Valmet, Inc. *and* United Steel, Paper and Forestry Rubber, Manufacturing, Energy, Allied and Industrial Service Workers International Union, AFL–CIO, CLC. Cases 15–CA–206655 and 15–RC–204708

February 4, 2019

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On April 17, 2018, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party each filed an answering brief. The General Counsel and Charging Party each filed cross-exceptions and supporting briefs, and the Respondent filed an answering brief to each set of cross-exceptions. The General Counsel filed a reply brief to the Respondent's answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision, Order and Direction of Second Election.[2]

The Respondent maintains and rebuilds equipment used by customers in the paper industry. This matter arises from the Union's efforts to organize a unit of the Respondent's full-time and regular part-time production and maintenance employees at its Columbus, Mississippi facility, which culminated in an election conducted on September 14 and 15, 2017.[3] The Union lost by one vote, with no challenged ballots.

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

[2] We have amended the judge's conclusions of law consistent with our findings herein. We shall modify the judge's recommended Order to conform to our findings and to the Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

[3] All dates hereafter are in 2017 unless otherwise noted.

I. THREATENING LOSS OF BENEFITS AND OTHER REPRISALS

The judge found that, during the critical period, the Respondent committed multiple violations of Section 8(a)(1) and engaged in objectionable conduct by threatening adverse consequences if its employees selected the Union to represent them. We affirm these findings. Specifically, we affirm the judge's findings that the Respondent violated Section 8(a)(1) and engaged in objectionable conduct by threatening to withhold employees' regularly scheduled step-progression wage increases[4] and threatening employees with loss of severance benefits.[5]

[4] The Respondent excepts to the judge's finding that regular step-progression wage increases were part of the status quo terms and conditions of employment the Respondent would be required to maintain during negotiations for an initial collective-bargaining agreement if its employees selected union representation. However, the Respondent does not state, either in its exceptions or supporting brief, any grounds on which the judge's finding should be overturned. In accordance with Sec. 102.46(a)(1)(ii) of the Board's Rules and Regulations, we find that the Respondent's bare, unargued exception should be disregarded. See, e.g., *American Sales and Management Organization, LLC d/b/a Eulen America*, 367 NLRB No. 42, slip op. at 1 fn. 4 (2018); *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 fn. 1 (2005), enfd. 456 F.3d 265 (1st Cir. 2006).

We affirm the judge's finding that on September 7, Plant Manager Brian Hammerbacher threatened employees that step-progression wage increases would be "frozen" during negotiations, and that Vice President of Human Resources Doug Scheaffer made a similar unlawful and objectionable threat at a meeting with employees on September 13. We find it unnecessary to pass on whether Scheaffer repeated that threat at other meetings, and we also find it unnecessary to decide whether Supervisor Chris Cliett made a similar threat to employees Scotty Lawrence and Roman Casey Nail, as such findings would not affect the remedy and therefore would be merely cumulative.

[5] Employees at the Respondent's nonunion Columbus facility are entitled to severance benefits if they are laid off (so-called short-term severance benefits) *and* in the event the plant closes. In contrast, the severance plan for unit employees at the Respondent's unionized Neenah, Wisconsin facility provides benefits only if the plant closes. Had the Respondent merely informed its employees at Columbus of these facts, its statement would have been both lawful and unobjectionable. It is well established that "[a]n employer has the right to compare benefits presently in effect in its unorganized facilities with those enjoyed by employees in a similar facility which has union representation." *TCI Cablevision of Washington, Inc.*, 329 NLRB 700, 700 (1999). But that is not what happened here. Hammerbacher repeatedly described the Respondent's short-term severance plan as a "nonunion facility plan only," and Human Resources Manager Lori Kohl stated that the short-term severance plan was a "nonunion plan." These statements sent the message that short-term severance benefits are, and will remain, available only at nonunion facilities. Accordingly, by these statements, the Respondent threatened employees with the loss of those benefits if they chose to be represented by the Union. See *Georgia-Pacific Corp.*, 325 NLRB 867, 867 (1998) (employer engaged in objectionable conduct when its plant manager described employer's bonus plan as "developed for non-union plants," as "employees could reasonably infer that the plan's existence was contingent upon the work force remaining nonunion"). Hammerbacher's subsequent comment that severance benefits would be negotiated did not sufficiently ameliorate the prior threat. *Hertz Corp.*, 316 NLRB 672, 672 fn. 2 (1995)

We additionally affirm the judge's finding that Safety, Health, and Environmental Manager Tiffany Wallace is an agent of the Respondent, and that the Respondent violated Section 8(a)(1) and engaged in objectionable conduct when Wallace told employees Rodriguez Bush and Michael Frierson that if employees selected union representation, either the leadman position would be eliminated or there would be no more openings for leadmen in the future.[6] We also affirm the judge's finding that the Respondent violated Section 8(a)(1) and engaged in objectionable conduct when, shortly before the polls opened, Production Manager Larry Richardson threatened employee Justin Leonard with unspecified reprisals if he selected the Union.[7] Finally, we affirm the judge's dismissal of the allegations that the Respondent, by Vice President of Human Resources Doug Scheaffer, unlawfully solicited employee grievances and threatened employees that unionization would be futile.[8]

II. PROMISING BENEFITS TO DISCOURAGE UNIONIZATION

The General Counsel alleged that the Respondent promised employees a benefit in the form of a "cash raffle prize" to discourage protected activity. The judge found that the Respondent's raffle violated the Act, not as a promise of benefits, but as an unlawful poll. We reverse the judge's finding in this regard.[9] For the reasons discussed below, however, we find that the raffle was an objectionable and unlawful promise of benefits as alleged.

Two weeks before the election, the Respondent announced a contest, in the form of a voluntary, multiple-choice quiz. The Respondent claimed that the purpose of the contest was to encourage employees "to learn all the REAL FACTS about the union and what it actually can—and cannot—do." First prize was "$900 (= 1 Year's Union Dues)," and second prize was "$450 (= 6 month's [sic] Union Dues)." Three days before the election, the Respondent posted a reminder about the contest

(finding "[r]espondent's oral explanation of the negotiation process was insufficient to dispel . . . the impression . . . that unionization itself would trigger the loss of the plan, and that loss would continue throughout negotiations unless and until it was restored").

[6] Wallace is an employee of Solutions Group, which contracts with the Respondent to provide Wallace's services. Notwithstanding this fact, we agree with the judge that Wallace is an agent of the Respondent under the "apparent authority" standard: whether, under all the circumstances, employees would reasonably believe that the individual in question was reflecting company policy and speaking and acting for management. *Einhorn Enterprises*, 279 NLRB 576, 576 (1986), enfd. 843 F.2d 1507 (2d Cir. 1988), cert. denied 488 U.S. 828 (1988). On or about September 13, Wallace attended a management training meeting at which Respondent's managers and at least one of its attorneys discussed the union campaign. Almost immediately after leaving the meeting, Wallace encountered employees Bush and Frierson and, in the judge's words, "told them that she had just left a meeting with [the] Respondent's attorneys." When Wallace then told Bush and Frierson what would happen to the leadman position if employees unionized, they would have reasonably surmised that Wallace's statement reflected the Respondent's policy and that she was speaking for management on the subject. Moreover, their belief in this regard would have been strengthened by the fact that undisputed managers had previously threatened additional adverse consequences if employees selected the Union. See *Great American Products*, 312 NLRB 962, 963 (1993) (finding that employee Frias acted as an agent of the employer based in part on the fact that Frias' "discouragement of union activity was not contrary to the message and acts of the [r]espondent's admitted supervisors"). Thus, based on her apparent authority, Wallace was acting as an agent of the Respondent under Sec. 2(13) of the Act, and her threat is properly imputed to the Respondent on that basis. The fact that she was not also a supervisor under Sec. 2(11), as the Respondent points out, is immaterial.

[7] The judge found that Richardson threatened Leonard either with discharge or unspecified reprisals. We find that Richardson threatened unspecified reprisals. During the September 7 meeting regarding unionization, Leonard suggested that Richardson's manner was one reason employees supported the Union. Richardson later learned of the comment. Less than 2 hours before the polls opened on September 14, Richardson approached Leonard at Leonard's workstation, suggested to Leonard that if the Union were voted in, the two men could no longer have one-on-one conversations, and told Leonard, "Remember that I hired you." Richardson did not explicitly threaten to fire Leonard. He indicated, however, that things would change if the Union came in, and his "remember that I hired you" remark was a not-so-subtle reminder of his authority over Leonard, which he could exercise to Leonard's detriment if he so chose. On these facts, we find that Richardson threatened Leonard with unspecified reprisals because of Leonard's protected union activity. See *Colonial Parking*, 363 NLRB No. 90, slip op. at 7 (2016) (supervisor's remarks "constituted an unspecified threat of future reprisals since, unlike the close and good relationship that they enjoyed in the past, [supervisor] warned [that employee]'s terms and conditions of employment would change for the worse because of his protected activities").

Member Emanuel disagrees with his colleagues and would find that Richardson's statement is open to interpretation and too vague to constitute a threat of unspecified reprisals. See *Phoenix Glove Co.*, 268 NLRB 680, 680 fn. 3 (1984) (reversing the judge and dismissing an allegation that the employer issued an unspecified threat when a supervisor told an employee that employees did not need a union and would be "messing up" if they got one on the grounds that the statement was "too vague and ambiguous to rise to the level of a violation…"). In contrast, the statement in *Colonial Parking*, cited by the majority, made it clear that the employer would treat employees less favorably in the future, stating: "[u]p until now . . . we were like family members," but "[f]rom now on, we are not going to continue the sentiment of familyship." 363 NLRB No. 90, slip op. at 7.

[8] In affirming the judge's dismissal of the solicitation allegation, we rely on *Contempora Fabrics, Inc.*, 344 NLRB 851 (2005), rather than *Maple Grove Health Care Center*, 330 NLRB 775 (2000), cited by the judge. As in *Contempora Fabrics*, we find the "evidence insufficient to conclude that [Scheaffer's] brief offer to discuss 'problems' was directed at eliciting workplace problems and conveyed an implied promise to remedy them." 344 NLRB at 851.

[9] The Respondent excepts to the judge's finding that the raffle violated the Act on the ground that the General Counsel did not allege the polling theory in his complaint, and thus the judge "impermissibly crafted [his] own theory of the violation." We find it unnecessary to pass on whether the unlawful polling theory was properly before the judge because, as discussed below, we reverse the judge's finding that the Respondent conducted a poll.

advising employees that, starting at 5:30 a.m. on September 12, supervisors would have copies of the quiz for distribution. Employees were to deposit their completed quizzes in a box in their break room and retain a portion of a raffle ticket to identify their entry. Submissions were due by noon on September 13. The election began at 2 p.m. on September 14. Three days after the ballots were counted, the Respondent selected two winning raffle tickets from a pool of entries that had the most correct answers. The winners received their monetary prizes via direct deposit a few weeks later. There is no evidence that the Respondent had previously held any similar raffles.

The Board prohibits raffles conducted within 24 hours of the scheduled opening of the polls. *Atlantic Limousine*, 331 NLRB 1025, 1029 (2000). Raffles conducted outside of the 24-hour period are not per se permissible, however.

> Rather, such raffles held earlier in the election campaign primarily would raise issues of whether or not they involve promises or grants of benefits that would improperly affect employee free choice; or whether they allow the employer to identify employees who might or might not be sympathetic, and thus to learn where to direct additional pressure or campaign efforts.

Id. at 1029 fn. 13 (citing *National Gypsum Co*., 280 NLRB 1003 (1986)).

We agree with the judge that the Respondent's raffle was not per se objectionable, as it was not conducted within 24 hours of the scheduled opening of the polls. The judge nevertheless found that the Respondent used the raffle to poll its employees, reasoning that the raffle assisted the Respondent in discerning employees' sentiments about the Union because employees were required to pick up quiz forms from supervisors. We disagree with the judge's finding.

Conducting a raffle in a fashion that allows the employer to discern employee sentiment about the union may violate the Act. *National Gypsum*, above at 1003 (finding raffle objectionable). For example, the Board has disallowed preelection raffles where employees are required to identify themselves on election-related quizzes because this enables the employer to learn who participated in the raffle and who did not, and which employees are familiar with the employer's campaign literature. Id. This information, in turn, indicates to the employer where "additional campaign efforts should be focused" and affords it the opportunity to "direct[] pressure at particular employees." Id.

Here, however, the Respondent took steps to ensure the anonymity of participants in the contest. The quiz form itself indicated that the quiz was "completely anonymous," and it instructed participants, "[p]lease do not put your name anywhere on this quiz form." For identification purposes, participants retained a portion of a raffle ticket that identified entries by a six-digit number. Supervisors did play some role in distributing the quizzes, and the Respondent's reminder poster advised employees to see their supervisor to obtain a quiz. However, the supervisors' limited role in distributing the quiz, standing alone, did not destroy its anonymity. See *Thrift Drug Co.*, 217 NLRB 1094, 1095 fn. 5 (1975) (finding quizzes circulated to employees by the employer unobjectionable, where the Board was "unable to find anything in the questionnaire which required employees to identify themselves or to state their views as to [election] campaign issues"). This was not a situation in which employees were invited or required to make an observable choice that would disclose their union sentiments. Cf., e.g., *A.O. Smith Automotive Products Co.*, 315 NLRB 994, 994 (1994) (employer violated 8(a)(1) when its supervisors distributed "vote no" caps, T-shirts, and buttons because doing so "effectively put employees in the position of having either to accept or reject the [employer's] proffer"); *Kurz-Kasch, Inc.*, 239 NLRB 1044, 1044 (1978) (employer violated 8(a)(1) by making "vote no" buttons available only in plant manager's office, thereby pressuring employees openly to declare themselves against the union by presenting themselves at the office for a "vote no" button). Supervisors were able to see who picked up a quiz, but this did not disclose whether employees favored or opposed the Union. Neither did it enable the Respondent to learn who participated in the raffle, let alone which employees were familiar with its campaign literature. Rather, it merely revealed which employees were *considering* participating in the raffle. Accordingly, we reverse the judge's polling finding.

We find instead that the Respondent's raffle was an objectionable promise of benefit.[10] To determine whether a raffle involves a promise or grant of benefit that would improperly affect employees' free choice, the Board applies an objective standard under which it examines several factors, including "(1) the size of the benefit conferred in relation to the stated purpose for granting it; (2) the number of employees receiving it; (3) how employees reasonably would view the purpose of the benefit; and (4) the timing of the benefit." *B & D Plastics*, 302 NLRB 245, 245 (1991).

[10] Because the prize money was distributed after the election, we find only that the Respondent engaged in objectionable conduct by the promise of a benefit, not by the actual grant of the benefit.

As to the first factor, the promised benefits were substantial: $450 and $900, a total of $1350 in cash giveaways. The respondent connected the size of the benefit to the purpose for granting it: by setting the prize amounts as equivalent to 6 months' and 1 year's worth of union dues, respectively, the Respondent reminded employees how much union dues would cost them. But the Respondent could have achieved the same purpose *without* the prizes, by simply conveying this message directly. Because the promised benefit was both substantial and unnecessary to achieve the Respondent's campaign-related purpose, we find the first *B & D Plastics* factor weighs in favor of finding the raffle to be an objectionable promise of benefits.

Second, only two employees ultimately received prizes. Properly understood, however, the benefit also included the *opportunity to compete* for those prizes, and every employee in the unit was given that opportunity. Thus, we find that the second factor weighs somewhat in favor of a finding of objectionable conduct.

Third, given the amount of the prizes and the lack of evidence that the Respondent had ever offered employees the opportunity to compete for similar or, indeed, any prizes prior to the organizing campaign, we find that employees reasonably would have viewed the raffle as intended to influence their votes in the upcoming election. We recognize that part of that intended influence was legitimate: by setting the amounts of the prizes to correspond with union dues amounts, the Respondent put an exclamation point on its 8(c)-protected message that those dues would be costly. Nonetheless, we believe the prize amounts would have tended to coerce employees in the exercise of their free electoral choice over and above the influence on that choice the Respondent sought to exert legitimately—particularly because, as stated above, the same message about union dues could have been conveyed without the prizes. Thus, we find that the third factor also weighs in favor of finding the raffle an objectionable promise of benefits.

Finally, the raffle was announced 2 weeks before the election, and it was conducted just barely outside the per se objectionable 24-hour period. We find that the proximity of the raffle to the election supports a finding that timing—the fourth *B & D Plastics* factor—also weighs in favor of an objectionable promise of benefits.

Precedent supports our conclusion that the raffle was objectionable. In a similar case, *BFI Waste Systems*, 334 NLRB 934 (2001), the Board found that $890 worth of prizes, offered less than a week before the election, was a "substantial benefit" that "sent a message to employees that 'the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if [the employer] is not obliged.'" Id. at 936 (citing *B & D Plastics*, above). We recognize that the size of the benefit was explained, in part, by the Respondent's 8(c)-protected purpose of presenting accurate information about the union, including the cost of union dues. Nevertheless, that purpose could have been achieved without the raffle, and there is no evidence that the Respondent had ever raffled prizes of any value to its employees prior to the organizing campaign and election, much less $1350 in cash. Then, just 2 weeks before the election, "the potential to receive" substantial monetary "prizes [wa]s suddenly offered" by the Respondent. Id. Under these circumstances, where a substantial, unprecedented benefit was promised in close proximity to the election, we find the employees would reasonably have viewed the purpose of the benefit was to influence them to vote against the Union. Accordingly, we find that the Respondent's raffle constituted an objectionable promise of benefit.

In addition, the foregoing analysis supports an inference, not only that employees would have reasonably *viewed* the opportunity to win such substantial prizes as intended to influence their votes, but also that the Respondent in fact *intended* to influence their votes by its promise of benefits. We therefore find that the Respondent also violated Section 8(a)(1) of the Act. See *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964); *Network Dynamics Cabling*, 351 NLRB 1423, 1424 (2007) ("An allegation that an employer has violated Section 8(a)(1) by making a promise of benefits in response to union organizational activity is analyzed under *NLRB v. Exchange Parts*," and "the 8(a)(1) analysis under *Exchange Parts* is motive-based.").

In light of the Respondent's objectionable conduct during the Union's organizing campaign, we adopt the judge's finding that the first election should be set aside. Accordingly, we will set aside the election held on September 14 and 15, 2017, sever Case 15–RC–204708 from the other case in this consolidated proceeding, and remand that case to the Regional Director for further appropriate action.

AMENDED CONCLUSIONS OF LAW

1. Delete the judge's Conclusion of Law 4 and renumber the remaining paragraphs accordingly.

2. Substitute the following for the judge's Conclusion of Law 6, renumbered as Conclusion of Law 5:

"by Production Manager Larry Richardson threatening employees with unspecified reprisals because of protected activities related to the representation election."

3. Substitute the following as renumbered Conclusion of Law 6:

"by conducting a raffle during the critical period between the filing of a representation petition and a representation election that promised a benefit in order to discourage union activities."[11]

ORDER

The National Labor Relations Board orders that the Respondent, Valmet, Inc., Columbus, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with loss of step-progression wage increases and short-term severance benefits if they select union representation.

(b) Threatening employees with elimination of the leadman position if they select union representation.

(c) Threatening employees with unspecified reprisals to discourage them from selecting union representation.

(d) Promising benefits to employees to discourage them from selecting union representation.

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

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

(a) Within 14 days after service by the Region, post at its Columbus, Mississippi facility copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 15, 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 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 August 30, 2017.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the election held on September 14 and 15, 2017, is set aside, and Case 15–RC–204708 is severed and remanded to the Regional Director for Region 15 to direct a second election whenever the Regional Director shall deem appropriate.

Dated, Washington, D.C. February 4, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain 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 loss of step-progression wage increases or severance benefits if you select union representation.

WE WILL NOT threaten you with the elimination of the leadman position if you select union representation.

WE WILL NOT threaten you with unspecified reprisals to discourage you from selecting union representation.

[11] In addition, in the section of the judge's decision headed "Recommendations Regarding Objections," delete the reference to Cliett's statement.

[12] 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."

WE WILL NOT promise you benefits to discourage you from selecting union representation.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above, which are guaranteed you by Section 7 of the Act.

VALMET, INC.

The Board's decision can be found at www.nlrb.gov/case/15-CA-206655 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.

Andrew T. Miragliotta, Esq., for the General Counsel.
Joshua H. Viau, and *Douglas R. Sullenberger, Esqs. (Fisher and Phillips, LLP)*, of Atlanta, Georgia, for the Respondent.
Brad Manzolillo, Esq. (United Steel, Paper and Forestry Workers), of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Columbus, Mississippi on February 26–27, 2018. It involves unfair labor practice allegations and objections to a representation election.

The Union filed objections to the September 14 and 15, 2017 representation election at Respondent's Columbus, Mississippi facility on September 20, 2017. The Region directed that a hearing be held on these objections on September 27, 2017. The Union filed the initial charge alleging unfair labor practices on September 21, 2017, and the General Counsel issued a complaint on December 27, 2017. The Region consolidated the objections case and unfair labor practice proceeding for trial on February 1, 2018. The General Counsel and Union seek a direction of a second election as well as posting of a notice regarding the alleged unfair labor practices.

The alleged unfair labor practices and objections overlap. The General Counsel alleges that Respondent violated Section 8(a)(1) and the Union alleges objectionable conduct on the part of Respondent, as follows:

1. by promising employees a benefit in the form of a cash raffle prize if employees participated in an anti-Union campaign on about September 1, 2017 and conducting such a raffle on September 13.[1] (Union objections 3 and 4).

2. by Environmental, Health and Safety Manager Tiffany Wallace threatening employees with job loss and loss of benefits if they selected union representation in September 2017.

3. by General Manager Brian Hammerbacher, on about September 7, 2017, threatening employees with loss of benefits and frozen wages and loss of raises, if they selected union representation.

4. by Supervisor Chris Cliett, threatening employees with frozen wages and loss of raises if they selected union representation.

5. by Human Resources Vice President Douglas Scheaffer, threatening employees with frozen wages and loss of raises if they selected union representation, promising increased benefits and improved terms and conditions of employment if employees rejected union representation, and informing employees that selecting union representation would be futile as a means of achieving better wages or benefits. (Union objections 1 and 2).

6. by Production Manager Larry Richardson, threatening employees with termination and unspecified reprisals if they selected union representation. (Union objections 5, 6 and 7).

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and the Charging Party Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Valmet, Inc., is a global corporation,[2] that rebuilds equipment that is used by customers in paper industry at its facility in Columbus, Mississippi. Respondent annually sells and ships goods valued in excess of $50,000 from the Columbus facility directly to points outside of Mississippi. It also purchases and receives goods valued in excess of $50,000 at the Columbus facility directly from points outside of Mississippi. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, referred to herein as the United Steelworkers, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On August 21, 2017, the Union filed a petition with the Board to represent a unit of all the full-time and regular part-time production and maintenance employees at Respondent's Columbus, Mississippi plant. There apparently was an earlier organizing campaign by the Steelworkers at this facility in 2015. The Board scheduled a representation election at the

[1] Conducting the raffle is also alleged to be a violation of Sec. 8(a)(3) and (1).

[2] Valmet was "spun off" by the Metso Group several years ago. The company's headquarters are located in Finland. Valmet has 9 production locations in North America and about 12,000 employees worldwide.

facility for the afternoon of September 14 and the morning of September 15, 2017. Thus, the critical period during which the conduct of the employer and the Union is more closely scrutinized runs from August 21, to September 15, 2017. Eighty five of 87 eligible voters cast ballots in the election that were counted. Forty-three votes were cast against union representation; Forty-two were cast in favor of representation by the United Steelworkers.

Respondent Conducts a Raffle/Contest During the Critical Period (Complaint Paragraphs 7 and 13; Objections 3 and 4)

On August 30, 2017, during the critical period, Respondent announced a contest for employees via an informational poster that was either posted at the Valmet facility or mailed to employees' homes, or both. This flyer, Jt. Exh. 1, stated that:

> …we keep hearing that a small group of union supporters keep telling co-workers to "ignore" the FACT SHEETS and examples that we are putting out to help you make intelligent decisions.
>
> …
>
> To make it more interesting-and to keep the union from keeping you from the FACTS-we are going to run a CONTEST to make sure you have plenty of incentive to learn all the REAL FACTS about the Union and what it actually can-and cannot do for you.
>
> …
>
> On September 11, you all will get the chance to test your knowledge by taking a 12-question quiz. The quiz will be based on the FACTS we are providing
>
> …
>
> 1st Prize: $900 (=1 year's Union Dues)
> 2nd Prize $450 (=6 months' Union Dues)

Respondent posted a reminder about the contest on September 11, Jt. Exh. 2, which advised employees to see their supervisors for a quiz entry form starting at 5:30 a.m. on September 12.[3]

Valmet Supervisor Chris Cliett advised unit employee Roman "Casey" Nail that he could not hand him an entry form because it would look like a bribe. Supervisor Kevin Clark told unit employee Rodriguez Bush that he could get an entry form from Clark's office. Clark either gave Travis Leonard an entry form or told him where he could get one.

The quiz consisted of 10 multiple choice questions.

1. In the U.S. what percentage of non-government employees belong to unions?

2. After weeks of talking to Valmet Columbus employees, the USW has delivered written, signed Guarantees that they will deliver on the following promises?

3. During contract negotiations, if the USW union cannot force Valmet Columbus to agree to deliver on promises it made to our employees, the union <u>can</u> do which of the following?

4. Under U.S. labor laws, the USW can actually guarantee Columbus employees the following?

5. After the Omnova-USW strike ended, Omnova later shut down forever. How many former Omnova employees got jobs at other USW-represented companies?

6. Based on the USW's 1.45 percent formula, Columbus employees could be required to pay monthly union dues of:

7. The USW union took in $513,000,000.00 in 2018 in union dues and other income. How much of that was paid back out on behalf of individual members?

8. Since 1968 the USW union has lost how many "dues paying" members?

9. How many unfair labor practice charges have been filed by "dues-paying" members against the USW since 2007?

10. At the unionized Neenah, Wisconsin operation,[4] Valmet contracted out how much more work in 2017 (so far) than it has at the Columbus operation?

Employees were encouraged to detach one part of a two-part raffle ticket, keep one part and drop the other in a contest quiz box in the employee break room. Entries had to be submitted by noon on September 13, the day before the representation election, which started at 2 p.m. on September 14. On September 18, 3 days after the representation election ballots were counted, Respondent randomly selected 2 winning tickets and announced the ticket numbers of the winners. Apparently, there were multiple entries which had the most "correct" answers; thus the winning tickets were selected from this pool. On October 6 or October 9, employee Daniel Carter received $900 via direct deposit and employee Charlie Horton received a $450 direct deposit as the winners of the contest.

Participation in the raffle/contest was voluntary. Respondent had never conducted a similar raffle/contest.

Respondent's Mandatory Meetings to Encourage Unit Employees to Vote Against Union Representation

Respondent held a number of meetings at which attendance was mandatory in which it endeavored to convince employees to vote against union representation.

Company Mandatory Meetings on September 6 and 7, 2017 (Complaint Paragraph 9).

Brian Hammerbacher, the General Manager of the Columbus plant, held 2 sets of 5 or 6 mandatory meetings for employees at the facility. Five or 6 sessions of 1 meeting for employees in different departments were conducted on August 30, and September 1, 2017. Another 5 or 6 sessions were conducted by department on September 6 and 7. Hammerbacher conducted a make-up session for one in which the company's video machine did not work and a separate meeting solely for the machine shop employees on September 12. Travis Leonard, a unit employee, recorded one of the meetings on September 7, 2017, at which 16–20 employees were present. Lori Kohl, Respond-

[3] Joint Exhibits 1–4 are attachments to G.C. Exh. 2.

[4] Neenah is the only Valmet facility at which employees are represented by the Steelworkers. Two other plants are organized, one by the Teamsters; the other by the IAM.

ent's regional human resources manager, attended this meeting with Hammerbacher and addressed certain topics.

During this meeting, which was about 50 minutes long, Hammerbacher told employees that if they selected the Union, Respondent would maintain the status quo. He went on to elaborate that this meant that everything, including compensation would be "frozen" because everything would be subject to negotiation. Thus, there would be no wage increases, and no merit wage increases. In response to an inquiry from an unidentified speaker in the audience, Hammerbacher said that there would be no step progression increases as well, G.C. Exh. 3 (between minutes 7:04 and 7:53 of the September 7, 2017 recording). Hammerbacher did not indicate whether or not Respondent's annual cost of living increases would continue to be implemented during negotiations.

Respondent has a corporate severance plan for its employees that covers the Columbus facility (Tr. 225). During his meetings with employees, Hammerbacher referred to that plan as the "non-union" plan. This implied that if employees selected the Union they would necessarily lose some or all of the benefits of this plan. These statements were misleading and coercive. During contract negotiations, Respondent would have been obliged to continue the benefits of the company plan until it either negotiated a contract with the Union or implemented its final offer upon reaching impasse. To suggest, as did Hammerbacher, that employees would necessarily lose the benefits of the company severance plan if they chose union representation and in failing to assure employees that they would continue to receive its benefits during contract negotiations, Respondent violated Section 8(a)(1), *Lynn-Edwards Corp.,* 290 NLRB 202, 205 (1988); *Longview Fibre Paper & Packaging, Inc.,* 356 NLRB 796, 796 fn. 3, 804 (2011).[5]

Lori Kohl compared Respondent's non-union plan with the severance plan negotiated at Respondent's Neenah, Wisconsin facility at one captive audience meeting (Tr. 226). The severance plan at the Neenah facility, where employees are represented by the Steelworkers, only covers employees in the event of a plant closure. Respondent's plan also covers employees who are laid-off. Kohl and Hammerbacher's remarks together could only leave employees with the impression that selecting union representation would necessarily mean they would not get severance benefits in the event of a lay-off. Kohl herself conceded that the reason the Neenah plan was so limited was that the parties probably did not negotiate broader coverage. This is a far cry from the impression left with employees, i.e., there will be no severance for employees who are laid off if you select the Union.

Respondent is correct that an employer may lawfully compare union and nonunion benefits of historical fact. However, an employer violates the Act and engages in objectionable conduct when it makes statements from which employees could reasonably infer that they will lose an *existing* benefit if they select union representation, *Georgia-Pacific Corp.,* 325 NLRB 867 (1998); *Cooper Tire & Rubber Co.,* 340 NLRB 958, 959 (2003); *TCI Cablevision of Washington, Inc.,* 329 NLRB 700 (1999). Hammerbacher's remarks about the company severance plan did just that.

Meetings Conducted by Human Resources Vice-President Douglas Scheaffer on September 12 and 13, 2017 (Complaint Paragraph 11; Objections 1 and 2)

Douglas Scheaffer, a global vice-president of human resources for Valmet, conducted 6 meetings for unit employees over two days, September 12 and 13. Unit employee Travis Leonard recorded one of the September 13 meetings at which 15–20 unit employees were in attendance. Schaeffer spoke from prepared remarks at all 6 meetings and then entertained questions. I conclude that his talks, with the exception of his remarks in response to questions, were essentially the same at all 6 meetings as those recorded by Travis Leonard. Human Resources Regional Manager Lori Kohl was in attendance at this meeting as well and addressed certain topics.

The general tenor of the Scheaffer's prepared remarks was that unit employees were unlikely to benefit from selecting union representation.[6] He told employees that everything would be up for negotiation if they selected union representation and that Respondent could not give any wage increases (GC 3), tape of September 13 meeting at 28:00–30:00. Scheaffer also told employees that negotiations for a first contract could go on for months, a year or even 15 months, *Ibid.* After about 38 minutes, Scheaffer entertained questions. An employee asked if the progressive step wage increases would be "frozen." Scheaffer responded that once employees selected the Union and the Union was certified, Respondent could not give any wage increases (GC 3), tape of September 13 at 38:45–40:00.

A little later an employee asked whether employees would still have their medical insurance during negotiations if employees selected union representation. Scheaffer responded by saying that would not change because Respondent would have to maintain the "status quo" during negotiations. However, he stated further that Valmet could not give any wage increases during this period and that wages would have to be frozen (GC 3), tape of September 13, 49:00–50:00.

Unless their performance is unsatisfactory, Respondent's Columbus employees receive wage increases every 3 months for 4 years and every 6 months the fifth year until they reach the top of their pay grade ("max out").

Shipping and Receiving Supervisor Chris Cliett testified that he had declined to give progressive wage increases on 10-15 occasions out of approximately 100 opportunities to grant them

[5] At p. 21 of its brief, Respondent contends that Hammerbacher clarified his statement by telling employees that the severance plan was among the things that would be negotiated. His remarks at 32:30, 5 minutes after he discussed the severance plan, are not specific and would not have clarified his earlier statement.

[6] For example between 15:00 and 18:00 elapsed minutes on the recording, G.C. 3, September 13, Scheaffer talked about Respondent's need or desire to keep all its plants the same with regard to pay and benefits. He said he did not see how a 10-percent wage increase was going to happen if the employees selected the Union. Later he said if employees expected a big windfall from union representation that was not possible. Scheaffer then told employees that they were competing with other plants and that if Respondent raised wages, it would have to raise prices.

during his tenure. Progressive wage increases are denied to employees who have attendance issues, disciplinary write-ups or have caused Respondent to lose money (an in-plant loss).

Alleged Violation by Supervisor Chris Cliett (Complaint Paragraph 10)

Scotty Lawrence, a unit employee in Valmet's shipping department, testified that during the week prior to the representation election, supervisor Chris Cliett, came to talk to him about why employees at Valmet Columbus did not need a union. Lawrence testified that Cliett told him that if employees selected the Union that the company's wage progression process would be frozen. Unit employee Roman Casey Nail, who was also present, testified that either Lawrence or Cliett used the word "frozen." Nail recalled Cliett telling him and Lawrence that the progression wages would be "stuck in the status quo." This led Nail to believe that he might not get the progression wage increase that he was due in about a week if the employees voted for union representation.

Cliett testified that Lawrence came to him after attending one of the meetings with Doug Scheaffer (either September 12 or 13). Lawrence was up for a wage increase pursuant to Respondent's progressive wage increase process in October 2017. Cliett testified that he told Lawrence that whether he would get his October increase would depend on the status quo. Cliett was not sure whether or not employees would receive progressive wage increases pursuant to the status quo. Thus, at a minimum, he created uncertainty in the minds of Lawrence and Nail as to whether they would receive the progressive wage increases that they were otherwise expecting. Lawrence had received progressive wage increases in the past. There is no evidence that either he or Nail was ever denied a progressive increase. Lawrence received his increase in October 2107.[7]

Alleged Violation by Tiffany Wallace (Complaint Paragraph 8)

On or about September 13, Tiffany Wallace, Valmet's Safety, Health and Environmental Manager, left a management training meeting regarding the union campaign. At least one of Respondent's attorneys was present at that meeting. Almost immediately thereafter, Wallace met with unit employees Rodriguez Bush and Michael Frierson in their work area. Wallace is an employee of Solutions Group, which has contracted with Valmet to provide it her services. However, there is no indication that unit employees are aware that Wallace is not an employee of Valmet. When Wallace tells an employee that, for example, they must wear personal protective equipment such as safety glasses, employees regard that as direction coming directly from Valmet.

Wallace was looking to speak with leadman William Jenkins, who had left work for the day. Leadmen are unit employees who voted in the representation election, but are paid 10 percent of their base salary extra for being leadmen. Rodriguez Bush and Michael Frierson, who are not leadmen, testified that Wallace told them that she had just left a meeting with Respondent's attorneys and that if employees selected union representation, either that the leadman position would be eliminated or that there would be no more leadman openings in the future.[8] Bush relayed this conversation to Travis Leonard, who is a leadman, after work on September 13. He also told several other employees about the conversation the same day. Bush told William Jenkins what Wallace said on September 14. It is not clear whether he talked to Jenkins before or after the election started.

The subject of whether Respondent would continue to have leadmen and how they would be compensated was raised by an employee in the question and answer period of Douglas Scheaffer's September 13 meeting. It was an obvious concern to a number of unit employees. Scheaffer responded that whether Respondent continued to have leadmen, how many and how much extra they would be paid would be a subject of negotiation if employees selected the Union (GC 3), tape of September 13 meeting, 40:00-44:00.

Alleged Violative and Objectionable Conduct by Production Manager Larry Richardson (Complaint Paragraph 12; Objections 5, 6 and 7)

At a mandatory company meeting most likely one conducted by Brian Hammerbacher on September 6 or 7, unit employee and leadman Justin Leonard (Travis' son) complained about Production Manager Larry Richardson. He intimated or said that Richardson's manner was one reason or the main reason some employees supported the Union. He also mentioned that Richardson had let a rebuilt part be shipped to a customer which Leonard believed should not have been shipped out.[9]

On September 14, about an hour or less before the representation election began, Richardson stopped at Leonard's work station. Richardson told Leonard that he wanted to discuss with Leonard what Leonard had said about him at the company meeting. Leonard asked Richardson who told him about his comments. Leonard had been led to believe that whatever he said at this meeting would be kept confidential. Richardson did not tell him.

[7] I infer from this record that Nail also received the increase he was expecting.

[8] I find Bush and Frierson's testimony to be more credible than that of Wallace. First of all, Bush would have had no way of knowing that Wallace had just come from a management meeting at which an attorney was present unless Wallace told him that. Thus, his testimony at Tr. 97–98 is far more credible than her denials at Tr. 154. In fact, Wallace did not deny that she told Bush that she had just left a meeting with the company attorney. She denied only that she told Bush that the company attorney or anyone else told her that Respondent was going to cut out leadmen.

Secondly, her explanation as to why she came to talk to Bush and Frierson is nonsensical. According to Wallace, she wanted them to talk to pro-union employee Larry Parker to put in a good word for her. She testified she didn't want to talk to Parker herself even though she considered him a friend. Wallace confirmed that she spoke to Bush and Frierson about negotiations if the employees selected the Union just after leaving a meeting in which a company attorney was present. She did not get any more specific than that. While Wallace had plenty of motivation to deny the comments attributed to her by Bush and Frierson, they had no motivation to fabricate their testimony. Moreover, other things being equal, the testimony of a current employee, which is made at the risk of alienating his or her employer, is likely to be particularly reliable, *Flexsteel Industries,* 316 NLRB 745 (1995).

[9] Plant Manager Brian Hammerbacher may also have talked to Leonard about this part prior to September 5, R. Exh. 3.

Leonard does not have a clear recollection about everything Richardson said to him.[10] He did recall that during that discussion, Richardson said something to the effect that if employees selected union representation, he would not be able to have one-on-one conversations with unit employees. Richardson also said, "just remember who hired you." Leonard's supervisor, Ken Hopper, in a November 8, 2017 affidavit, remembered that Leonard told him on September 14, that Richardson said he hired Leonard and could fire Leonard. I conclude that is exactly what Richardson said to Leonard.[11] Given the timing of this conversation, this was said to intimidate Leonard just before he went to vote in the representation election.

Leonard was very upset and immediately went to his supervisor, Ken Hopper, to complain about Richardson's conversation with him. Hopper then went to Lori Kohl, Valmet's regional human resources manager. Several employees questioned Leonard about his conversation with Richardson before Leonard went to cast his ballot in the representation election. No later than the evening after the September 14 voting, but before the September 15 voting, many employees were aware of the conversation/confrontation between Leonard and Richardson (Tr. 216–217).

When Kohl arrived, Leonard said, "go ahead and fire me." Kohl assured Leonard he was not going to be fired.

I credit Leonard's testimony over that of Respondent's witnesses.[12] Richardson testified that he only discussed the rebuilt part with Leonard. He testified further that the reason he went to talk to Leonard just before the election was that Brian Hammerbacher had mentioned the part to him that morning. This testimony is clearly inaccurate because Hammerbacher left the facility to go to Michigan on September 12 and did not return until after the election (Tr. 127–128). Moreover, an email chain introduced by Respondent establishes that Hammerbacher told Richardson about the issue with the rebuilt part on the morning of September 5 (R. Exh. 3).

Richardson testified that Hopper told him that Leonard had come to him to report that Richardson had just threatened his job. Thus, Hopper's testimony at Transcript 201 that Leonard did not tell him that Richardson threatened him is not credible and indeed is inconsistent with the affidavit he gave to Respondent's counsel on November 9, 2017.[13] I find that Leonard told Hopper that Richardson threatened his job immediately after Richardson did so.

Analysis

The Raffle/Contest

The lead Board case on raffles during the critical period before an election is *Atlantic Limousine,* 331 NLRB 1025, 1029 (2000). In that case, the Board set forth a bright-line test which prohibits unions or employers from conducting a raffle if (1) eligibility to participate or win prizes is in any way tied to voting in the election or being at the election site on election day, or (2) the raffle is conducted at any time within a period beginning 24 hours before the scheduled opening of the polls and ending with the closing of the polls. On page 1029 note 13, the Board discussed situations not falling within this bright line or per se rule, that might also be prohibited.

> Raffles conducted more than 24 hours before the scheduled opening of the polls, not aimed at encouraging employees to come out to vote, do not raise the concerns that underlie the Board's decision in *Sunrise*. Rather, such raffles held earlier in the election campaign primarily would raise issues of whether or not they involve promises or grants of benefits that would improperly affect employee free choice; or whether they allow the employer to identify employees who might or might not be sympathetic, and thus to learn where to direct additional pressure or campaign efforts. See *National Gypsum Co*., 280 NLRB 1003 (1986). Accordingly, we shall not apply our new per se rule to such raffles, but shall analyze them based on whether or not they implicate those particular concerns.

Respondent goes to great lengths to argue that it conducted a contest, not a raffle on the day before the election. I find that it was close enough to a "raffle" that the standards in *Atlantic Limousine* govern its legality. The winners of the contest or raffle were determined at least in part by a random drawing of the participants. Respondent in its brief states that the entries were graded after the election ended. However, there is no evidence to support this contention.[14] The parties stipulated that Respondent randomly selected two winning tickets (GC Exh. 2). There is no evidence as to how Respondent determined which tickets were winners.

The raffle or contest in this case clearly falls outside of the bright line rule enunciated in *Atlantic Limousine.* However, the raffle/contest did run afoul of one of the considerations governing contest/raffles conducted more than 24 hours prior to the election. By requiring or suggesting that employees obtain a quiz from their supervisor the contest assisted Respondent in identifying which employees might or might not be sympathetic with the organizing drive. One would reasonably infer that employees who asked their supervisor for a quiz would be more likely to oppose the Union than those who did not request one.

[10] Regardless of what Richardson said or didn't say about Leonard's complaints about him, Richardson communicated to Leonard that somebody had told Richardson about what Leonard said at the company meeting. Since Leonard knew he complained about Richardson, he reasonably would have inferred that somebody told Richardson about those complaints. Thus, Richardson, by letting Leonard know that he was aware of what Leonard said at the meeting and reminding Leonard that he hired him, was trying to and did intimidate Leonard just before the representation election.

[11] Hopper's affidavit constitutes substantive evidence of what transpired, *Conley Trucking,* 349 NLRB 308, 309–313 (2007). Hopper's affidavit is not hearsay evidence pursuant to Federal Rule of Evidence 801(d).

[12] See fn. 5 for an additional reasons I find Leonard credible.

[13] Lori Kohl's testified that Leonard did not tell her that Richardson said he could hire and fire Leonard. She did not recall Leonard saying anything about Richardson's remark about hiring Leonard. This brings me to one of three conclusions: (1) Leonard did not repeat everything he said to Hopper to Kohl, or (2) Kohl's recollections are faulty, or (3) Kohl's testimony is not believable.

[14] If this were so, the grading could be a statutory violation in that it would indicate to Respondent how employees voted in the representation election, which must be a secret ballot election.

On this basis alone, I find that Respondent's raffle/contest violated the Act.

Progressive Wage Increases Were Part of the "Status Quo" Which Respondent was Required to Continue if Employees Selected Union Representation.

Respondent's progressive wage increases occurred with such regularity and frequency that employees could reasonably expect them on a regular and consistent basis, *Philadelphia Coca-Cola Bottling Co.,* 340 NLRB 349, 353–354 (2003). These raises were awarded on a fixed schedule and apparently in fixed amounts. Based on Chris Cliett's testimony, I infer that progressive increases were denied only on the basis of fixed criteria, i.e., disciplinary write-ups, attendance issues or causing an in-plant loss.[15] The only relevant factual question is whether the employer's action is similar in kind and degree to what the employer did in the past, *Raytheon Network Centric Systems,* 365 NLRB No. 161 (2017), slip opinion at page 13. *Daily News of Los Angeles,* 315 NLRB 1236 (1994) enfd. 73 F.3d 406 (D.C. Cir. 1996); *United Rentals,* 349 NLRB 853 (2007); *Mission Foods,* 350 NLRB 336, 337 (2007). I conclude this is the case. Thus, Respondent's obligation in maintaining the status quo during negotiations, if employees selected the Union, included continuing granting these progressive increases as it had in the past.

Respondent, by Brian Hammerbacher, Douglas Scheaffer and Chris Cliett Violated Section 8(A)(1) and Engaged in Objectionable Conduct by Telling Employees That Wage Increases That Were Established Past Practices Would Be Frozen if They Selected Union Representation and/or Indicating the Employees Would Not Receive Such Wage Increases if They Selected Union Representation

Respondent, by Brian Hammerbacher, Douglas Scheaffer and Chris Cliett violated Section 8(a)(1) and committed objectionable conduct by telling employees that wage increases that were established past practices would be frozen, and/or otherwise indicating that employees would not receive such increases during collective bargaining negotiations, *Alpha Cellulose Corporation,* 265 NLRB 177, 178 fn. 1 (1982), enfd. mem. 718 F.2d 1088 (4th Cir. 1983); *ADIA Personnel Services,* 322 NLRB 994 (1997);[16] *W.F. Hall Printing Co.,* 239 NLRB 51, 52–53 (1978); *More Truck Lines,* 336 NLRB 772, 773 (2001), enfd. 324 F.3d 735 (D.C. Cir. 2003); *Illiana Transit Warehouse Corp.,* 323 NLRB 111, 115 (1997); *Jensen Enterprises,* 339 NLRB 877 (2003). The impact of Scheaffer's remarks was exacerbated by his emphasis on how long negotiations might take. This reasonably would suggest to employees that if they selected union representation they would not receive their progressive wage increases for an extended period.

Respondent suggests that it should not be held responsible for Scheaffer's remarks because he was "set-up" by prounion employees. It is clear from this record that Scheaffer was not very familiar with the step-progression system for wage increases at the Columbus facility (Tr. 140–144). He talked about Respondent not being able to give wages increases without distinguishing the step increase system to which employees were clearly entitled during negotiations. This would leave employees with the impression that they might not get these increases for some time, since Scheaffer indicated negotiations might drag on for some time. I conclude that Respondent bears full responsibility for this uncertainty. Had Scheaffer been adequately familiar with the wage system at Columbus, he would have able to correctly explain what would happen to wages during negotiations and after negotiations end.

Respondent, by Brian Hammerbacher Violated the Act and Engaged in Objectionable Conduct by Suggesting That if Employees Selected Union Representation, They Would Lose the Benefits of Respondent's Severance Plan

As stated earlier, to suggest, as did Hammerbacher, that employees would necessarily lose the benefits of the company severance plan if they chose union representation and in failing to assure employees that they would continue to receive its benefits during contract negotiations, Respondent violated Section 8(a)(1), *Lynn-Edwards Corp.,* 290 NLRB 202, 205 (1988); *Longview Fibre Paper & Packaging, Inc.,* 356 NLRB 796, 796 fn. 3, 804 (2011); *Georgia-Pacific Corp.,* 325 NLRB 867 (1998); *Cooper Tire & Rubber Co.,* 340 NLRB 958, 959 (2003); *TCI Cablevision of Washington, Inc.,* 329 NLRB 700 (1999). This is so because the severance benefit was an existing benefit for Columbus employees.

Respondent, by Douglas Scheaffer, Did Not Violate the Act by Soliciting Grievances.

As stated in the General Counsel's brief, towards the end of his speech on September 13, Douglas Scheaffer said "If you have a problem, put it out there, let's talk about it, and let's resolve it and let's agree." (GC 3, 55:09-55:24.) As I listened to the recording, Schaeffer continues to say something like "if we can't agree, we'll move on." I conclude that Scheaffer did not implicitly promise to remedy employee grievances. The speech in toto rebuts the presumption that Valmet would remedy all or even any employee grievances. Thus, I dismiss the allegation in complaint paragraph 11(b), *Maple Grove Health Care Center,* 330 NLRB 775 (2000).

Respondent, By Douglas Scheaffer Did Not Violate the Act, by Suggesting That Employees Would Not Benefit From Union Representation

While the general tenor of Scheaffer's remarks on September 13 were that employees would see little, if any, benefit from union representation, I conclude that his remarks did not rise to the level of a statutory violation. The cases cited by the General Counsel are all factually distinguishable. Respondent, did not for example, imply that it would insure its non-union status by unlawful means, *Winkle Bus Co.,* 347 NLRB 1203, 1205 (2006); *Wellstream Corp.,* 313 NLRB 698, 706 (1994).

Tiffany Wallace Was an Agent of Respondent

The Board applies common law agency principles in determining who is an agent under the Act. When applied to labor relations, agency principles must also be broadly construed in light of the legislative policies embedded in the Act. A party

[15] That an employee may be denied a progressive increase for unsatisfactory performance does not negate the fact that the increases are an established past practice, *Jensen Enterprises,* 339 NLRB 877 (2003).

[16] This case is sometimes cited as *Siemens*.

may be bound by the conduct of those it holds out to speak and act for it, even though there is no proof that specific acts were actually authorized or subsequently ratified. *Atelier Condominium & Cooper Square Realty,* 361 NLRB 966, 1001 (2014). *Braun Electric Co.,* 324 NLRB 1, 2 (1997); *Dorothy Shamrock Coal Co.,* 279 NLRB 1298, 1299 (1986).[17] Statements of a supervisor or agent may be imputed to an employer even if that employer was not aware that the statements were made, *Jays Foods, Inc. v. NLRB,* 573 F.2d 438 (7th Cir. 1978).

Common law principles incorporate the principles of implied and apparent authority. Apparent authority is created through a manifestation by the principal to a third party that supplies a reasonable basis for the latter to believe that the principal has authorized the agent to do the act in question, *Shen Automotive Dealership Group,* 321 NLRB 586, 593 (1996). Another way the Board has stated this principle is "whether under all the circumstances the employees would reasonably believe that [a person] was reflecting company policy and speaking and acting for management," *Community Cash Stores,* 238 NLRB 265 (1978); *Poly-America, Inc.,* 328 NLRB 667 (1999).

Unit employees Bush and Frierson would have reasonably believed that Wallace was speaking for management when she told them that leadmen positions *would* be eliminated or reduced in bargaining. This is so given her responsibilities in the plant and because she told them that she was imparting the information after attending a meeting with Respondent's management and attorneys.

Respondent by Tiffany Wallace Engaged 8in Objectionable Conduct and Violated Section 8(A)(1)

Wallace's statements are objectionable and violative of Section 8(a)(1). Wallace was not telling employees that the status of leadmen was a subject of bargaining but rather that those who voted for union representation would lose that status or be foreclosed from becoming leadmen in the future. This is an obviously coercive statement the day before an election. It either implicitly threatened incumbent leadmen of a 10% loss in wages or threatened aspiring leadmen that selecting union representation would foreclose their opportunity in increasing their wages by becoming a leadman.

Respondent by Larry Richardson Engaged in Objectionable Conduct and Violated Section 8(A)(1)

Larry Richardson, either explicitly threatened Justin Leonard with loss of his job, or implicitly threatened him with unspecified reprisals. Even though Richardson did not mention the Union or the union campaign, Leonard was very likely to draw the connection between the threat and his comments at the captive audience meeting and the representation election. This is so because both he and Richardson understood that Richardson was talking to him about comments made at a captive audience meeting concerning the election. At that meeting Leonard had stated that Richardson's conduct was a reason for the union drive. Moreover, the timing of Richardson's conversation, just before Leonard was about to vote, was likely to coerce and interfere with Leonard's right to exercise his right to vote freely, *Jupiter Medical Center Pavilion,* 346 NLRB 650, 651 (2006). Additionally, assuming that Richardson did not specifically threaten Leonard with loss of employment, a threat of unspecified reprisal related to union or other protected activity violates the Act, *Aladdin Gaming, LLC,* 345 NLRB 585, 616–617 (2005).

CONCLUSIONS OF LAW

Respondent violated Section 8(a)(1) of the Act and engaged in objectionable conduct during the critical period between the filing of the representation petition as follows:

1. by Environmental, Health and Safety Manager Tiffany Wallace threatening employees with job loss or loss of promotion opportunities (to leadman) if they selected union representation on or about September 13, 2017.

2. by General Manager Brian Hammerbacher, on September 7, 2017, telling employees that during collective bargaining negotiations they would not receive progressive step wage increases, which were an established past practice of Respondent, if they selected union representation.

3. by General Manager Brian Hammerbacher, suggesting that unit employees would necessarily lose the benefits of Respondent's severance plan if they selected union representation.

4. by Supervisor Chris Cliett telling or suggesting to employees that they would not receive progressive step wage increases during collective bargaining negotiations if they selected union representation.

5. by Human Resources Vice President Douglas Scheaffer, on September 13, 2017, telling employees they would not receive progressive step wage increases during collective bargaining negotiations if they selected union representation.

6. by Production Manager Larry Richardson, threatening employees with termination and/or unspecified reprisals because of protected activities related to the representation election.

7. by conducting a raffle/contest during the critical period between the filing of a representation petition and a representation election in a manner which would aid it in identifying which employees were and which employees were not sympathetic to the Union.

Recommendations Regarding Objections

Generally, the Board will set an election and order a new election whenever an unfair labor practice occurs during the critical period between the filing of the representation petition and the election. The only exception to this policy is where the misconduct is de minimis, such that it is virtually impossible to conclude that the election outcome could be affected. In assessing whether the misconduct could have affected the result of the election, the Board has considered the number of violations, their severity, the extent of dissemination, the size of the unit, the proximity of the misconduct to the election and the closeness of the vote. It also considers the position of the managers who committed the violations, *Bon Appetit Management*

[17] The language of Sec. 2(13) defining "agent" states that actual authorization or subsequent ratification of specific acts is not controlling in determining whether a person is an "agent."

Co., 334 NLRB 1042 (2001); *Caterpillar Logistics,* 362 NLRB 395 (2015), enfd. 835 F. 3d 536 (6th Cir. 2016).[18]

Respondent's statements, some of which were made by high-ranking company officials in captive audience meetings had more than a minimal impact on employees in an election that ended in an extremely close vote. Those statements include the statements by Hammerbacher, Scheaffer, and Cliett, suggesting that employees would not receive their progressive wage increases, statements by Hammerbacher that employees would lose their severance plan benefit if they selected union representation, the statements by Wallace that either the leadman position would be eliminated or that there would be no more such positions and Richardson's coercive statements to Justin Leonard. Therefore, I recommend that the election be set aside and remanded to the Regional Director for the purpose of conducting a second election, *ADIA Personnel Services, & W.F. Hall Printing Company,* supra.

REMEDY

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[19]

ORDER

The Respondent, Valmet, Inc., Columbus, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with job loss or loss of promotion opportunities if they select union representation.

(b) Telling or suggesting to employees that during collective bargaining negotiations they will not receive benefits, such as progressive wage increases, that are an established past practice of Respondent, if they selected union representation.

(c) Threatening employees with termination and/or unspecified reprisals because of protected activities related to the representation election.

(d) Suggesting to employees that they would lose the benefits of Respondent's severance plan if they select union representation.

(e) Conducting a raffle/quiz during the critical period between the filing of a representation petition and a representation election in a manner that would assist it in determining which employees favored and which employees opposed unionization.

(f) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Within 14 days after service by the Region, post at its Columbus, Mississippi facility copies of the attached notice marked "Appendix."[20] Copies of the notice, on forms provided by the Regional Director for Region 15, 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 physical posting of paper notices, the 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 7, 2017.

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

Dated, Washington, D.C., April 17, 2018

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain 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 employees with job loss or loss of promotion opportunities if they select union representation by the United Steelworkers or any other union.

WE WILL NOT tell employees that during collective bargaining negotiations they will not receive benefits that are an established past practice of Respondent, such as progressive wage

[18] The Court of Appeals noted that the direction of a second election was unreviewable.

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

[20] 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."

step increases, if they select union representation by the United Steelworkers or any other union.

WE WILL NOT threaten employees with termination and/or unspecified reprisals because of protected activities related to a representation election or their support of the United Steelworkers or any other union.

WE WILL NOT suggest to employees that they will lose the benefits of our severance plant if they select union representation.

WE WILL NOT conduct a raffle/quiz during the critical period between the filing of a representation petition and a representation election in a manner that aids us in identifying which employees favor and which employees oppose unionization.

WE WILL NOT In any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

VALMET, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/15-CA-206655 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.