JD–77–22
Washington, MO

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

MOTOR APPLIANCE CORPORATION

and **Cases 14–CA–290327**
14–CA–290381
DISTRICT LODGE 9, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO **14–CA–290407**

SPARTA, A DIVISION OF INTERNATIONAL LABOR RELATIONS, INC.[1]

and **Case 14–CA–293615**

DISTRICT LODGE 9, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL–CIO

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for the Charging Party.

DECISION

Statement of the Case

ROBERT A. RINGLER, Administrative Law Judge. This hearing was held via Zoom in September 2022. In the complaint, the General Counsel (the GC) alleged that Motor Appliance Corporation (MAC) and Sparta, a Division of International Labor Relations, Inc. (Sparta) violated §8(a)(1), (3) and (5) of the National Labor Relations Act (the Act) by, inter alia,

[1] This name was amended at the hearing.

threatening and interrogating employees, informing employees that it would be futile to select the District Lodge 9, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) as their representative, soliciting grievances and discharging employees. The complaint further alleged that these unfair labor practices (ULPs) warrant a bargaining order under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). As will be discussed, the complaint has merit. On the record, I make the following

FINDINGS OF FACT[2]

I. JURISDICTION

A. MAC

MAC makes electric motors and battery chargers at its Washington, Missouri plant (the plant). It annually purchases and receives goods exceeding $50,000 directly from points outside of Missouri. It admits, and I find, that it engages in commerce under §2(2), (6) and (7) of the Act.

B. Sparta

Sparta admitted, and the record shows, that it is a corporation with an office in Tulsa, Oklahoma, where it provides labor consulting services. It admitted, and the record shows, that it annually provides services exceeding $50,000 directly outside of Oklahoma. (GC Exh. 1). It denied, however, that it engages in commerce under §2(2), (6) and (7) of the Act. It explained that, because it does not employ a statutory employee, it falls outside of the Board's jurisdiction. This contention is false; the record, in fact, shows that it employs one worker, Zach Langren.

1. Langren's Role

Sparta's President James Teague initially admitted that he employs a single worker, Zach Langren.[3] (Tr. 381). Although he first described him as a "regularly salaried employee," he then recanted and insisted that he was a non-employee.[4] (Tr. 381). Given that Teague was inconsistent on Langren's employment status, a brief review of Langren's work duties is useful.

Teague testified that Langren drafts consulting proposals and contracts,[5] performs

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[2] Unless otherwise stated, factual findings arise from joint exhibits, stipulations and undisputed evidence. Although the GC submitted a post-hearing brief, neither MAC nor Sparta saw fit to do so.

[3] In his sworn NLRB affidavit, Teague stated that, "Sparta employs 2 employees" (i.e., himself and Langren), he is unrelated to Langren, and Langren's hours vary from "more than full-time to part-time." (Tr. 396). He agreed that, as a labor relations consultant, he understands the definition of an "employee," and was aware of the distinction between an employee and independent contractor under the NLRA when he signed and reviewed his affidavit. (Id.).

[4] He explained that his accountant recently told him that Langren was not an employee, but, added that he was unable to "produce a 1099 or a W-2 for Zach Langren," which supports this revision. (Tr. 384).

[5] They are mostly boilerplate documents, where Langren primarily changes names and pricing. (Tr. 403).

billing and bookkeeping,[6] and disburses payments to labor relations consultants. (Tr 392-95). He agreed that, although Langren's hours fluctuate weekly, he is consistently paid $1,490 per month. (Id.). Langren uses his personal cell phone for bookkeeping. (Tr. 404). Teague oversees Langren's work and said that, "nothing goes out unless I get a chance to review it and approve it." (Tr. 405, 409-10). Langren is not listed on Sparta's bank account. (Tr 411).

In describing his role, Langren diverged from Teague.[7] He described himself as more of a consultant than a bookkeeper. (Tr. 523). Regarding bookkeeping, he explained:

> At the end of 2019 or early 2020 …. I … handle[d] all the billing and essentially if somebody has a case that they just got done with, they will send me over their hours and expenses, and I forward those to the client, and they pay them.

(Tr. 524). He pegged his duties as 95% consulting and 5% bookkeeping, which he said ranged from 2 to 5 hours per week.[8] (Tr. 525). He added that his wages fluctuated monthly.[9] He also denied that he receives direction from Teague.[10] (Tr. 526-27, 539). He claimed he receives a 1099 from Sparta (i.e., presumably in support of its contention that he is an independent consultant), as opposed to a W-2.[11] He does not have degrees in labor relations or accounting.[12]

For several reasons, I do not credit Langren on these points: (1) 95% of his work involves consulting and only 5% bookkeeping; (2) his work is not overseen by Teague; and (3) he receives a 1099 for his services. *First*, his testimony that his work is independent was contradicted by Teague, who expressly said that, "nothing goes out unless I get a chance to review it and approve it."[13] *Second*, Langren's testimony that he was an independent contractor, who performed labor relations assignments about 95% of the time and received a 1099, was contradicted by Teague, who primarily considered him to be a bookkeeper and employee.[14] *Third*, Langren's repeated willingness to lie to Sparta's clients by using a fake name, Gina Raegor, for billing purposes makes him less than credible.[15] I find, as a result, that Langren was primarily a bookkeeper, whose work was overseen by Teague.

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[6] Teague, a non-accountant, trained Langren to handle these duties. (Tr. 404).

[7] It is undisputed, however, that he sets his own hours and performs most work on his cell phone. He uses Quickbooks, which is a software that Sparta uses. (Tr. 538).

[8] This contradicted Teague's testimony that he was mostly a bookkeeper, whose hours varied from "more than full-time to part-time." (Tr. 396).

[9] This contradicted Teague's testimony that he was paid a flat monthly rate.

[10] This contradicted Teague's testimony that "nothing goes out unless I get a chance to review it and approve it." (Tr. 405, 409-10).

[11] As noted, this 1099 was never produced. (Tr. 527).

[12] He did not complete his college degree.

[13] Teague was more credible than Langren, who appeared to act like the hearing was an elaborate game. And, although crediting Teague over Langren was a bit like paying homage to the proverb, "in the land of the blind, the man with one eye is king," Teague's account was still consistent with his affidavit, which was created well before it was apparent that Langren's employee status was an issue. Teague has, thus, been credited over Langren.

[14] Langren's account was unsupported by Sparta's failure to offer Langren's tax returns or Sparta's business records (e.g., billing records, time sheets, etc.), which corroborated this testimony.

[15] Unlike Teague, there was no safety-related reason behind the use of his pseudonym.

2. Analysis

A threshold issue in this case involves whether the Board has jurisdiction over Sparta (i.e., whether Sparta is a §2(2) "employer" under the Act).[16] Under the Act, an "employer" must minimally employ a §2(3) employee. *Operating Engineers Local 487 Health and Welfare Trust Fund*, 308 NLRB 805 (1992). The Board uses a common law right-of-control test. *Id*. at 805. In *Roane-Anderson Co*., 95 NLRB 1501, 1503 (1951), the Board held that the "decisive elements in establishing an employer-employee relationship are complete control over the hire, discharge, discipline, and promotion of employees, rates of pay, supervision, and determination of policy matters." The Board weighs these common law factors:

> (a) the extent of control which, by the agreement, the master may exercise over the details of the work;
> (b) whether the one employed is engaged in a distinct occupation of business;
> (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
> (d) the skill required in the particular occupation;
> (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
> (f) the length of time for which the person is employed;
> (g) the method of payment, whether by the time or by the job;
> (h) whether the work is part of the regular business of the employer;
> (i) whether the parties believe they are creating the relation of master and servant; and
> (j) whether the principal is or is not in business.

Operating Engineers, supra, 308 NLRB at 806, n.3.

The GC established that Langren is a §2(3) employee. Factor 1 favors employee status, inasmuch as Teague stated that "nothing goes out unless I get a chance to review it and approve it." Factor 2 also supports employee status, inasmuch as Langren "is engaged in the distinct operation of the business" and handles a core bookkeeping role for Sparta. Regarding factors 3 and 4, it seems intuitive that a bookkeeper, who lacks specialized financial degree, is employed in the "kind of occupation … [that] is usually done under the direction of the employer."[17] Factor 5 is neutral, given that Langren does not appear to require any specialized instruments, tools or worksite.[18] Factors 6 and 7 favor employee status, given that he has been continuously

[16] The GC holds the burden on this issue. *Laborers Local 1177 (Qualicare-Walsh, Inc.)*, 269 NLRB 746 (1984).

[17] Langren uses a cell phone to perform transactions, has basic knowledge of Quickbooks and math, and changes boilerplate documents. Such basic bookkeeping and administrative work is generally directed by an employer.

[18] Hence, the issue of who supplies such tools is irrelevant and this factor has been given no weight.

employed by Sparta since early 2020 and receives a consistent $1,490 per month for his work (i.e., he is not paid by the job). Regarding factor 8, Langren's bookkeeping work is "part of the regular business of the employer," which supports employee status. Regarding factor 9, Teague believed that he was "creating a master and servant relationship" by employing Langren, inasmuch as his sworn NLRB affidavit stated that he is an employee. Regarding factor 10, Sparta, the principal, is a business entity; this supports employee status. In sum, 9 of 10 common law factors support employee status, while 1 factor is neutral; Langren is, thus, a §2(3) employee.

The Board, therefore, has jurisdiction over Sparta, which employs a single employee. Given that that Sparta admitted that it annually provides services exceeding $50,000 directly outside of Oklahoma (GC Exh.1),[19] I find that it engages in commerce under the Act.

C. Union

The parties stipulated, and I find, that the Union is a §2(5) labor organization. (Tr. 302-304).

D. Eric Grumbrecht's Agency Status and Sparta's Liability for His ULPs

Both MAC and Sparta, quite surprisingly, denied that Grumbrecht was a §2(13) agent for their respective entities. After considering this issue, I find that he was an agent for both entities.

1. Precedent

An individual is an employer's agent, when they hold either actual or apparent authority to act on behalf of the employer. *Rogan Brothers Sanitation, Inc*., 362 NLRB 547, 552 (2015). The Board finds apparent authority when, "'under all the circumstances, the employee would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management.'" *SAIA Motor Freight, Inc*., 334 NLRB 979, 979 (2001), citing *Waterbed World*, 286 NLRB 425, 426-427 (1987). The burden proof on this issue rests with the party averring agency status. *CNP Mechanical, Inc*., 347 NLRB 160, 169 (2006).

2. Grumbrecht was MAC's §2(13) Agent

Grumbrecht was MAC's agent. During his consulting tenure, he was authorized to: summon MAC's employees from their workstations; meet with them individually and in groups regarding the Union and labor relations issues; and counsel them on issues connected to the MAC's plant. MAC President Evan Ballman succinctly described his authority:

> I … didn't know much about it and relied on … [Grumbrecht]. He basically had carte blanche … to go in and handle it, because I don't know what to say.

[19] Beyond this admission, Langren testified that Sparta received approximately $567,000 in 2021 from JSW Steel, an Ohio company, for its labor relations services. (Tr. 547).

(Tr. 620). Grumbrecht was, as a result, vested with apparent authority as a §2(13) agent for MAC, inasmuch as employees reasonably believed that he was "reflecting company policy and speaking and acting for management." *SAIA Motor Freight, Inc*., supra.

3. Grumbrecht was Sparta's §2(13) Agent

Grumbrecht was Sparta's agent. MAC and Sparta signed a contract, where Sparta agreed to provide consulting to MAC on the Union's organizing drive. Thereafter, Teague selected Grumbrecht to perform these services for Sparta at MAC's plant. He was Sparta's only on-site representative and vested with apparent authority to speak to employees for Sparta as its agent.

4. Sparta's Liability for Grumbrecht's ULPs

Sparta is jointly liable with MAC for those ULPs that were committed directly against MAC's employees by Grumbrecht. Under §2(2), an "employer" includes "any person acting as an agent of an employer, directly or indirectly." A question presented in this case is whether Sparta (i.e., an employer independently covered by the Act's jurisdiction) is liable for ULPs committed by Grumbrecht during his direct interactions with MAC's employees.[20] The Board examined this issue in *St. Francis Hospital*., 263 NLRB 834, 850 (1982):

> In *National Lime and Stone Company*, 62 NLRB 282 [1945], the employer, whose employees were attempting organization, retained the services of Labor Relations Institute …. There [was] no contention … National is not responsible for the conduct of the Institute or that the Institute is not an employer within the meaning of the Act …. [National] … authorized the Institute's representatives … to go among the employees and speak to them; … [and] introduced … [the Institute] to assembled groups of employees in National's plant, thereby sponsoring talks of the Institute's representatives to the employees on such occasions …. The Board concluded that under all the circumstances, the Institute acted in the interest of National and was therefore an employer within the meaning of Section 2(2) of the Act, and that National was also responsible for the acts and statements of the Institute. **After finding that both were responsible for the unfair labor practices committed, it ordered both to cease and desist therefrom and to post notices for the employees of National.**

Id. (emphasis added). *St. Francis* and *National Lime*, therefore, provide that where a §2(2) employer and labor relations consultant such as Sparta dispatches consultants to an employer such as MAC, and they serve as §2(13) agents for both entities as was the case here, both entities are responsible for those ULPs committed directly by that labor consultant (i.e., Grumbrecht). See also *Blankenship & Associates., Inc.*, 306 NLRB 994 (1992); *Alliance Rubber Co*., 286 NLRB 645 (1987); *Sierra Academy*, 182 NLRB 546 (1970).

[20] Although there is no question that MAC is liable for Grumbrecht's actions (i.e., given that he served as MAC's agent), this question is more nuanced and asks whether Sparta is also liable for those ULPs committed directly against employees by Grumbrecht during his one-on-one and mass meetings.

II. UNFAIR LABOR PRACTICES

A. December 2021 – Organizing Drive Begins

The Union held organizing meetings at the Super 8 in Washington, Missouri on: December 28, 2021 (5 employees attended); January 10, 2022[21] (7 employees), 18 (4 employees) and 26 (6 employees); and February 1 (4 employees) and 8 (3 employees). (GC Exh. 3). These meetings produced signed authorization cards from 10 of the 14 MAC employees in the bargaining unit at issue (the Unit).[22] (GC Exh. 4-6).

B. January 20 – Representation Petition

The Union filed a petition with the Board seeking to represent the following Unit:[23]

> Included: All full-time and regular part-time production and maintenance employees who are employed in the Employer's charger division at their 601 International Avenue, Washington, Missouri facility.
>
> Excluded: All other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

(GC Exh. 5).

C. January 21 – MAC Retains Sparta

Following the filing of the petition, Teague cold-called Sparta and marketed his own very special brand of union avoidance services. Amusingly, and just like Chazz Reinhold of *Wedding Crashers,* who "never used his real name,"[24] Teague introduced himself to Ballman with the fake name, "Jack Black."[25] Labor consultant Grumbrecht later followed suit and identified himself as "Aleks Green."[26] And, not to be outdone by anyone, Langren rolled with a female nom de plume, "Gina Raegor."[27] (Tr. 548). On January 21, MAC contracted with Sparta at a gaudy rate of $375 per hour to provide a "systematic, organized counter campaign … to secure an election win." (GC Exh. 13). Shortly thereafter, Jack Black (i.e., Teague) dispatched Aleks Green (i.e., Grumbrecht) to MAC to answer the call, and a veritable

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[21] Unless otherwise stated, all dates that follow occurred in 2022.

[22] Union Organizer Robert Beloit directly observed MAC's employees sign the authorization cards.

[23] These employees held sheet metal and assembly positions.

[24] *Wedding Crashers.* Directed by David Dobkin, New Line Home Entertainment, 2005.

[25] Teague signed Sparta's contract with MAC as "Jack Black," even though he was uncertain it was enforceable.

[26] Grumbrecht used his fake name, when filling out an LM-2 report for the U.S. Department of Labor connected to the MAC campaign, even though it said that, "failure to comply may result in criminal prosecution." (GC Exh. 15).

[27] Langren uses the email Ginailrpro@gmail.com and signs his name as Gina Raegor (Tr. 548).

smorgasbord of ULPs ensued.

D. January 26 – Grumbrecht's One-on-One Meetings with MAC's Employees[28]

For Grumbrecht's opening act, several MAC employees were summoned from their workstations to meet with him alone for a vigorous dose of misinformation in Manufacturing Manager Brandon Rodriguez's office. Grumbrecht did not want to waste the chance to use his slick nickname and unsurprisingly introduced himself to employees as "Aleks Green."[29]

1. Shannon Bartle Meeting

Bartle recollected this exchange with Green:

> [He] introduced … himself to me and … basically just started asking me a bunch of questions. [He] told me that he was a union buster … hired by the company. They were bringing him in … to give the other side …. [and] explain to me why unions would be bad …. He told me to go get my own information …. [He] asked me what I thought about the union ….

(Tr. 133-34).

2. Jessica Krausch Meeting

Krausch remembered this close encounter with Green:

> I walked in … and [said] … I didn't want to be in this meeting …. Green said, "[t]his is mandatory. You are not allowed to leave until our meeting is over." ….
>
> And he … closed the door behind me. I was immediately intimidated, because this man whom I have never met, whose face is covered in a mask …. just closed the door … and is now sitting between me and the only exit ….
>
> He asked … why … we needed … the Union, and I explained … that we were having …. sexual harassment, and threats …. I was threatened by Brandon Spaulding that he was going to punch me in the face …. [and] was going to send someone to my home with a gun ….
>
> I filed complaints … and nothing became of it, and … he said that … my vote for the Union was just an "F-you" vote to Evan and Motor Appliances. I told him, "No," that I had done my research, and I believe that a "yes" vote for the Union is what is best for me and my family.

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[28] Several statements made at these meetings were alleged to be unlawful under complaint ¶¶6, 13 and 15.

[29] Throughout this decision, the names Grumbrecht and Green are used interchangeably to identify the same person.

> He then said that if we bring in a Union, they will take our First Amendment rights away. We cannot speak poorly about the Union, otherwise we will face legal consequences. They can mandate drug tests, and that our raises will be frozen while we settle a contract, which could take one to three years.
>
> I informed him that … our raises were based on performance reviews, and that if any raises were questioned, they could be backed up by performance reviews, and he said, "No. It is illegal for Evan to give you any raises while we settle this, because it could be taken as he is trying to bribe you into stopping the Union." I reminded him, "No, our hiring paperwork promises raises at certain times, based on performance if we do well and are doing a good job …."
>
> It was at that point that I knew that … he wasn't changing my mind …. So, I told him, "… I have got work to do. I need to go back to work."
>
> He said, "No. This is my time. Your work will still be there. We need to finish this." I said, "I am done," and I walked out of the room.

(Tr. 222-24).

3. Randy Breedlove Meeting

Breedlove met with Green and recalled the following:

> [The meeting began] with him telling me he was here to dispel the rumors of the union, how they were not for us. That they were all for themselves and things that were promised was not going to be … kept. And how he used to be pro-union for so many years. In fact he was a big Jimmy Hoffa fan but once he found out the union was corrupt then he went the other way ….
>
> [He asked how I was going to vote] …. And I told him I was undecided ….
>
> [He said] the union was not going to keep up their end of the bargain. We were basically under the rule of Evan …. And he was willing to listen to us for our demands ….

(Tr. 193-194).

4. Analysis[30]

Several of Grumbrecht's comments violated §8(a)(1). They are analyzed below.

a. Futility of Unionizing

MAC and Sparta violated §8(a)(1), when Grumbrecht told Breedlove that: the Union was "all for themselves and things that were promised were not going to be;" he stopped supporting unions when he learned of their corruption; and "the union was not going to keep up their end of the bargain." When taken as a whole, these comments unlawfully conveyed that unionizing would be a futile effort. *Smithfield Foods*, 347 NLRB 1225, 1230 (2006); *Aqua Cool*, 332 NLRB 95, 95 (2000); *North Star Steel Co*., 347 NLRB 1364, 1365 (2006).

b. Unspecified Reprisals

MAC and Sparta violated §8(a)(1), when Grumbrecht threatened Krausch by telling her that her "vote for the Union was just an 'F-you' vote to Evan and Motor Appliances." *Hialeah Hospital*, 343 NLRB 391, 391 (2004) (statement that manager felt "betrayed" implied disloyalty and was an implicit threat of unspecified reprisals). He similarly violated §8(a)(1), when he told Breedlove that "the union was not going to keep up their end of the bargain …. [and we] were basically under the rule of Evan." These comments unlawfully related that Ballman held all of the power and employees might suffer unspecified consequences, if they failed to support his election interests. *Corliss Resources, Inc.*, 362 NLRB 195, 195-196 (2015) (statements calling union supporters disloyal implicitly threatened retaliation); *Fixtures Mfg. Corp.,* 332 NLRB 565, 565 (2000)(employers liable for all threats that could reasonably tend to be coercive, even if ambiguous); *Boydston Electric, Inc.,* 331 NLRB 1450, 1450 (2000).

c. Threats to Withhold Raises

MAC and Sparta violated §8(a)(1), when Grumbrecht told Krausch that MAC's practice of providing annual performance-based "raises will be frozen while we settle a contract, which could take one to three years." A promise of a future wage increase or review is a condition of employment, which must be maintained during a campaign and subsequent contract bargaining. *Deaconess Medical Center*, 341 NLRB 589, 590 (2004); *Baker Brush Co.*, 233 NLRB 561 (1977); *Liberty Telephone & Communications, Inc.*, 204 NLRB 317 (1973). As a result, an employer violates the Act, when it threatens to end the status quo regarding raises, if employees unionized. *Wal-Mart Stores, Inc.*, 352 N.L.R.B. 815 (2008)(employer comment that it would not grant merit increases during negotiations for a collective-bargaining agreement was unlawful); *Lynn-Edwards Corp.*, 290 NLRB 202, 205 (1988).

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[30] Bartle, Krausch and Breedlove were credible, consistent and cooperative witnesses, with strong demeanors. Their testimony was essentially unrebutted, inasmuch as Grumbrecht failed to return to the hearing to continue his testimony. Although Respondents were offered the opportunity on the record to subpoena him and enforce the subpoena in U.S. District Court if he remained uncooperative, they declined and opted to close the case without procuring his additional testimony. The GC's unrebutted testimony regarding these meetings was, as a result, credited.

d. Interrogation

MAC and Sparta violated §8(a)(1), when Grumbrecht asked Bartle what she thought about the Union and asked Krausch why MAC needed a Union. In *Westwood Healthcare Center*, 330 NLRB 935 (2000), the Board held that these factors determine whether an exchange is an unlawful interrogation:

> (1) The background, i.e., is there a history of employer hostility and discrimination?
> (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
> (3) The identity of the questioner, i.e., how high was he in the company hierarchy?
> (4) Place and method of interrogation, e.g., was employee called from work to the boss's office? Was there an atmosphere of unnatural formality?
> (5) Truthfulness of the reply.

Id. at 939. In applying these factors, however, the Board concluded that:

> 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.

Id. at 940.

The Bartle and Krausch exchanges were unlawful interrogations. These factors are determinative: the questioning involved a protected activity (i.e., Union support); there is extensive evidence of animus in this case ranging from threats to unlawful firings; Grumbrecht had a high-level of authority during the campaign (i.e., he reported directly to Ballman, spoke for MAC and could order supervisors to summon employees to meetings); the questionings occurred in a private office area, which involved Bartle and Krausch being summoned away from their workstations to meet alone with Grumbrecht, who was a masked[31] and formidably-sized stranger.[32]

[31] He wore a mask presumably as a precaution against COVID-19.

[32] Although the hearing was held via Zoom, Grumbrecht appeared to be a burly man with a booming voice.

E. February 9 –Nicholas Kampschroeder's Firing[33]

1. GC's Position

a. Background

Kampschroeder, a punch press operator, was employed on the 6:30 a.m. to 2:30 p.m. day shift from April 2018 until his February 9, 2022 firing. He was an open and active Union supporter, who encouraged coworkers to support the Union, wore Union buttons at the plant, attended Union meetings and signed an authorization card.[34] (GC Exhs. 3-4). He also, unfortunately, suffers from epilepsy, which MAC seized upon as cover to prompt his firing.[35]

b. Friday, January 28 – Epileptic Seizure

Kampschroeder had an epileptic seizure, while working on his punch press. This resulted in him passing out and going to the emergency room. Thereafter, MAC directed him to see the company doctor for a fitness-for-duty evaluation, as a condition before returning to work.

c. Monday, January 31 – Medical Clearance Issued

After the company doctor evaluated him, he received a *Return to Work Report*, which succinctly stated that he had resumed a "fitness for duty" and could, "return to work for [his] … next scheduled shift." (GC Exh. 9). The physician added, without further explanation, "[n]o specific physical limitations. No safety sensitive activities. No driving forklift for at least 6 months." (Id.).

d. Tuesday, February 1 – Return to Work

Kampschroeder then tendered his *Return to Work Report* to MAC. During a later meeting with Ballman and Rodriguez, he was told that, in spite of the positive *Return to Work Report*, he would no longer be assigned his punch press job due to MAC's safety concerns and would now need to be reassigned. There was no evidence presented that MAC consulted with the company physician, who had expressly declared him fit for duty, before making its reassignment decision.

Kampschroeder was understandably upset by the unexpected news of his reassignment, but, expressed a willingness to accept MAC's decision. He was, however, sent home that workday due to lack of work. It is noteworthy that, although he previously had an epileptic

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[33] This allegation is pled under complaint ¶¶10 and 14.

[34] Rodriguez recalled Kampschroeder wearing Union buttons. (Tr. 353-56). Vaughn was aware that Kampschroeder supported the Union and had connected discussions with Grumbrecht. (Tr. 367-70).

[35] He disclosed his condition to MAC in his 2018 job application. (Tr. 108). He previously had a seizure at the plant in 2020 and recalled that his first epileptic seizure occurred in 1998. Epilepsy is listed on his Driver's License. In short, he has been continuously transparent about his disability.

seizure at the plant in 2020, his assignment was never changed by Rodriguez at that time and no concerns were ever raised regarding his then fitness for duty. (Tr. 105-108). Ballman acknowledged that he knew about the earlier seizure, but, denied knowing that it was connected to epilepsy. (Tr 631). He, surprisingly suggested, without explanation, that a seizure of unknown origin was less concerning for him than an epileptic seizure.

e. Wednesday, February 2 through Friday, February 4

On Wednesday, February 2, Kampschroeder was sent home early due to snowy road conditions. On February 3 and 4, he did not attend work because of winter weather, which made his commute unsafe. On Friday, February 4, he and Rodriguez exchanged these texts:

> **[Kampschroeder]** What's up [?]
>
> **[Rodriguez]** Well, the last few times we talked … you were unsure about working the industrial line. Come Monday, you are going to report to the industrial line for training, correct?
>
> **[Kampschroeder]** Sure
>
> **[Rodriguez]** Thank you for replying …. you've got this!

(GC Exh. 10).

f. Monday, February 7 – Kampschroeder Reports to Work

Kampschroeder then reported to work at 6:30 a.m. on the "industrial line for training," as directed by Rodriguez's February 4 text. After reporting, he loitered at the industrial line awaiting for an assignment and instruction, until he finally encountered Rodriguez at 8:30 a.m. At that time, he was directed to assist Breedlove, which he did. Breedlove credibly described his assistance that day as productive and useful.

g. Tuesday, February 8

Kampschroeder again assisted Breedlove on the industrial line. Breedlove again credibly offered that he was productive and an eager learner. Kampschroeder, nevertheless, missed his old assignment and met with Human Resources Manager Ashby-Huck in the afternoon that day and asked if this reassignment would be permanent, but, did not receive a concrete reply.

h. Wednesday, February 9

On this date, in what can only be described as a workplace "hit and run." Kampschroeder was summarily fired without explanation.[36] Thereafter, he packed his things, left, and very

[36] Rodriguez conceded that he never told Kampschroeder why he was fired. (Tr. 362).

logically concluded that he was fired because he was pro-Union.

i. Rodriguez's Start of the Day

There was a significant amount of testimony about when Rodriguez arrived at work. The GC contended that this was relevant because, although MAC now contends that Kampschroeder was fired for loafing on February 7, the GC defends that Kampschroeder was reasonably idle on February 7 between 6:30 am and 8:30 a.m. because Rodriguez was unavailable to give him the promised training and new assignment prior to arriving at around 8:30 a.m.

Stanfield, who arrived at work at 6 a.m., indicated that Rodriguez generally showed up between 9 am and 10 am. Kampschroeder estimated that Rodriguez typically made an appearance at 9 a.m., as was the case on February 7. Bartle said that she normally observed him arriving at work at around 10 a.m. each day. Although the GC logically issued a subpoena, which requested "attendance records that show the hours worked by Brandon Rodriguez," MAC failed to provide the same and averred that no responsive documents existed. (GC Exh. 19). I credit the GC's witnesses on this issue, who were consistent and believable, and find, as a result, that Rodriguez generally arrived between 8:30 a.m. and 10 a.m. and was not available to give Kampschroeder instruction and the training promised within his February 4 text before about 9 a.m. I further find that Kampschroeder's idle time between roughly 6:30 a.m. and 9 a.m. on February 7 was reasonable, inasmuch as he was waiting for Rodriguez to arrive and train him on the industrial line, as promised in the text from a few days before.

j. Progressive Discipline Policy

The GC also issued a subpoena to MAC, which requested its "progressive disciplinary policy." (GC Exh. 19). The parties stipulated that no responsive document existed. The GC argues that, assuming arguendo that discipline was merited under the circumstances, which it has not conceded, MAC should have solely subjected Kampschroeder, who was previously a model employee, to vastly lesser progressive discipline (i.e., a warning or short suspension in lieu of a firing).

2. MAC's Response

Ballman claimed that he fired Kampschroeder for loafing. He agreed, however, that he failed to counsel him or issue a lesser penalty before his firing, even though it is undisputed that he was a model worker before his reassignment.[37] (Tr. 349). Before Kampschroeder, MAC had never fired anyone for loafing or failing to perform their duties. (Tr. 349); see also (GC Exh. 19). Ballman said that Kampschroeder was very upset by his reassignment and performed it half-heartedly. In support of this point, MAC showed various photos, which demonstrated that Kampschroeder was unproductive and talking to coworkers on February 7 at

[37] On at least one instance, MAC provided progressive discipline to Spaulding, another employee, before firing him. (GC Exh. 16).

various points between about 6:00 a.m. and 9:00 a.m.[38] (R Exh. 6B-E). As noted, these pictures were taken before Rodriguez arrived at work that day to assign and train Kampschroeder, as was promised.

Ashby-Huck denied knowing that Kampschroeder was an epileptic, even though she was aware of his 2020 seizure. (Tr. 495, R. Exh. 1). She stated that she believed that his punch press job was a safety sensitive role. (Tr. 505). She described MAC's rationale for the firing:

> Nick was fired because of … several factors. The main one being he did not want to do assembly work. He did not want to … do that type of job …. He was not receptive to training …. He was … wandering around and pouting …. [H]e was just being obstinate …. [H]e was not doing his job.

(Tr. 508-509). She agreed that, during her February 8 conversation with Kampschroeder, he never refused to perform his duties and was actually "working on the assembly line." (Tr. 516). She conceded that he was good at his job and had no prior attendance or disciplinary issues. (Tr. 519).

Rodriguez averred that Kampschroeder "was terminated because he kept refusing to do the job … [and] was standing around not doing anything." (Tr. 572). He added that, "he was still not coming in on time…. [,] dragging his feet on getting over to the industrial line …. [and] didn't want to do the job."[39] (Tr. 576).

3. Analysis

MAC fired Kampschroeder in violation of §8(a)(3). The Board applies a mixed motive analysis under *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989, 102 S. Ct. 1612, 71 L. Ed. 2d 848 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 103 S. Ct. 2469, 76 L. Ed. 2d 667 (1983). Under *Wright Line*, the GC must first demonstrate, by a preponderance of the evidence, that the worker's protected conduct was a motivating factor in the adverse action. This initial burden is satisfied by showing: (1) the individual's protected activity; (2) employer knowledge of such activity; and (3) union animus on the part of the employer. If the GC meets the initial burden, the burden shifts to the employer to prove that it would have taken the adverse action, even absent the protected activity. *Mesker Door*, 357 NLRB 591, 592 (2011). The employer cannot meet its burden, however, merely by showing that it had a legitimate reason for its action; rather, it must show that it would have taken the same action in the absence of the protected conduct. *Bruce Packing Co.*, 357 NLRB 1084, 1086-87 (2011). If the employer's

[38] It is noteworthy, however, that, even though Kampschroeder seemed to be repeatedly engaged in non-productive discussions with an unnamed woman wearing a pink sweatshirt in these photos, there was no evidence that she was also fired or disciplined for loafing. MAC also failed to explain exactly what duties Kampschroeder should have been performing before Rodriguez arrived that day to provide his assignment and training. It also neglected to proffer any evidence showing that it reviewed these photos before firing him.

[39] Rodriguez agreed that Kampschroeder could have been issued a lesser discipline to correct his alleged behavior, but, this was not done. (Tr. 585-86).

proffered reasons are pretextual (i.e., either false or not actually relied on), it fails by definition to show that it would have taken the same action for those reasons regardless of the protected conduct. *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007).

a. Prima Facie Case

The GC satisfied its initial burden of showing that Kampschroeder's protected conduct was a motivating factor. He had extensive Union activity; MAC had knowledge (i.e., knowledge was admitted by both Rodriguez and Vaughn); and there is abundant evidence of animus (i.e., several unlawful threats, interrogations and other actions).[40]

b. MAC's Response

MAC averred that it would have fired Kampschroeder, even absent his protected activity. It argued that he loafed and would have fired anyone else for this transgression.

c. Synthesis

MAC failed to demonstrate that it would have fired Kampschroeder absent his Union activity. *First*, it unreasonably accused Kampschroeder of loafing on February 7 and fired him on this basis, even though Rodriguez did not arrive at the plant until late morning to provide the promised training and assign his duties. This meant that MAC is holding him accountable for Rodriguez's laziness in failing to show up at 6 a.m. to train and direct him or ineptitude in failing to leave guidance on what his new assignment should be.[41] It is noteworthy that, once Rodriguez actually advised Kampschroeder of his assignment, he competently performed it alongside Breedlove without issue. In sum, MAC's decision to fire him under such circumstances is suspect, particularly given its accolades that he was model employee before the reassignment. *Second*, there is no record evidence that the woman in the pink sweatshirt, who was photographed talking to Kampschroeder and also loafing during the morning of February 7 was disciplined, even though she committed the same transgression as Kampschroeder. This disparate treatment was glaring. *Third*, MAC could have resorted to lesser discipline under these circumstances, i.e., it could have issued a counseling or warning or limited suspension, which would have communicated its concerns while preserving the livelihood of a previously stellar worker. Its unwillingness to pursue this very obvious and more effective option is suspect.[42] *Fourth*, MAC's failure to conduct a comprehensive investigation of his actions, by minimally interviewing him about his actions before firing him further delegitimizes its stance. It also afforded him an unreasonably short trial period to accept the reassignment. Or put another way, an evenhanded employer, would have first completed a

[40] The close timing between Kampschroeder 's Union activity and his firing also demonstrates animus. *La Gloria Oil & Gas Co*., 337 NLRB 1120 (2002), enfd. 71 Fed. Appx. 441 (5th Cir. 2003).

[41] Rodriguez knew that this was a reassignment and that Kampschroeder needed detailed guidance on his new duties. MAC's decision to hold him accountable for a manager's failure to properly supervise a worker with their new assignment is egregious.

[42] In Spaulding's case, MAC applied progressive discipline before firing him, even though his transgressions seemed more egregious (i.e., harassment). Its unwillingness to afford Kampschroeder identical grace is suspect.

comprehensive investigation before firing a model worker, would have given him a reasonable chance to perform the reassignment, and would have seen fit to tell him what he was being fired for when it met with him. The decision to shoot first, ask no questions later and then attempt to validate its actions after the firing rendered MAC's actions suspect. In sum, based upon the foregoing reasons (i.e., many of which suffice in isolation), MAC failed to show that it would have fired Kampschroeder, absent his Union activity. His termination was, therefore, unlawful.

F. February 9 Meeting

Grumbrecht held a group meeting for Unit employees in the break room regarding the Union's campaign. The GC has alleged that several of his comments were unlawful, and that MAC and Sparta constructively discharged two employees in violation of §8(a)(3) at this meeting. As a preliminary matter, Grumbrecht was authorized to hold this meeting by Ballman. The meeting was also attended by supervisors Vaughn and Rodriguez.

1. Meeting Transcript[43]

The meeting, which demonstrates that there is nothing nuanced when the proverbial bull strolls around the fine china shop, is described verbatim below:

> **Grumbrecht:** …. Good Morning everybody …. I know previously some people had said if they get pulled into … any other meetings, that they were going to quit. Well, feel free right now, your bosses are here, to tender your resignation …. Are there any takers? …. Are there any takers? ….[44]
>
> **Bartle:** If you want a fucking resignation, here it is. I'm not doing this shit no fucking more! ….
>
> **[Unidentified] Employee:** Okay so that's two people that's quit because of him (Door slams) today. Two people that have quit because of you today.[45]
>
> **Grumbrecht:** Okay. Did she just quit?

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[43] Grumbrecht, quite surprisingly, recorded the entire meeting on his very own cell phone. His homemade documentary later found its way into the GC's welcoming hands, who ultimately presented it at trial. There is, as a result, no credibility determination to be made regarding this highly damning meeting from the shared perspectives of MAC and Sparta. And, while it is not uncommon for employees and unions to record meetings surreptitiously, it is somewhat unusual for an employer's own video production to be later presented as uncontroverted, smoking gun, evidence against the very same employer in support of a host of ULPs, as was the case here. Grumbrecht, apparently, missed the film, *Training Day*, where narcotics officer Alonzo Harris (i.e., Best Actor Award winner Denzel Washington) condescendingly advised rookie Jake Hoyt (i.e., Ethan Hawke), that, "it's not what you know, it's what you can prove." *Training Day*. Directed by Antoine Fuqua, Warner Brothers, 2001. And, in this case, every pixel of Grumbrecht's debacle was proven by the GC without issue.

[44] Grumbrecht related that he never told employees that they would be held harmless, if they left one of his MAC campaign meetings without consent. (Tr. 49-50).

[45] The reference to now that's "two people that's quit" refers to Kampschroeder, who was the first firing of the day, and the subsequent Bartle resignation.

Brandon Rodriguez: Yes.

Grumbrecht: Okay. Anybody else? Anybody else?

(muffled talking)

[Unidentified] Employee: Yeah.

Lucy Stanfield: You know, what, I guess I'm done. Yup. Yeah, everything my mom fucking when through? Fuck all of you guys.

[Unidentified] Employee: What?

(Door slams)

Grumbrecht: Anybody else?

[Unidentified] Employee: So there's three. Three. Because of you….

[Unidentified] Employee: I don't want to fucking sit through this shit. All I … come here for is to work.

[Unidentified] Employee: Well, when he's picking and choosing what information he discloses then we're going to be here forever.

Grumbrecht: … [Y]ou'll be here as long as I deem the meeting necessary. How about that? …. I don't have to name names. You … know who I'm talking about …. I've seen the videos of hours of work not being done …. I'm going to tell you something, All of this, … it opened up the office's eyes. Because now they look and it's like, "What is going on here? This is an out-of-control, on-the-run train wreck." And from what I see, and it's on film, it's not me making … stuff up ….

[Unidentified] Employee: I just want to work.

Grumbrecht: Okay, … believe me you're going to get the opportunity because they're watching now. They're definitely watching. So those of you that do sit at your desk and, … eat with your feet up … on your phones. You know that may be a problem coming up, or hiding your area hidden from cameras? That's stopping. Okay? So, … that they can't see you what you're doing or not doing. So tell me how people in their zeal to make this place better are making it better? When the rules are going to start being enforced. How is it making it better for you? Where … are those lax things like, "I'm going to go out and blow a cigarette. It ain't my break time." …. And I'm not referring to anybody in particular, so again we'll go back to the letter "G" for guilty conscious. …. "I'll

> do whatever I want and you'll like it, or else." Okay … you've just opened Pandora's box. So, … management … is now going to be much more proactive about their jobs ….
>
> **[Unidentified] Employee:** Management should have been doing their jobs in the first place.
>
> **Grumbrecht:** Well, thank the people who got them looking at ya. That's who you thank for that.
>
> **[Unidentified] Employee:** And that right there,
>
> **Grumbrecht:** Are they making your work life better? Do they care? Tell me…. But it seems to me that you're being dragged into these meetings and none of you want to be here, … nobody wants to be in these meetings. But it seems to me that these people keep talking like they're trying to better your workplace …. Give me one example how they are, one example? …. I never have meetings like this. I've never had a meeting like this before. This place is exceptional. Because you have people stirring up the hornet's nest, for their own reasons and cloaking it in this loyalty, "I'm looking out for you." Give me one example where they have? One? I said to you, tell me what you think is wrong? And where things went wrong here. Because I'll truly try and help make it better …. I'd much rather go home and say, "I did some good for these people and they're not reaching into their pocket to pay somebody…. " Okay? That's the root cause of why I'm here. I'm not lying …. I can look [at] myself in the mirror … and be okay with me …. I'm laying waste … to the lies that are being told to you….
>
> There will be more meetings and I didn't bully Lucy out the door. She made a decision. I didn't bully Nikki out the door. She made a decision. I respect that….
>
> Get as much information as you can to make a good, informed decision …. I'm going to wrap it up soon …. I didn't bring me here. This situation brought me here …. I didn't make it so that management now is going to be much more vigilant. I didn't bring that here but it's here and it's here to stay. So be aware of that and those of you that … do your job, have no worries….
>
> [The meeting then ended and employees filed out].

(GC Ex. 2(a)(video recording); 2(b)(audio recording); 2(i)(transcript). Immediately after the meeting ended, Grumbrecht made this additional smoking-gun comment to supervisor Vaughn and effectively celebrated the Bartle and Stanfield resignations, when he said:

> I could have cut that meeting short a half an hour ago because we, we've already won. They're gone…. Now I'm going to go vomit ….

(Id). Grumbrecht conceded that, when he said, "they're gone," he was referring to Bartle and Stanfield. (Tr. 39).

At the time that Bartle and Stanfield resigned, MAC knew that they were Union supporters.[46] Moreover, they were major Union advocates, who signed cards, attended various Union meetings and wore Union buttons at the plant.

2. Attendance Policies at MAC's Campaign Meetings

Ballman denied that, "employees continued employment … was conditioned upon their attendance of any meetings" held by Grumbrecht. (Tr. 710-11). He expressly said that Bartle and Stanfield would not have been disciplined if they simply chose to walk out of the meeting. (Tr. 712). He agreed, however, that he never disavowed Grumbrecht's invitation for them to quit, as the only way to exit his meeting. (Tr. 737).

It is noteworthy that Krausch ended her meeting with Grumbrecht on January 26, without any disciplinary consequences, which was consistent with Ballman's testimony that campaign meetings were optional and could be ended at a worker's discretion. Kampschroeder also ended his meeting with Grumbrecht on January 26, without being issued discipline at that time. (Tr. 174). As a result, I credit Ballman's testimony that MAC's campaign meetings were generally non-mandatory and that prior employees, e.g., either Krausch or Kampschroeder, who walked out of such meetings before they ended, were not disciplined for departing.[47]

I further find, as a result, that Grumbrecht changed MAC's extant campaign meeting-optional policy at the onset of the February 9 meeting. At that time, he made it clear to employees that they had only 2 options, i.e., sit through his meeting or quit. This new mandatory, captive-audience, meeting policy represented a significant departure from MAC's former optional policy, as described by Ballman. It was this key change in the terms and conditions of employment at the plant, which caused Bartle and Stanfield to resign.

3. MAC Knew that Requiring Bartle and Stanfield to Attend a Mandatory Anti-Union Meeting Would Prompt Their Resignations

MAC's knowledge regarding the triggering effect that the mandatory meeting had, and would have, on Bartle and Stanfield was undisputed at the trial.[48] Following her resignation,

[46] Rodriguez recalled Krausch, Bartle and Kampschroeder wearing Union buttons. (Tr. 353-56). Vaughn told Grumbrecht that Bartle and Stanfield were Union supporters. (Tr. 367-68).

[47] Rodriguez flipflopped his testimony on this point, seemingly unsure of which stance would be more beneficial to MAC. See (Tr. 565, 576)(meetings not mandatory); (Tr. 359-360)(meetings mandatory). He also reported that he "had a recent car accident that … does stuff to my memory" to explain various lapses in his testimony. (Tr. 359). His inconsistent and unreliable testimony on this matter was, as a result, afforded no weight.

[48] Neither MAC nor Sparta attempted to challenge this point with either Bartle or Stanfield during cross-examination, which was extremely limited for both witnesses. Moreover, although Rodriguez conceded that he was aware that a mandatory anti-Union meeting would trigger Bartle and Stanfield to quit, he never testified that he did not believe them, nor did he testify that he did not share this information with Grumbrecht or anyone else at MAC about this potential weapon to eradicate 2 Union supporters.

Bartle sent a text to Human Resources Manager Sarah Ashby Huck, which stated:

> I had discussed with Brandon [Rodriguez] earlier in the day that I was at the point that I was going to have a panic attack from the amount of stress I have been caused in the last 2 weeks, along with our aunt is dying right now. I told him that I cannot handle that meeting. When the union buster came in and bullied us and threatened us I could not take it anymore. I really did like my job but I could not take the stress and bullying anymore.

(GC Exh. 12A). Huck, without offering any aid, dismissively replied:

> Thank you for reaching out. I can understand where you are coming from. A workplace shouldn't add more stress to your life. I enjoyed working with you.

(Id.).

Rodriguez agreed that, in early February 2022 (i.e., well before the meeting at issue), Stanfield told him that she could not mentally handle any more of MAC's anti-union campaign meetings. (Tr. 361). He also affirmed that, after Stanfield walked out of the meeting, she told him that it was simply too much stress to sit through the anti-union meetings. (Tr. 361).

Bartle explained that the Union meetings had become so stressful that she could no longer stand to attend, which prompted her to leave the meeting at issue. She said that she never wanted to quit and loved her job. She offered that she was afforded no choice but to quit or stay in the meeting, which had become too abusive for her to tolerate.

If all of this were not enough, the clearest evidence of MAC's awareness of the triggering effect that the mandatory campaign meeting would have can be gleaned directly from Grumbrecht. He basically removed all doubt on this point, when he said:

> ***I know previously some people had said if they get pulled into … any other meetings, that they were going to quit.*** Well, feel free right now, your bosses are here, to tender your resignation …. Are there any takers?

(GC Exh. 2)(emphasis added).

4. Analysis

a. Constructive Discharges[49]

The GC advances that MAC and Sparta, via Grumbrecht's actions, constructively discharged Bartle and Stanfield at the February 9 meeting. After careful analysis, I find that Bartle and Stanfield were constructively discharged by MAC in violation of §8(a)(3).[50]

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[49] The terminations of Stanfield and Bartle were alleged to be unlawful under complaint ¶¶11, 14 and 16.

[50] For several reasons, I find, contrary to the GC's request, that the remedy for these constructive discharges

i. Precedent

The Board utilizes two constructive discharge theories. Both lend themselves to this case.

Changed Working Conditions

Two elements are required to prove a "changed working condition" constructive discharge. *N.C. Prisoner Legal Services*., 351 N.L.R.B. 464, 470 (2007). *First*, the burdens imposed on an employee must cause, and be intended to cause, a change in working conditions so difficult or unpleasant that it compels resignation. *Crystal Princeton Refining Co*., 222 NLRB 1068, 1069 (1976). *Second*, the burdens must be imposed because of their protected activities. *Id*. Intent is satisfied so long as the employer "reasonably should have foreseen" that its actions would prompt the employee to quit. *American Licorice Co*., 299 NLRB 145, 148 (1990).

Hobson's Choice

The other type of constructive discharge is often called the "Hobson's Choice" constructive discharge. The "Hobson's Choice" involves situations where an employer, rather than simply cutting one's hours, wages, benefits or shift, restricts the employee's right to engage in §7 rights, which causes them to quit rather than working without engaging in their §7 rights. For example, in *Hoemer Waldorf Corp*., 227 NLRB 612 (1976), the employer disparately and discriminatorily enforced a no solicitation rule, which prevented affected employees from discussing union topics, and told an employee that he would have to comply with this rule in order to return to work. When the employee refused and quit, rather than complying with this unlawful condition, the Board found that this constituted a constructive discharge because the employer conditioned continued employment upon the employee abandoning his right to engage in §7 activity and the employee was compelled to quit rather than relinquish these rights. *Intercon I (Zercom)*, 333 NLRB 223, 223 (2001). The choice between continuing employment

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cannot be extended to Sparta. *First*, although Sparta is an employer under the Act, it is not and never has been an employer of either Bartle or Stanfield. This means that the Board cannot order Sparta to reinstate Bartle and Stanfield to MAC because Sparta is powerless to effectuate such an action, i.e., only MAC is empowered to reinstate Bartle and Stanfield. Or put another way, there is not, and has never been, a master and servant relationship between Sparta, and Bartle and/or Stanfield. *Second*, although Sparta is clearly a bad actor in this case, the GC's request to hold them liable for the backpay for workers who were never in their employ fits more within the realm of a tort action rather than an NLRB proceeding. See BLACK'S LAW DICTIONARY 1335 (5th Ed. 1979)(defining a tort as a "private or civil wrong or injury … for which the court will provide a remedy in the form of an action for damages). *Finally*, the GC could not identify a single Board case, where a labor relations consultant has been held accountable for the reinstatement and backpay of a worker, who was never in its employ. See *National Lime & Stone Co.*, 62 NLRB 282 (labor relations consultant accountable for various threats but not a related discharge)(1945); see also *Blankenship & Assocs., Inc*., 306 NLRB 994 (1992)(labor relations consultant accountable for threatening and photographing employees); *National Welders Supply Co*., 132 NLRB 660 (1961)(labor relations consultant accountable for threats and interrogation). I find, as a result, that there is no Board precedent supporting the remedy that the GC is seeking against Sparta in this case and must leave any decision to expand such precedent to the Board.

and forfeiting statutory rights must be clear and unequivocal. *Chartwells, Compass Group*., 342 NLRB 1155, 1157 fn.15 (2004); *ComGeneral Corp*., 251 NLRB 653, 657-58 (1980). In these cases, a constructive discharge finding is appropriate where the employee quits rather than comply with the condition. *Intercon I (Zercom)*, supra, 333 NLRB at 223. An employee does not have to wait for a formal ultimatum to reasonably interpret an employer's words to mean that ongoing § 7 activity will result in their discharge. *Id.* at 224.

ii. Synthesis

Changed Working Conditions

MAC violated §8(a)(3), when it constructively discharged both Stanfield and Bartle under the Board's changed working conditions paradigm. On February 9, MAC went from its pre-existing campaign meetings-optional policy described by Ballman (i.e., employees were free to leave campaign meetings without disciplinary repercussions (credited Ballman testimony (tr. 710-12)),[51] to Grumbrecht changing this working condition by telling assembled employees that, if they did not want to stay for the meeting their sole recourse was to quit. (GC Exh. 2). Grumbrecht intended his announcement of these changed working conditions to compel both resignations. He confirmed his strategy, when he stated to Vaughn that he, "could have cut that meeting short a half an hour ago because we, we've already won. They're gone."[52] MAC also knew in advance that forcing Bartle and Stanfield to attend another campaign meeting would prompt their resignations because they told Rodriguez in advance of the meeting that this was the case.[53] Grumbrecht then announced his knowledge at the beginning of the

[51] Ballman's testimony of this key point was procured by his own counsel. In support of Ballman's testimony, Krausch walked out of her January 26 meeting with Grumbrecht without any disciplinary repercussions.

[52] Although there might have been some lingering debate over MAC's intentions regarding Bartle and Stanfield before Grumbrecht's obvious flex, his bluster that he could have cut the meeting short once they resigned removed all doubt. His bravado against his own interests is reminiscent of the late MLB centerfielder Chuck Carr, who infamously ignored a take sign at a critical point in the game, swung on a 2-0 pitch, weakly grounded out and effectively lost an important game for his team. Following the game, after being approached by his manager, who presumably wanted to know whether Carr's miscue was intentional or negligent, Carr removed all doubt regarding his intentions and boldly retorted, "that ain't Chuckie's game, Chuckie hacks on 2-0." David Russell, *Former Met, NL Stolen Base Leader, Chuck Carr dead at 55*, N.Y. POST, Nov. 14, 2022, https://nypost.com/2022/11/14/chuck-carr-former-met-dead-at-55/. Carr's candor resulted in his demotion and eventual ouster. In short, one can say that Grumbrecht, just like the late, great Chuckie Carr, swung on 2-0, when he openly removed all doubt regarding MAC's intentions to prompt these resignations. In sum, subtlety "ain't Grumbrecht's game" either.

[53] As said, Stanfield told Rodriguez, in early February, that she could not mentally handle any more of MAC's campaign meetings. (Tr. 361). Rodriguez affirmed that, after Stanfield walked out, she told him that it was simply too much stress to sit through the mandatory campaign meeting. (Tr. 361). Bartle explained that MAC's campaign meetings had become so stressful that she could no longer stand to attend, which prompted her to walk out; she confirmed that she told Rodriguez the morning before the meeting that she "can't handle any more meetings" and "if it gets crazy I'm going to have to clock out and go home because I can't take it anymore today." (Tr. 167). She related that Rodriguez assured her that he would "make sure it doesn't get crazy today." (Id.). Finally, as previously discussed, neither MAC's nor Sparta's attorneys attempted to challenge this important litigation issue by asking Bartle or Stanfield a single cross examination question about this matter or by soliciting any testimony about it from other witnesses. These factors resulted in this key point being fully credited in favor of the GC's witnesses.

meeting, when he said, "I know … some people had said if they get pulled into … any other meetings, that they were going to quit." MAC's strategy to compel these resignations was also demonstrated by Ballman, who while claiming that employees were free to leave campaign meetings without repercussion, failed to reach out to either Stanfield or Bartle to give them the chance to rescind their resignations, once he learned that Grumbrecht had breached his campaign-meeting optional rule.[54] Given these circumstances, it is clear that MAC knew that conducting a mandatory campaign meeting (i.e., changing its campaign-meeting optional working condition) would prompt Bartle and Stanfield to resign because they expressly both told Rodriguez that they would. Under such circumstances, MAC "reasonably should have foreseen" that its actions would prompt their resignations.[55] Lastly, the record demonstrates that Grumbrecht made this meeting mandatory and sought to compel Bartle and Stanfield to resign because of their Union activities, i.e., they both engaged in significant Union activity and the record is replete with great hostility to such activity (e.g., Grumbrecht childishly celebrating their resignations, threats, interrogations, Kampschroeder's firing, etc.).[56]

Hobson's Choice

This case also begs the question of whether Stanfield and Bartle were unlawfully fired under the Board's Hobson's Choice paradigm. Simply put, by the time of the February 9 meeting at issue, MAC had already fired Kampschroeder (i.e., a leading Union supporter) and repeatedly interrogated and threatened employees during a series of one-on-one meetings on January 26. Once Grumbrecht initiated his February 9 meeting by telling workers that they could listen or quit their jobs, it was fundamentally obvious that they were in for more of the same (i.e., the continued trampling of their §7 rights), which repeatedly and predictably occurred as the February 9 meeting proceeded. In short, Bartle and Stanfield were essentially given the Hobson's choice of having Grumbrecht, MAC and Sparta continue to trample their §7 rights or leaving the meeting and quitting. This, as a result, appears to be a constructive discharge scenario, where MAC conditioned continued employment upon Bartle and Stanfield abandoning their §7 rights to not be unlawfully coerced and threatened at a captive audience meeting by Grumbrecht.[57]

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[54] Or put another way, given Ballman's assertion that employee attendance at campaign meetings was voluntary, it is dumbfounding that he would not have just reached out to Bartle and Stanfield after Grumbrecht changed MAC's policy without his consent, and simply offered them the chance to return to work. His failure to take this obvious and reasonable action demonstrates that he intended the change in working conditions to induce their resignations.

[55] Grumbrecht did everything but "high-five" supervisor Vaughn and dance a jig, when he successfully prompted them to quit. *American Licorice Co*., supra. MAC was also aware that both Bartle and Stanfield were deeply vulnerable because of their personal family difficulties and seized upon their misfortunes to further its own interests.

[56] This does not mean that MAC was no longer free to conduct a captive-audience meetings under *Babcock & Wilcox Co*., 77 NLRB 577, 578 (1948). This case does not involve MAC's decision to hold a captive audience meeting and lawfully exercise its free speech rights to its employees. This case involved an employer changing its practice of holding optional campaign meetings in order to prompt 2 important Union supporters to quit and advance its election interests. Once again, it is for the Board, and not the undersigned, to decide whether it is appropriate to overrule *Babcock & Wilcox Co.,* as advanced by the GC.

[57] It seems intuitive that, if an employer, who repeatedly coerces employees, calls a mandatory meeting, the

b. Threats and Other Unlawful Statements[58]

i. Unspecified Reprisals

MAC and Sparta violated §8(a)(1), when Grumbrecht threatened employees with unspecified reprisals. Specifically, he told employees that they "just opened Pandora's box" by seeking to unionize, "management … is now going to be much more proactive about their jobs," "you have people stirring up the hornet's nest," to thank union supporters for stirring things up, "management now is going to be much more vigilant" and the organizing drive "opened up the office's eyes." These statements unlawfully threatened employees with unspecified reprisals for their lawful organizing activities. *Fixtures Mfg. Corp.,* supra; *Boydston Electric, Inc.,* supra; *Tim Foley Plumbing Svc., Inc.,* supra; *Corliss Resources, Inc.*, supra; *Hialeah Hospital*, supra.

ii. Threat of Loss of Jobs

MAC and Sparta violated §8(a)(1), when Grumbrecht invited employees to quit if they did not support the unlawful, anti-Union barrage presented at his meetings. The Board has held that such invitations are unlawful. *W. D. Manor Mech. Contrs., Inc.* , 357 N.L.R.B. 1526 (2011)(telling employees to quit in retaliation for engaging in protected activity); *Equipment Trucking Co.*, 336 NLRB 277 (2001)(comment, that president would run the Company "any way she wanted, and if [he] didn't like it, find another job," was unlawful because it implicitly related that complaining about working conditions and engaging in union activity was incompatible with continued employment.); *Eby-Brown Co. L.P.*, 328 NLRB 496 (1999); *Stoody Co.*, 312 NLRB 1175, 1181 (1993).

iii. Greater Scrutiny and Stricter Enforcement of Rules

MAC and Sparta violated §8(a)(1), when Grumbrecht told employees that they more closely monitored because of their Union activities, stated that there would be stricter enforcement of work rules because of Union activities, threatened stricter break times, and announced that management would now be more vigilant and that was there to stay. See, e.g., *Cadillac of Naperville, Inc.*, 368 NLRB No. 3, slip opinion at 3-4 (2019); *Fleming Companies, Inc*., 336 NLRB 192 (2001).

iv. Soliciting Grievances and Promises of Improved Benefits

MAC and Sparta violated §8(a)(1), when Grumbrecht made this statement:

> [T]ell me what you think is wrong? And where things went wrong here. Because I'll truly try and help make it better …. I'd much rather go home and say, "I did

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same employees can rationally predict that they are in for more of the same. As a result, such employees can reach a point where they no longer choose to listen to unlawful threats and opt to quit rather than being deprived of their §7 rights to not be unlawfully threatened. *Hoemer Waldorf Corp*., supra.

[58] These comments were alleged to be unlawful under complaint ¶¶7, 13 and 15.

> some good for these people and they're not reaching into their pocket to pay somebody…. "

This statement implied that he would lobby MAC to provide employees with improved terms and conditions of employment, if they did not unionize, i.e., "reach into their pocket to pay somebody [i.e., pay Union dues]."

It is well settled that it is unlawful for an employer to promise or grant a wage increase or other improved benefits, if the promise is made in response to an organizing drive. See, e.g., *Network Dynamics*, 351 NLRB 1423, 1424 (2007); *Hampton Inn NY-JFK Airport*, 348 NLRB 16, 17 (2006). To establish such a claim, the GC must first prove, by a preponderance of the evidence, "that employees would reasonably view the grant of benefits as an attempt to interfere with or coerce them in their choice on union representation." *Southgate Village Inc*., 319 NLRB 916 (1995).

In this case, there was no evidence presented that MAC solicited grievances on a regular basis prior to the organizing campaign, which would have been permissible. *Greenbrier Rail Servs.*, 364 NLRB 279 (2016). As a result, Grumbrecht's solicitation to resolve employees' grievances during the organizing campaign violated the Act. *Network Dynamics*, supra; *Hampton Inn NY-JFK Airport*, supra.

G. January 31 – Storeroom Policy[59]

Bartle credibly testified that, prior to January 31, if an employee needed supplies, they were allowed to freely enter the supply room and take what they needed.[60] On January 31, MAC posted the following sign on the storeroom door:

> It is company policy that if items stocked on inventory shelves are needed, the storeroom clerk is to be informed and … get the items for the worker.
>
> This is for inventory control purposes, to ensure all parts can be accounted for and ordered accordingly. Adherence to this policy will assure the build process runs smoothly.

(GC Exh. 11).

Rodriguez asserted that this rule had actually been in effect since 2017 and that the sign was only a restatement of the existing rule, which was necessary for inventory control and because employees needed to be reminded. (Tr. 569). Ashby-Huck corroborated Rodriguez; she added that a reiteration of the rule was necessary because COVID-related supply chain issues mandated tighter inventory control and stricter compliance.

MAC did not violate the Act, when Rodriguez announced on January 31 that it was

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[59] This was alleged to be unlawful under complaint ¶¶9, 13 and 14.

[60] Krausch credibly corroborated this testimony.

implementing tighter inventory control over storeroom supplies. Although the GC made out a prima facie case, I credit MAC's witnesses and their contentions that this was a pre-existing policy, which required reiteration because COVID-related supply chain issues required tighter inventory control and stricter adherence. I find, as a result, that MAC demonstrated that it would have taken the same action in the absence of the protected conduct.

H. February – Surveillance Cameras Readjusted[61]

It is undisputed that, in early-February, MAC relocated several surveillance cameras in its plant, and focused these cameras on new locations in the assembly area, where its Unit employees were working. Ballman stated that MAC adjusted these cameras because it realized that some cameras were no longer capturing relevant business information. He claimed that Kampschroeder's seizure prompted MAC to re-evaluate its camera placement because he was out of view when the seizure occurred. (Tr. 625). Ballman averred that his sole motivation was safety and security. (Tr. 626). He agreed, however, that MAC is too small an enterprise to "sit and watch TV every day, and … try to see what people are doing." (Tr 626). He denied that the Union played any role in this decision. (Tr. 627). See also (R. Exh. 3).

Rodriguez stated that the cameras were repositioned after Kampschroeder's seizure for safety reasons. (Tr. 567). He also denied that that the Union played any role. (Tr. 569).

Regarding this subject, Grumbrecht once again removed any ambiguity regarding MAC's intentions, when he stated the following at the February 9 meeting:

> Okay, … believe me … they're watching now. They're definitely watching. So those of you that do sit at your desk and, … eat with your feet up … on your phones. ***You know that may be a problem coming up, or hiding your area hidden from cameras? That's stopping***.

(GC Exh. 2(a))(emphasis added).

1. Precedent

The Board has considered whether the turning or repositioning of cameras violates §8(a)(3) under *Wright Line's* mixed motive analysis. *Genesee Family Rest. & Coney Island, Inc.*, 322 NLRB 219 (1996). As stated above, under *Wright Line*, the GC must first demonstrate, by a preponderance of the evidence, that the worker's protected conduct was a motivating factor in the adverse action. This initial burden is satisfied by showing: (1) the individual's protected activity; (2) employer knowledge of such activity; and (3) union animus on the part of the employer. If the GC meets his initial burden, the burden shifts to the employer to prove that it would have taken the adverse action, even absent the protected activity. *Mesker Door*, supra. The employer cannot meet its burden, however, merely by showing that it had a legitimate reason for its action; rather, it must show that it would have taken the same action in the absence of the protected conduct. *Bruce Packing Co.*, supra. If the employer's proffered reasons are

[61] This was alleged to be unlawful under complaint ¶¶11 and 16.

pretextual (i.e., either false or not actually relied on), it fails by definition to show that it would have taken the same action for those reasons regardless of the protected conduct. *Metropolitan Transportation Services*, supra.

2. Analysis

MAC violated §8(a)(3), when it repositioned its cameras. As noted, the GC made out a prima facie case; it established Union activity, MAC's knowledge and animus. Although MAC offered that it readjusted its surveillance cameras for employee health and safety reasons, it failed to show would have taken the same action in the absence of the protected conduct. *First*, this was not Kampschroeder's first seizure. He had a seizure in 2020, when there was no Union campaign and this seizure never prompted MAC to re-evaluate or change its camera positioning. Or put another way, the same safety reasons existed in 2020 and MAC took no action at that time in the absence of a Union campaign. *Second*, there is close timing between Union activity and MAC's relocation of its cameras; this further undercut's its claim that its actions were non-discriminatory. *Finally*, Grumbrecht openly admitted that the camera relocation was unlawfully motivated when he told employees on February 9 that they opened a Pandora's box by engaging in Union activities, MAC is "definitely watching" them and that they can no longer "hid[e] your area hidden from cameras." When taken, as a whole, these facts make it clear that the camera relocation was unlawfully motivated.

I. Bargaining Order[62]

The GC contends that MAC's and Sparta's actions in this case are so egregious that a bargaining order is warranted. Its position is meritorious.

The Union sought to block the election in this case, once it realized that the instant ULPs prevented a fair and free election. In its initial ULP charge on February 9, the Union asked the Region to "block the election." (GC Exh. 1A). In a separate and further request, the Union renewed its request to block the election.[63] (Tr. 317-18). The Region, however, denied this request and ultimately proceeded with the election.

Following the ULP's, the Union's support amongst Unit employees plummeted. The Union went from having almost unanimous support amongst Unit employees in January (GC Exhs. 4-6) to an anti-Union petition being disseminated and signed less than a month later. (GC Exh. 7). On February 10, 7 of the 14 employees on the voter list (i.e., half of the Unit) signed a petition, which stated as follows:

> We the employees of Motor Appliance Corporation at 601 International Ave., Washington, MO 63090 at this time would like to withdraw our petition for union representation for the purpose of collective bargaining.

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62 This was alleged in complaint ¶19.

63 I fully credited Union organizer Beloit's testimony on this issue. He was a deeply credible witness, whose testimony was supported by the February 9 ULP charge.

(GC Exh. 7). Thereafter, and quite unsurprisingly, on March 16, the Union lost the mail ballot election in this case by a 6 to 3 margin.[64] (GC Exh. 8).

On March 30, the Regional Director for Region 14 of the Board issued a *Certification of Results of Election*, which stated as follows:[65]

> An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has not been selected. No timely objections have been filed.
>
> As authorized by the National Labor Relations Board,
>
> It is certified that a majority of the valid ballots has not been cast for any labor organization and that no labor organization is the exclusive representative of the employees in the bargaining unit described below.
>
> **Unit**: All full-time and regular part-time production and maintenance employees employed by the Employer in its charger division at its 601 International Avenue, Washington, Missouri facility, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

1. Precedent

In *NLRB v. Gissel Packing Co*., 395 U.S. 575, 614 (1969), the Supreme Court authorized the Board to issue a bargaining order in the absence of a §8(a)(5) violation. *Id*. (stating that, the Board may "issu[e] a bargaining order, in the absence of a §8(a)(5) violation or even a bargaining demand, when that was the only available, effective remedy for substantial unfair labor practices."). The Supreme Court, as a result, identified the following two categories of misconduct warranting a bargaining order: (1) "category I" cases involving "outrageous" and "pervasive" ULPs that make a fair election impossible; and (2) "category II" cases involving "less extraordinary" and "less pervasive" ULPs that also undermine majority union support that has already been established via authorization cards and consequently make the possibility of a fair election slight. *Id*. In category II cases, the Supreme Court held that:

> If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue.

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[64] The Union did not file any objections to the election. It is also noteworthy that there has not been any contention that the ULPs filed in these cases were intended by the Union to serve as objections to the election.

[65] The *Certification of Results* was not presented as an exhibit by either party. This document was retrieved from the Board's electronic case filing system (NXGEN) and judicial notice has been taken.

Id. at 614-615.

The Board has "identified certain 'hallmark' violations as those that more strongly support the issuance of a bargaining order because they are highly coercive of employees' Section 7 rights and can be expected to have a lasting inhibitive effect." *Whitehawk Worldwide*, 371 NLRB No. 122, slip op. at 17 (2022). Such violations include granting significant benefits, plant closure or discharge threats and §8(a)(3) firings. See, e.g., *Whitehawk Worldwide,* supra; *M. J. Metal Products, Inc*., 328 NLRB 1184, 1184 (1999), affd. 267 F.3d 1059 (10th Cir. 2001). In examining whether a case meets the category II standard, the Board examines "the seriousness of the violations and the pervasive nature of the conduct, considering such factors as the number of employees directly affected by the violations, the size of the unit, the extent of the dissemination among employees, and the identity and position of the individuals committing the unfair labor practices." *Intermet Stevensville*, 350 NLRB 1349, 1359 (2007).

2. Synthesis

The instant case surpasses the standard for a category II bargaining order. *First*, the instant ULPs were serious, repeated and egregious. MAC fired and constructively discharged Union supporters, repeatedly threatened and interrogated workers and engaged in a host of other unlawful actions. *Second*, these ULPs occurred within a relatively small Unit, where MAC illegally fired a whopping 3 employees in a 14-person unit (i.e., over 20% of the Unit) and directly threatened and interrogated the vast majority of the Unit. The widespread impact of these ULPs in such a small Unit further supports a bargaining order. *Third*, there is no debate that, in a 14-person Unit, the instant ULPs were widely disseminated via either direct exchanges with Grumbrecht or by word of mouth within a small and cohesive group. *Fourth,* the majority of the ULPs were committed by high-level officials, i.e., either Grumbrecht, who answered directly to Ballman, or by Rodriguez, who was second in command. In sum, this case abundantly meets the standards for a category II *Gissel* bargaining order.[66] See, e.g., *Whitehawk*

[66] The Board's *Irving Air Chute* rule does not preclude the issuance of a *Gissel* bargaining order herein. 149 NLRB 149 NLRB 627, 627-630 (1964), enfd. 350 F.2d 176 (2d Cir. 1965). Specifically, the Board has adopted multiple exceptions to the *Irving Air Chute* rule, which were met here by the Union's repeated request to block the election due to the ULPs at issue herein. This sanctions the issuance of a *Gissel* bargaining order. See, e.g., *White Plains Lincoln Mercury*, 288 NLRB 1133 (1988)(*Gissel* bargaining order remedy warranted where union did not file meritorious objections on the basis of ULP conduct in order to ensure that employee sentiment regarding union representation was not trumped by a procedural formality); *Nelson Tree Service, Inc.*, 361 NLRB 1485 (2014)(if a Regional Director "receives or discovers evidence during his investigation that shows that the election has been tainted, he has no discretion to ignore such evidence and it is reversible error if he fails to set aside the election."); *Dawson Metal Products*, 183 NLRB 191 (1970), enf. den. on other grounds 450 F.2d 47 (8th Cir. 1971)(Board imposed a *Gissel* bargaining order notwithstanding that the ALJ had properly denied all the specific objections to the election and stating that, "when the unlawful conduct is, a fortiori, conduct that interferes with a free choice in an election, it cannot be treated as somehow falling outside the legitimate and appropriate scope of the investigation of the election process simply because it was not cited in the specific objections to the election."); *Pure Chem Corp*., 192 NLRB 681 (1971) ("a 'meritorious objection' is anything that would justify setting aside the election, whether that misconduct was raised by the union in its objections or discovered subsequently by the Agency's own procedures in resolving the questions raised as to the propriety of the election."). See also *Avis Rent-A-Car*, 324 NLRB 445, 446 (1997)(company's timely filing of ULP regarding objectionable conduct was sufficient to constitute timely-filed "objections," and stating that, "the allegations were contained on an unfair labor practice

Worldwide, supra. *Finally*, as a result of the ULPs, the Union went from having majority support (i.e., 10 of 14 Unit employees signed cards) to half of the Unit signing an anti-Union petition less than a month later and a comprehensive election defeat shortly after that. These events abundantly demonstrate that the possibility of the Board holding a fair election in this case is slight, and that a bargaining order is now warranted. *Id*.

Conclusions of Law

1. MAC is an employer engaged in commerce within the meaning of §2(2), (6), and (7) of the Act.

2. Sparta is an employer engaged in commerce within the meaning of §2(2), (6), and (7) of the Act.

3. Eric Grumbrecht was, at all material times, an agent of MAC and Sparta within the meaning of §2(13) of the Act.

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

5. The Union is the exclusive collective-bargaining representative of the following appropriate bargaining unit of MAC's employees (the Unit):

Included: All full-time and regular part-time production and maintenance employees employed in the employer's charger division at their 601 International Avenue, Washington, Missouri facility.

Excluded: All other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

6. MAC violated §8(a)(1) by:

a. Threatening employees with unspecified reprisals because of their Union and other protected activities.

b. Threatening employees that their annual performance raises would be withheld because of their Union and other protected activities.

c. Interrogating employees about their Union and other protected concerted activities.

d. Informing employees that it would be futile for them to select the Union

charge form and were not explicitly identified as election objections does not, by itself, undermine the otherwise clearly expressed intent by the employer to allege the occurrence of conduct interfering with the election.").

as the collective-bargaining representative.

e. Threatening employees with job loss because of their Union and other protected activities.

f. Informing employees that they would be more closely monitored by management because of their Union and other protected activities.

g. Informing employees that work and break rules would be more strictly enforced because of their Union and other protected activities.

h. Soliciting grievances from employees and making implied promises to remedy their grievances in order to undermine their Union support.

7. Sparta violated §8(a)(1) by:

a. Threatening employees with unspecified reprisals because of their Union and other protected activities.

b. Threatening employees that their annual performance raises would be withheld because of their Union and other protected activities.

c. Interrogating employees about their Union and other protected concerted activities.

d. Informing employees that it would be futile for them to select the Union as the collective-bargaining representative.

e. Threatening employees with job loss because of their Union and other protected activities.

f. Informing employees that they would be more closely monitored by management because of their Union and other protected activities.

g. Informing employees that work and break rules would be more strictly enforced because of their Union and other protected activities.

h. Soliciting grievances from employees and making implied promises to remedy their grievances in order to undermine their Union support.

8. MAC violated §8(a)(3) by:

a. Moving and refocusing surveillance cameras because of employees' Union and other protected activities.

b. Firing Nicholas Kampschroeder because of his Union and other

protected activities.

c. Constructively discharging Shannon Bartle and Lucy Stanfield because of their Union and other protected activities.

9. MAC's violations of the Act mandate a bargaining order remedy under *Gissel Packing Co*., supra.

10. These unfair labor practices affect commerce within the meaning of §2(6) and (7).

Remedy

The appropriate remedy for the violations found herein is an order requiring MAC and Sparta to cease and desist from their unlawful conduct and to take certain affirmative action.

MAC, having unlawfully discharged Kampschroeder, Bartle and Stanfield, shall reinstate them to their former jobs or, if their positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privilege previously enjoyed. MAC shall make them whole for any loss of earnings and other benefits suffered as a result of its unlawful discrimination against them. The make whole remedy shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23, 429 U.S. App. D.C. 270 (D.C. Cir. 2017), MAC shall compensate these employees for search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), MAC shall compensate these employees for the adverse tax consequences, if any, of receiving lump sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), the Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 14 a report allocating backpay to the appropriate calendar year for these employees. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. MAC shall also be required to remove from its files any references to the unlawful discharge of these employees and to notify them in writing that this has been done and that their unlawful discharges will not be used against them in any way.

The remedy for the unfair labor practice violations at issue herein shall include an order that MAC shall recognize, and upon request, bargain with the Union as the exclusive representative of the Unit, and, if an understanding is reached, embody the understanding in a signed agreement.

Regarding the GC's notice reading request, the Board generally grants such a remedy, where the ULPs are so pervasive and egregious that a notice reading is necessary to dispel the impact of such conduct.[67] For the same reasons that a *Gissel* bargaining order is appropriate, a notice reading is warranted as well. MAC's serious and widespread ULPs, which were designed to unlawfully derail the Union's protected organizing campaign, warrant having the attached notice to employees read aloud during worktime. A public reading of the notice to employees is a remedial measure that ensures that the employees "will fully perceive that the Respondent and its managers are bound by the requirements of the Act." See *Federated Logistics & Operations*, 340 NLRB 255, 258 (2003), affd. 400 F.3d 920, 929-930, 365 U.S. App. D.C. 164 (D.C. Cir. 2005). A public notice reading will also help "dissipate as much as possible any lingering effects" of the ULPs. *Homer D. Bronson Co*., 349 NLRB 512, 515 (2007), enfd. mem. 273 Fed.Appx. 32 (2d Cir. 2008). MAC, as a result, must hold a meeting or meetings during work time at its Washington, Missouri plant, scheduled to ensure the widest possible attendance of employees, at which the remedial notice is to be read to employees by President Ballman in the presence of a Board agent and a Union representative if the Region or the Union so desires, or, at MAC's option, by a Board agent in the presence of Ballman and, if the Union so desires, a union representative.

MAC shall also post the attached notice in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010).[68] Finally, given the egregiousness of MAC's ULPs, a broad order requiring it to cease and desist "in any other manner" from interfering with, restraining, or coercing its employees in the exercise of their §Section 7 rights is warranted. See *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[69]

ORDER

A. Motor Appliance Corporation (MAC), Washington, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Threatening employees with unspecified reprisals because of their Union and other protected activities.

b. Threatening employees that their annual performance raises would be withheld

[67] *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007); *Domsey Trading Co*., 310 NLRB 777, 779-780 (1993).

[68] During this 60-day posting period, MAC shall permit a duly appointed Board agent to enter its facilities at reasonable times and in a manner not to unduly interfere with its operations, for the limited purpose of determining whether it is in compliance with the notice posting, distribution, and mailing requirements.

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

because of their Union and other protected activities.

c. Interrogating employees about their Union and other protected concerted activities.

d. Informing employees that it would be futile for them to select the Union as the collective-bargaining representative.

e. Threatening employees with job loss because of their Union and other protected activities.

f. Informing employees that they would be more closely monitored by management because of their Union and other protected activities.

g. Informing employees that work and break rules would be more strictly enforced because of their Union and other protected activities.

h. Soliciting grievances from employees and making implied promises to remedy their grievances in order to undermine their Union support.

i. Moving and refocusing its surveillance cameras because of employees' Union and other protected activities.

j. Firing, constructively discharging or otherwise discriminating against employees because of their Union and other protected activities.

k. In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by §7 of the Act.

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

a. On request, bargain with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time production and maintenance employees who are employed in its charger division at their 601 International Avenue, Washington, Missouri facility.

Excluded: All other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

b. Within 14 days from the date of the Board's Order, offer Nicholas

Kampschroeder, Shannon Bartle and Lucy Stanfield full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

c. Make Kampschroeder, Bartle and Stanfield whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

d. Compensate Kampschroeder, Bartle and Stanfield for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

e. File with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Kampschroeder's, Bartle's and Stanfield's corresponding W-2 forms reflecting the backpay award.

f. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

g. Within 14 days from the date of the Board's Order, remove from its files any reference to these unlawful discharges, and within 3 days thereafter, notify Kampschroeder, Bartle and Stanfield in writing that this has been done and that the discharges will not be used against them in any way.

h. Rescind the changes that were made to the positioning and focus of its surveillance cameras.

i. Within 14 days after service by the Region, post at its Washington, Missouri facility the attached notice marked "Appendix A."[70] Copies of the notice, on forms provided by the Regional Director for Region 14, 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 customarily posted. In addition to the

[70] 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."

physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If 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 January 26, 2022.

j. During this 60-day posting period, Respondent shall permit a duly appointed Board agent to enter its facilities at reasonable times and in a manner not to unduly interfere with its operations, for the limited purpose of determining whether it is in compliance with the notice posting, distribution, and mailing requirements.

k. Hold a meeting or meetings during worktime at its Washington, Missouri plant, scheduled to ensure the widest possible attendance of employees, at which the attached notice marked "Appendix" will be read to employees by President Ballman in the presence of a Board Agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent's option, by a Board agent in the presence of Ballman and, if the Union so desires, the presence of an agent of the Union.

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

B. Sparta, a Division of International Labor Relations, Inc. (Sparta), Tulsa, Oklahoma, its officers, agents, successors, and assigns, when acting separately or in concert with MAC as agent for or in the interest of MAC, shall

1. Cease and desist from

a. Threatening employees with unspecified reprisals because of their Union and other protected activities.

b. Threatening employees that their annual performance raises would be withheld because of their Union and other protected activities.

c. Interrogating employees about their Union and other protected concerted activities.

d. Informing employees that it would be futile for them to select the Union as the collective-bargaining representative.

e. Threatening employees with job loss because of their Union and other protected activities.

f. Informing employees that they would be more closely monitored by management because of their Union and other protected activities.

g. Informing employees that work and break rules would be more strictly enforced because of their Union and other protected activities.

h. Soliciting grievances from employees and making implied promises to remedy their grievances in order to undermine their Union support.

i. In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by §7 of the Act.

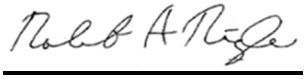
2. Take the following affirmative action necessary to effectuate the Act's policies

a. Within 14 days after service by the Region, mail copies of the attached notice marked as "Appendix B" to MAC's employees.[71] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be mailed, at its own expense, to all current employees of MAC as well as any former employees who employed at any time since January 26, 2022.[72]

b. Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

It is further ordered that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated Washington, D.C., January 3, 2023.



Robert A. Ringler
Administrative Law Judge

[71] 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."

[72] MAC is directed to provide contact information for these current and former employees to Sparta.

APPENDIX A

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 with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten you with unspecified reprisals because of your Union and other protected activities.

WE WILL NOT threaten that your annual performance review and raises will be withheld because of your Union and other protected activities.

WE WILL NOT interrogate you about your Union and other protected concerted activities.

WE WILL NOT tell you that it would be futile for you to pick the Union as the collective-bargaining representative.

WE WILL NOT threaten you with job loss because of your Union and other protected activities.

WE WILL NOT tell you that you will be more closely watched by management because of your Union and other protected activities.

WE WILL NOT tell you that work and break rules would be more strictly enforced because of your Union and other protected activities.

WE WILL NOT solicit grievances from you and make implied promises to address these grievances in order to undermine your Union support.

WE WILL NOT move and refocus our surveillance cameras in the plant because of your Union and other protected activities.

WE WILL NOT fire, constructively discharge or otherwise discriminating against you because of your Union and other protected activities.

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

WE WILL, on request, bargain with District Lodge 9, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time production and maintenance employees who are employed in the employer's charger division at their 601 International Avenue, Washington, Missouri facility.

Excluded: All other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Nicholas Kampschroeder, Shannon Bartle and Lucy Stanfield full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Kampschroeder, Bartle and Stanfield whole for any loss of earnings and benefits resulting from their discharges, less any net interim earnings, plus interest, and **WE WILL** also make them whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Kampschroeder, Bartle and Stanfield for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WLL** file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Kampschroeder's, Bartle's and Stanfield's corresponding W-2 forms reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to these unlawful discharges, and **WE WILL**, within 3 days thereafter, notify Kampschroeder, Bartle and Stanfield in writing that this has been done and that their discharges will not be used against them in any way.

WE WILL rescind the changes that we made to the positioning and focus of our surveillance cameras in the plant.

WE WILL hold meetings during working hours at the plant and have this notice read to you and your fellow workers by President Evan Ballman (or, if he is no longer employed by the Respondent, by an equally high-ranking responsible management official) in the presence of a Board agent and, if the Union so desires, a Union representative, or, at the Respondent's option, by a Board agent in the presence of Ballman (or an equally high-ranking management official if Ballman is no longer employed by the Respondent), and, if the Union so desires, a Union representative.

MOTOR APPLIANCE CORPORATION

(Employer)

Dated _____ By _____

(Representative) (Title)

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.nlrb.gov.

1222 Spruce Street, Room 8.302, St. Louis, MO 63103-2829
(314) 539-7770, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/14-CA-290327 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

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, (314) 539-7770

APPENDIX B

NOTICE TO EMPLOYEES

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National Labor Relations Board
An Agency of the United States Government

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WE WILL NOT tell you that you will be more closely watched by management because of your Union and other protected activities.

WE WILL NOT tell you that work and break rules would be more strictly enforced because of your Union and other protected activities.

WE WILL NOT solicit grievances from you and make implied promises to address these grievances in order to undermine your Union support.

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

SPARTA, A DIVISION OF INTERNATIONAL LABOR RELATIONS, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

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