgment” *Id.* at 691. The Board also held that in order to be responsible

direction, the alleged supervisor “must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” *Id.* at 692. The Board also said, “It must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It must also be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” Further the exercise of that authority must not be routine or clerical in nature but requires the use of “independent judgment.” In *Oakwood*, the Board held that for the judgment to be independent, it must be “free of the control of others” and not be “dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement.”

The lead persons in the instant case before me have the ability to and do make changes to work assignments, and prioritize these work assignments to assure production needs are met. Lead person Tim Childers testified that the Company’s written job descriptions accurately reflect what he does including changing work assignments when necessary. All parties stipulated as testified by Childers that the lead employees did so only after receiving approval from their supervisors. The Employer concedes that lead employees assign work to groups of employees and may from time to time change work assignments with the approval of their supervisor. The Employer contends that although the lead persons may change the assignment of a particular employee they do so only after checking with their supervisors. The lead persons have the authority to prioritize work and change work assignments to meet production needs. In *USF Reddaway, Inc.*, 349 NLRB 329 (2007), the Board held that lead persons who made changes in job assignments based on the employer’s needs were supervisors. In *American River Transportation Co.*, 347 NLRB 925 (2006), the Board held that authority to change and prioritize work assignments required a finding of supervisory status. The Union contends that the lead persons are supervisors and that the challenges to their ballots should be sustained. I find that the lead persons “assign” work to employees under their direction and control. Although they may frequently check with the supervisors, lead employees do assign work to groups of employees. I thus find that under *Oakwood Healthcare, Inc.*, *supra*, and related cases, the assignment of work and the prioritizing of these assignments, establishes that the lead employees are supervisors under Section 2(11) of the Act.

Background of the Alleged Unfair Labor Practices

In August 2006, the Union commenced a campaign to organize Respondent PPG’s production and maintenance employees at its Huntsville, Alabama facility where it manufactures airplane “transparencies” (windows and windshields for airplanes). The Union filed a petition for an election in Case 10–RC–15611 on August 30, 2006, to represent the Employer’s production and maintenance employees. The election was held on October 18, 2006, and the Region issued a tally of ballots on that date. The Union filed objections to conduct affecting the

results of the election on October 25, 2006. The Regional Director issued his order directing hearing, order consolidating cases, order transferring cases to the Board and notice of hearing on January 23, 2007.

The complaint allegations are as follows:

Paragraph 7 of the complaint—More closely scrutinizing and monitoring movements and conversations of employees because they supported the Union’s organizing campaign

General Counsel contends that on the day following the filing of the Petition for an election on or about September 1, 2006, the Respondent began closely scrutinizing and monitoring the activities of its production and maintenance employees because of their support of the Union. Respondent does not operate an assembly line. Its work is performed by small groups of individual employees who work in designated areas, referred to as “cells” in the finishing department. There are several employees assigned to each cell. There are two principal areas in the assembly area, the “autoclave” and the Assembly room.” Employees place units of product in the autoclave area. The “assembly room” is a sealed “clean room” which is entered through an “airlock” and contains a number of 10-by-10 foot plastic curtain booths with a single employee assigned to each one. “Clean room attire” must be worn by all persons entering the assembly room. Those persons outside the booths cannot hear conversations within the booths. The Respondent contends that employees began to more frequently gather and engage in conversations of nonwork related matters which required the supervisors to break up groups of employees near the assembly room booths and finishing cells. Iva Jayne Mayes, a 12-year employee who worked in the finishing department between August and October 2006, testified that on about September 1, 2006, she saw employees Jeff Lindsey and Rodney Brownfield engaged in a lengthy conversation in Brownfield’s “cell.” She was aware that Lindsey was not a union supporter and that Brownfield was a union supporter. Neither of these two employees were engaged in work or on break at that time. Mayes walked over to where the two men were talking. At that time she was approached by Supervisor Sue Cooper, who told her to return to her cell, and personally escorted her back to her cell and also told Mayes that Cooper could not allow “two union people to gang up on a non-union person.” Mayes testified that this was the first instance in which supervisor Cooper had personally escorted her back to her workstation. Mayes testified that during this same period of time she saw Lindsey engaged in other uninterrupted conversations with both union and antiunion supporters in the presence of Supervisor Cooper which lasted up to 30 minutes. Mayes testified that when conversations were led by union supporters such as Jay Balcerek, the supervisors interrupted these conversations. On September 27, 2006, Supervisor Cooper broke up a conversation between Mayes and Balcerek and told them to go back to work. Finishing department employee Gary Dwayne Sims testified that in the August to October time frame, the supervisors and managers on his shift closely watched the individuals in the assembly department because of their support for the Union. Sims was employed as an assembler. Sims testified that some of his projects could be accomplished in 30 minutes whereas others

would take a day and a half to complete. He testified that there would be “a little down time” between obtaining or receiving parts and receiving assignments and that during these periods the employees would help each other and would engage in general conversation.

Sims further testified that he attended union meetings. At a union meeting held in September 2006, Union Organizer Harvey Durham asked Sims and several other employees to pose for a picture with a sign stating “Union Yes.” They did so and held up their clenched fists. The picture was posted on the Union’s Internet website. Some of Sim’s coworkers told him that they had seen the picture on the Union’s website. During the same time period Supervisor Greg Campbell, in the presence of Sims and Supervisor Paul Rigsby, put his fist in the air and asked Sims what it was. Sims told Campbell he did not know what he was talking about. Campbell again made a fist, held it in the air and asked Sims what it was. Sims again said he did not know. Campbell then turned to Supervisor Rigsby and asked if he had seen this before and Rigsby replied that he thought he had seen it before. Supervisors Campbell and Rigsby denied at the hearing in this case that this incident had occurred. Sims testified that he noticed a change in Campbell’s attitude toward him after this incident. Campbell denied that his attitude toward Sims had changed. Sims testified that after this incident he noticed Campbell walking up and down the aisle and that whenever Sims would leave his workstation to help a coworker or to discuss an issue, Supervisor Campbell would fold his arms and stare at him. Sims also testified that during this same time period, he was aware that two of his coworkers, Mike Martin and Mary Mathis, did not support the Union and that while they had previously communicated only with each other, after the commencement of the union campaign, they began “talking to everybody . . . (in) all the booths and talking to everybody, just really outgoing.” Sims also observed that the supervisors did not interrupt the conversations of Martin and Mathis nor order them back to their workstations. The Respondent contends that during the campaign employees began to gather in groups by finishing cells and assembly room booths and discuss nonwork-related subjects during worktime.

I find that the evidence supports the conclusion that Respondent has, by its supervisors, violated Section 8(a)(1) of the Act by disparately closely scrutinizing and monitoring the conversations of its production and maintenance employees. I credit the testimony of Mayes and Sims who were current employees at the time they testified in this regard. I find that the Respondent through its supervisors was more closely monitoring and scrutinizing the movements and conversations of its prounion employees while permitting antiunion employees to engage in lengthy conversations without interruption.

Paragraph 8 of the complaint—Threatening its Employees with Loss of Benefits Because of their Support of the Union

Mayes testified that on about September 1, 2006, Supervisor Cooper told her, she would probably lose her “Salary Continuance” benefit if she and her co-employees voted to elect the Union as their collective-bargaining representative. Cooper also asked Mayes if she had ever missed a paycheck. This was a meaningful threat as Mayes testified that because of knee problems, she had made extensive use of the “Salary Continu-

ance” benefit and was then currently on a partial disability status. Although Cooper denied having made such a threat, I credit Mayes’ testimony who was a current employee at the time she testified and was not an alleged discriminatee. Her testimony was likely to be true. I find that this threat was violative of Section 8(a)(1) of the Act and destructive of the employees’ Section 7 rights to engage in protected concerted activities. This was a threat of reprisal for engaging in protected concerted activities. It was not tempered in any manner by tying it to the give and take of collective bargaining. It was not a mere factual statement of the realities or stated as an opinion but clearly was a threat of loss of a benefit if the employees chose union representation. See *Overnite Transportation Co.*, 329 NLRB 990 (1999), *enfd.* 240 F.3d 325 (4th Cir. 2001). RE: threat of loss of future pay increases; *Abramson, LLC*, 345 NLRB 171, 174 (2005); Re: threat of loss of benefits and that the company would probably close its doors if the employees voted in favor of union representation; *International Harvester Co.*, 222 NLRB 377 (1976); Re: threat of loss of healthcare benefits, sick pay and vacation. In the instant case before me, Supervisor Cooper’s threat of loss of benefits because of the employees’ support of the Union was violative of Section 8(a)(1) of the Act.

Paragraphs 9(a), (b), and (c) of the Complaint

Complaint Paragraph 9(a)—Threatening employees with the inevitability of a strike if they selected the Union as their bargaining representative

Complaint Paragraph 9(b)—Replacement of striking employees, and

Complaint Paragraph 9(c)—Futility of supporting the Union

Sandra Lingo Hansen has been an assembler the last 2 years. She inspects and installs windows and windshield’s internal components. Her supervisor is Greg Campbell. She testified that during the last week of September 2006 Campbell approached her with antiunion literature in hand and issued a number of threats if the Union won the election. He told her he had spoken to 50 of her fellow workers and that they had told him that they would not cross a picket line if the Union called a strike. He also told her that if the Union won the election she would need to go on strike as a strike was the Union’s only power and that she could be replaced if she went on strike. He also told her that the Union would be forced to go on strike as the Respondent would not give the Union a contract. He also told her that if she went on strike, she would be permanently replaced and thus, lose her job. He ended the conversation by telling Hansen to be prepared to strike. Later on October 17, 2006, he told her he hoped the Union lost the election.

Campbell denied having made these threats. However, I credit Hansen’s testimony and find that he did in fact make these threats as testified to by Hansen. I found Hansen to be a credible witness and note that she is a current employee who is not involved in this case as an alleged discriminatee and find that it is likely that her testimony is truthful. The threats made by Campbell to Hansen were not protected under the Act. Rather they were inherently destructive of Hansen’s right to engage in protected concerted activities under Section 7 of the Act. They were unlawful interference with the election. *NLRB*

v. *Gissel Packing Co.*, 395 U.S. 515 (1969); *Gold Kist, Inc.*, 341 NLRB 1040 (2001); and *Flexisteel Industries*, 316 NLRB 745 (1995).

Complaint Paragraph 10—Creating the Impression Among Employees that Their Union Activities were Under Surveillance

On October 16–17, 2006, the Respondent increased the number of supervisors on the second and third shifts in anticipation of the possibility of a need for greater supervision as the result of tension among the employees at the plant concerning the upcoming election set for October 18, 2006. The increase in supervision was modest. Whereas, the first shift was normally staffed with 260 to 275 employees and 15 to 20 supervisors; there was no increase in supervision on this shift. Rather, two supervisors from the first shift were assigned to supplement the supervision on the second shift and on the third. The second shift had a complement of 140 employees and 1 to 2 supervisors, the third shift normally had a complement of 70 to 75 employees and 1 supervisor. Respondent's witnesses, Operations Manager Mitchell Bruce and Director of Human Resources John Faulds, testified that there was tension in the plant concerning the upcoming election which was contributing to a loss of production. They also testified to three instances of suspected sabotage in which product had been intentionally damaged and of the serious safety concerns about the infliction of damage to its products which could threaten the life and safety of airplane crews and passengers if the integrity of the windshields and windows were compromised. Additionally Bruce testified that he was informed by an employee that the employee had been threatened with damage to his property and physical harm if he did not support the Union. They also testified that there was tension on the plant floor as groups of employees were gathering together to discuss the upcoming election.

I find that the General Counsel did not make a prima facie case of the creation of unlawful surveillance among the employees by Respondent. As noted above, the increase of supervision on the second and third shifts was modest. There was no increase in supervision on the first shift. I credit the testimony of Respondent's witnesses, Bruce, Willey, and Faulds, concerning the loss of production and the sabotage of its products. I credit the testimony of Bruce and Faulds that there were reports received from an employee of the threat of property damage and violence made by another employee. In *Crowley, Milner & Co.*, 216 NLRB 443, 444 (1975), the Board held there was no objectionable evidence of surveillance because of the employer's increase in supervision in a 2-week period prior to the election. It is undisputed that sabotaged products could cause an airplane disaster if they were installed in an airplane. Clearly, the Respondent had the right and responsibility to ensure that there was no interference with the production of safe products in the operation of its business and in view of the threat to all who were affected by their installation in airplanes. I find this allegation of the complaint should be dismissed.

With regard to Objection 1, I find that the Employer engaged in objectionable conduct as well as a violation of Section 8(a)(1) of the Act by more closely securitizing and monitoring

the movements and conversations of employees because they supported the Union's organizing campaign. This conduct occurred during the critical period.

With regard to Objection 3, I find that the Employer engaged in objectionable conduct as well as a violation of Section 8(a)(1) of the Act by threatening its employee with loss of benefits if she supported the Union. This conduct also occurred during the critical period.

With regard to Objection 5, I find that the Employer engaged in objectionable conduct as well as violations of Section 8(a)(1) of the Act by threatening employees with the inevitability of a strike if they selected the Union as their bargaining representative, by threatening its employees with replacement if they went on strike in support of the Union, and by informing employees that it would be futile for them to select the Union as their bargaining representative because the Union would never get a contract from the Employer. These threats occurred during the critical period.

Objection 8 shall be overruled as the evidence did not establish that the Employer engaged in the creation of unlawful surveillance.

Objection 10 shall be overruled as no evidence was submitted at the hearing in support of this objection.

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Sections 2(2), (6), and (7) of the Act.

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

3. Respondent violated Section 8(a)(1) of the Act by:

(a) More closely scrutinizing and monitoring the movements and conversations of its employees because of their support of the Union.

(b) Threatening loss of benefits because its employees supported the Union.

(c) Threatening its employees with the inevitability of a strike if its employees selected the Union as their collective-bargaining representative.

(d) Threatening its employees with replacement if they supported a strike by the Union.

(e) Informing employees it would be futile for them to select the Union as their collective-bargaining representative because the Union would never get a contract from the Respondent.

4. The Respondent did not violate the Act by creating the impression that the employees' union activities were under surveillance.

5. The Employer did not engage in objectionable conduct as alleged in Objection 10.

In view of my finding of a violation of the Act as alleged in complaint paragraph 7, I find that Objection 1 should be sustained.

In view of my finding of a violation of the Act as alleged in complaint paragraph 8, I find that Objection 3 should be sustained.

In view of my finding of a violation of the Act as alleged in complaint paragraphs 9(a), 9(b), and 9(c), I find that Objection 5 should be sustained.

In view of my finding of no violation of the Act as alleged in

complaint paragraph 10, I find that Objection 8 should be overruled.

I find that the Charging Party failed to establish that the employer abused the election process as asserted in Objection 10 and accordingly find that Objection 10 should be overruled.

THE REMEDY

Having found that the Respondent has engaged in the above violations of the Act, it shall be recommended that Respondent cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes and policies of the Act and post the appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, PPG Industries, Inc., Huntsville, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) More closely scrutinizing and monitoring the movements and conversations of its employees because of their support of the Union.

(b) Threatening loss of benefits because its employees support the Union.

(c) Threatening its employees with the inevitability of a strike if they select the Union as their collective-bargaining representative.

(d) Threatening its employees with replacement if they support the Union.

(e) Informing employees it would be futile for them to select the Union as their collective-bargaining representative because the Union would never get a contract from the Respondent.

(f) The allegation that Respondent unlawfully violated the Act by creating the impression that the employees' union activities were under surveillance shall be dismissed.

(g) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

2. Take the following affirmative actions to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix"⁴ at its facility in Huntsville, Alabama. Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 days in conspicuous places, including all places where notices to employees are customarily posted and shall mail a copy

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴ 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."

of the notices to all employees who were employed at its Huntsville facility during the period August 1 to October 18, 2006. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any 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 August 2006.

(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.

IT IS FURTHER ORDERED that the proceeding in Case 10-RC-15611 be severed and remanded to the Regional Director⁵ for appropriate action. I recommend that the challenged ballots of the temporary employees be counted. I recommend that the challenged ballots of the lead men be set aside and not counted. In the event that the challenged ballots and the revised tally show a majority in favor of the Union, I recommend that the election be certified by the Regional Director, as there will be no need for a second election. In the event that the challenged ballots and the revised tally do not show a majority in favor of the Union, I recommend that the election be set aside as the aforesaid finding of the objections has destroyed the laboratory conditions of the first election and the Employer should not benefit therefrom. An employer's pre-election conduct must not contain any threat of reprisal. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). See *Dominion Engineered Textiles, Inc.*, 314 NLRB 571 (1994).

Dated at Washington, D.C., October 19, 2007.

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT more closely scrutinize and monitor the movements and conversations of our employees because of their

⁵ Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, Exceptions to this Report may be filed with the Board in Washington, DC within 14 days from the date of issuance of this Report and recommendations. Exceptions must be received by the Board in Washington by [date].

support of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (the Union).

WE WILL NOT threaten our employees with loss of benefits because of their support of the Union.

WE WILL NOT threaten our employees with the inevitability of a strike if they select the Union as their collective-bargaining representative.

WE WILL NOT threaten our employees with replacement if they support the Union.

WE WILL NOT inform our employees it would be futile for

them to select the Union as their collective-bargaining representative because the Union would never get a contract from us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of your rights under Section 7 of the National Labor Relations Act.

PPG AEROSPACE INDUSTRIES, INC.