

September 6, 2022

National Labor Relations Board
Region 10 – Birmingham Office
1130 22nd Street South
Ridge Park Place, Ste 3400
Birmingham, AL 35205

Re: GE Aviation; 10-RC-301792; 10-CA-302246; Etc

To Whom it May Concern:

This letter is submitted on behalf of the IUE-CWA International (the “Union”) in support of the Unfair Labor Practice charge filed against GE Aviation, (“Employer”) in the referenced charge. Please see the following position statement in support of the charge. GE Aviation is an “employer” covered by the NLRA engaging in interstate commerce and is subject to the NLRA.

The production employees at GE are interested in being a part of the IUE-CWA and have expressed their interest by forming a committee in the spring of 2022. After forming a committee, the workers successfully organized a majority of their coworkers by convincing them to sign recognition cards and participate in Union activities, such as meetings and conversations.¹ The IUE-CWA filed a petition for election on August 22, 2022. After discovering the organizing campaign, the Company began to take measures, both legal and illegal, to defeat the Union campaign. Legally, GE Aviation has indicated to workers that the replacement for Andrea McAllister will be a black man, in order to attempt to sway votes by this symbolic gesture. Illegally, GE Aviation has terminated two workers affiliated with the Union, made numerous threats to close the plant if a Union is elected, engaged in surveillance of Union activities, given Union supporters the impression that they were being surveilled, interrogating Union employees, interfering with Union activity, and increasing supervision on known Union supporters.

On August 26, 2022 the Union requested recognition of the unit at GE Aviation based upon the fact that the Union had obtained a majority of the members on cards.² On August 30, 2022 the Company by through Plant Leader Andrea McAllister refused to recognize the Union and did not reference any “good faith doubt” of the Union’s majority status. After August 26, 2022, when the Union warned the Company not to engage in any coercive activity which could dissipate the Union’s majority status, the Company continued to engage in illegal coercive behavior including

¹ 10-RC-301792; August 23, Electronic Cards Filing (2nd)

² August 26, 2022 Request for Recognition

surveilling union supporters, increased supervision over union supporters, interrogating union supporters, and threatening to withdraw work from the plant if the plant became Union.

Due to the severe and nature of the threats and illegal behavior, the Union has no choice but to request that the Board look to serious remedies, including a 10(j) injunction and a bargaining order under Gissel and/or Joy Silk.

As General Counsel Abruzzo has noted, 10(j) injunctions “are one of the most important tools available to effectively enforce the Act.”³ GC Abruzzo went on to state that she will seek prompt Section 10(j) relief in all organizing campaigns where the facts demonstrate that the employer threats or other coercion may lead to irreparable harm to employees’ Section 7 rights. The Board has identified certain “hallmark violations” which undermine the laboratory conditions necessary for a fair election including threats of plant closure, discharge of union supporters, and grants of significant benefits.⁴ GC Abruzzo has wisely noted that a 10(j) injunction may “now include cases where employers swiftly react to organizing efforts with threats or other coercion, even in the absence of other unlawful actions.”⁵

Brenyetta Talley was terminated on July 28th, 2022, for pretextual reasons in order to show the employees at GE Aviation the hazards of supporting the Union.

Brenyetta Talley is a Union supporter and has signed a Union card.⁶ Brenyetta is close friends with Erica Fletcher, who is on the organizing committee and is a well-known Union supporter.⁷ Brenyetta and Erica would talk openly in the floor on daily basis. These conversations were closely observed by management. Tavaris Paine is also an open and well-known Union supporter.⁸ Tavaris “represented” Brenyetta on one of the occasions that she needed to talk with management. Tavaris accompanied her to the office and spoke out on her behalf in late June, 2022.

Brenyetta has long been seen as a “trouble-maker,” even prior to the advent of the union organizing drive. She asked for corporate’s number in complaining about Andrea McAllister, the GE Aviation Auburn Plant Leader. In exchange, Brenyetta’s attendance was closely monitored and she was place on a “DML” (Decision Making Leave), which is a probationary period for 12 months on March 30, 2022. The only discipline she had received in her file was attendance related, for tardiness, many of which were one to two minutes late. Brenyetta had received five “impact” awards over the years, which are awarded for both production and quality. Brenyetta had received both production and quality related awards. Brenyetta believes that her complaints prior to the Union drive, and her friendship and affiliation with Tavaris Paine and Erica Fletcher has made her

³ [2022 NLRB GCM LEXIS 1, *5-6 \(N.R.L.B. Gen. Counsel Memoranda February 1, 2022\)](#)

⁴ [North Texas Investment Group](#), 370 NLRB No. 122 (2022); Quoting [NLRB v. Gissel Packing Co.](#), 395 U.S. 575, 614 (1969)

⁵ [2022 NLRB GCM LEXIS 1, *5-6 \(N.R.L.B. Gen. Counsel Memoranda February 1, 2022\)](#)

⁶ Brenyetta Talley- 334-415-1713

⁷ Erica Fletcher - 334-412-0468

⁸ Tavaris Paine 334-663-2534

a prime target as a suspected Union leader, although she is not actually on the organizing committee.

Around the time the Union organizing drive started, in April, Brenyetta was placed on the grinder machine, which she complained about because she was pregnant. The grinder machine is difficult, especially for a pregnant person because you have to lift fifty to sixty (50-60 lbs) pounds whenever you change the wheel, which is very common. As the organizing drive picked up, the supervision around her increased, which is consistent with many other Union supporters. Supervisors AJ Wood and Marva Terrell would walk her line ten times a day and observe her. Finally, on July 28 Brenyetta was terminated without prior warning for being on her phone in the “phone zone.” Phone use in the plant is constant, even outside of the “designated” phone area, and in the following weeks many other employees were seen and recorded by the Union being on their phones, near management without complaint.

As stated by the Board in *Wright Line*, “an employer will rarely, if ever, baldly assert that it has disciplined an employee because it detests unions or will not tolerate employees engaging in union or other protected activities.”⁹ In many cases, a “dual motivation” will exist, the first being a legitimate business reason and the second being the illegal motivation to chill and retaliate against Union activity. In many cases however, the “good” motivation (the legitimate business reason) is actually shown to be a pretext. This year, the Board has held “where an employer’s purported reasons for taking an adverse action against an employee amount to a pretext – that is to say, they are false or not actually relied upon – the employer necessarily cannot meet its *Wright Line* rebuttal burden.”¹⁰

In this case, it is clear that the cell phone policy is not strictly enforced, and the “phone zone” is specifically designated for that activity. GE’s behavior towards Brenyetta Talley is unnecessarily cruel, they intentionally assigned her to the grinder machine despite her pregnancy and her complaints about that job. Furthermore, they had their supervisors AJ Wood and Marva Terrell watch her close to ten times per day, much more than previously, before the Union drive. Brenyetta was seen as a “troublemaker” because she called Corporate HR on Andrea McAllister, and she was also represented by Tavaris Paine and Erica Fletcher in the office, which tied her to the organizing drive. As the “easiest target,” someone who had been tardy and was on a probationary “DML,” she was terminated for an unknown violation, using her cell phone in the designated “phone zone.” By terminating a known friend and fellow union supporter, the company illustrated to the employees that Union leaders such as Tavaris Paine and Erica Fletcher cannot protect their friends and supporters.

⁹ *Wright Line, A Div. of Wright Line, Inc.*, 251 NLRB 1083, 1083-1084 NLRB LEXIS 1639, 5-6 (NLRB January 1, 1980)

¹⁰ *Security Walls, LLC and Randall Kelley*, 371 NLRB No. 74, 2022; *quoting CSC Holdings, LLC*, 368 NLRB No. 106 (2019); *Healthy Minds*, 371 NLRB No. 6 (citing *Parkview Lounge, LLC d/b/a Ascent ;Lounge*, 366 NLRB No. 71 (2018), *enfd. Mem.* 790 Fed. Appx. 256 (2^d Cir. 2019)

Tyrone Dawkins was released from his probation on August 8, 2022 on a pretext to show the Union that they cannot protect their allies

Tyrone Dawkins was on his probation at GE Aviation and he signed a Union card. Due to the Company's surveillance of the organizing drive, they are aware of who is and who is not a Union supporter. Tyrone Dawkins was working in the Backend of the Blades Department, and was doing fine with production in Airflow and Shot Peen.¹¹ Terrance Davis, his trainer, and Jared Burns, a process engineer both thought Tyrone was doing a fine job. Tyrone took a test to qualify in the Airflow and Shot Peen processes, with Jared Burns and Matt Weaver respectively. Tyrone passed the Airflow test with flying colors but was failed by Matt Weaver on the Shot Peen process.

Terrance Davis is a Union supporter and was aware that Tyrone Dawkins was also a Union supporter. Terrance Davis testified that whenever a new employee has trouble with an area or process, they are given a chance to try a different area or department. As a trainer of new employees, Terrance Davis has never seen a probationary employee let go after failing in only one area. After Tyrone failed the Shot Peen test three times, the Company let him go without allowing him to try a different process in a different area.

Both Terrance Davis, Jared Burns, and other employees including Tavaris Paine thought that the probationary termination was abnormal and unprecedented. Employees came away thinking that the Union supporters, such as Terrance Davis cannot protect their friends.¹² The Union supporters believe that the Company chose Brenyetta Talley and Tyrone Dawkins as "easy targets."

Plant Closure threats were openly made by management representatives Morgan Hokanson on July 20, Joe Dennis on August 4, and implied by Tim McQueen on September

1

On July 20, 2022, Erica Fletcher heard Morgan Hokanson telling one of the newer employees that if the plant was to unionize the plant would close down.¹³ Morgan Hokanson handles ERGO physical therapy and is known to be close friends with the safety manager Elizabeth.

On August 4, 2022, Tanya Tate was approached by Process Engineer Joe Dennis and then engaged in a conversation about the Union.¹⁴ Tanya Tate is a Union supporter and is on the

¹¹ Terrance Davis 334 663-6240

¹² Tavaris Paine

¹³ Erica Fletcher - 334-412-0468

¹⁴ Tanya Tate - 334-328-9780

organizing committee. Joe Dennis began to talk about how he “wanted to get fifteen more years in” to the Auburn plant. After that Joe Dennis went on to say that he “didn’t want to see the plant close down.” Tanya responded that “if it is going to shutdown let me know” so that she would not have to “ride up the road burning up my gas.”¹⁵ Joe Dennis then responded to the effect that it “won’t shutdown that fast, they will do it a slower rate.” Joe Dennis said if you vote in the Union it will shut down. He went on to say he wishes he could vote but he was salary. Tanya responded that if the site shuts down, another door will open. Joe went on to say that he was just “joking” with her.

On September 1, 2022, Tim McQueen held a meeting with all shifts, one at a time. Tim McQueen is the manager of the entire Turbine Airfoil Value Stream and he let all the employees know this. During all of the meetings, he started by saying “I am in charge of which plants get the work.”¹⁶ During first shift, he went on to say “I’m not going to put work where it is less advantageous for the company.” He then specifically stated “if you go Union it is not going to benefit you.” Justine Jackson, on second shift heard about the meeting on first shift from first shift employees. The employees she talked to took the speech as a threat to their work if they voted for the Union. Later in the speech Tim McQueen clearly stated that the Company controls the benefits and that the Union is futile.

The threat of plant closure and job loss if workers unionize is a “hallmark violation” which undermines the laboratory conditions necessary for a free election.¹⁷ Threatening a plant closure or job loss certainly “interfere[s] with, restrains[s], [and] coerce[s] employees in the exercise of the rights guaranteed” by the Act, under Section 8(a)(1). It is also true that under Section 8(c) “the expressing of any views argument, or opinion...shall not constitute or be evidence of an unfair labor practice...*if such expression contains no threat of reprisal or force or promise of benefit.*”¹⁸ Recently, the Board ruled on such a distinction in Arbah Hotel Corp. finding that blaming the Union for job loss was dishonest. In Southern Bakeries, the Board saw through an argument that a Vice President was only talking about “business conditions” rather than “union representation.”¹⁹

In this case, the most vague statements, made by Tim McQueen to the entire employee body are similar to the statements made in Southern Bakeries. By saying that the Union is powerless and will not benefit the workers, to then saying that it will be “less advantageous” to the company and therefore presumably less likely to receive work is a thinly veiled anti-union threat. The combination of these statements, so close together, creates a clear logical connection. First Tim McQueen states that he controls who gets work and then he goes on to state that he is not going to put work “where is less advantageous for the company.” Second, he immediately states

¹⁵ Tanya Tate

¹⁶ Tavaris Paine 334-663-2534, Justine Jackson - 334-663-4323

¹⁷ North Texas Investment Group, 370 NLRB No. 122 (2022); Quoting NLRB v. Gissel Packing Co., 395 U.S. 575, 614 (1969); Crown Bolt, Inc., 343 NLRB 776, 777, 2004 NLRB LEXIS 681 (343 NLRB No. 86)

¹⁸ ARBAH HOTEL CORP. D/B/A MEADOWLANDS VIEW HOTEL, 371 NLRB No. 126, (2022)

¹⁹ Southern Bakeries, LLC., 364 NLRB 804, 807 (364 NLRB No. 64 2016)

that if the workers “go Union it is not going to benefit you.” Third, he later states that the Union is powerless and futile. The combination of these statements cannot be misconstrued. If the going Union “will not benefit you” is stated directly after telling the workers who controls where the work goes, Tim McQueen is obviously implying that voting for the Union will affect their work because he will decide that it does. Finally, by telling the employees that the Union is powerless and going Union is futile, this eliminates any 8(c) argument the Company might claim by attempting to claim “economic conditions” is what will cause the job loss. If the Union is powerless, and cannot help the employees get anything economically, then it follows that the Union’s presence *alone* will cause the job loss. Employees made this connection and told Justine Jackson, on second shift, that the threat was made by Tim McQueen, before Justine had heard the presentation.

The other threats of plant closure are much more blatant, Morgan Hokanson simply told newer employees in earshot of Erica Fletcher that the vote to unionize would lead directly to a plant closure. Joe Dennis was obvious about his threat as well. He told Tanya Tate that he “wanted to get fifteen more years in” and specifically tied the danger to this desire to the Union vote. He openly told Tanya that if you vote in the Union the plant will shut down.

Joe McDermott illegally surveilled and interfered with protected organizing activity on August 3, 4, and 5 while organizers Tomeka Cooley-Pettus and Genesis Hunt were passing out fliers and doing a “honk-in-support” actions off of Company property.

On August 3, 2022, organizers Tomeka Cooley-Pettus and Genesis Hunt were passing out leaflets outside of GE property on public property outside of the GE gate. Tomeka knew that they were standing on public property because the grass was mowed differently and the street was painted in the same manner as the city. In fact, Tomeka had made sure where the property line was by checking the GPS. However, Joe McDermott, who works as security for GE Aviation pulled up behind Tomeka and asked her what she was doing. Joe McDermott then told her that she was on GE Aviation property and that she was not allowed to be there.

After this, Joe McDermott called the police numerous times on August 3, 4, and 5 to have the police talk to Tomeka and Genesis. While “checking on” Tomeka and Genesis the police confirmed the fact that they were on public property and what they were doing was completely legal. The police gave an employee a speeding ticket on August 5, 2022. During the three days Joe McDermott came out conspicuously in his truck and parked in plain view so that the employees could see him during the handing out fliers and the “honk-in-support” action.

Multiple management staff pretended to be employees in order to get the flier and to talk to Tomeka and Genesis. A supervisor named Margot Vachon pulled up to Tomeka and Genesis and told them she was an employee. When asked if she was management, she insisted that she was a worker. Later, after discussing the situation with the organizing committee Tomeka discovered that the person was Margot Vachon, the supervisor in additives. Another manager came by and

told them that she was a worker on 3rd shift. After giving her description to the organizing committee, it was discovered that no worker fit that description on 3rd shift. The organizing committee named her as “Jennifer,” someone who worked in HR.

Joe Dennis engaged in surveillance of a Union meeting at EndZone and told Tanya Tate of this surveillance

Joe Dennis, on August 4, 2022, came to talk with Tanya Tate at her work location, the same day and conversation of the plant closure threat. On that day Joe Dennis asked Tanya Tate about the Union meeting at EndZone that night on August 4. He specifically asked Tanya if she “was going to get the free wings and beer when [she] got off.” Tanya replied “I don’t know.” On August 5 Joe Dennis again came over to Tanya Tate’s work area. He asked her if she went to the meet and greet for the IUE at EndZone. She replied “no, did you go?” He replied “I got off late and rode by, didn’t see anyone I knew.” She then said “oh, you played peekaboo, I thought you wanted some wings?” She then asked “were you scared?” Joe said “I didn’t see anyone I knew for me to go in.” Again Joe asked “did you go by?” She stated “I don’t live here in Auburn, I stay in Montgomery.” He replied “a lot of people don’t stay here in Auburn and started comparing Madisonville and Auburn cost of living.” She said “I stay in Montgomery, what’s that got to do with me?” At that point, he returned to talking about work and walked away.

Jeff Essenbauch surveilled Marcus Durell on August 30, 2022

Marcus Durell testified to being followed in the plant on Monday, August 30.²⁰ He clocked out at 3:30pm and walked across the plant. When he saw Jeff Essenbauch, he thought that was strange and stopped in an aisleway and stood still for a minute. After he walked back out on the floor, he saw Jeff standing there looking at him. When he saw Jeff, Jeff immediately looked up towards the ceiling. Jeff was standing about fifteen (15) yards away. Marcus then proceeded across the plant and proceeded to talk with Tavaris Paine. Tavaris Paine testified that Jeff followed Marcus and then stood strangely while they talked.

After Marcus’ conversation with Tavaris, Marcus saw that Jeff was still standing there. Marcus asked “you must be lost.” Jeff answered something to the effect of “just making sure you clocked out.” Marcus responded “you think I am talking about the Union on the clock?” Jeff said “you are too smart to do that.”

Tim McQueen intentionally gave Justine Jackson the impression that her Union activity was being surveilled

After Tim McQueen’s presentation to 2nd shift on September the 1st, he was sitting in the cafeteria while employees were exiting the room. Cynthia and Justine Jackson were leaving the cafeteria when Tim McQueen asked Cynthia what job she ran. Cynthia answered “I run a grind.”

²⁰ Marcus Durell 334-319-5207

Tim McQueen then asked Justine Jackson where she worked but before she could answer he said “Oh that’s right you work M85 grind.”

An employer who creates the impression employees’ protected/concerted activities are under surveillance violates Section 8(a)(1) of the Act.²¹ The test is “whether the employee would reasonable assume from the statement in question that his union activities had been placed under surveillance.”²² If an employer behaves in a manner that is out of the ordinary as it observes union activities, or by its statements or actions implies that it has done so, it engages in unlawful surveillance or creates an unlawful impression of surveillance, even if the employees' union activities are conducted openly.²³ The Board takes into account whether the employer's observations occurred in connection with other coercive behavior.²⁴ In Shamrock Foods, a supervisor unlawfully engaged in surveillance of employees' union activity by standing outside a local Denny's restaurant where a union organizing meeting was taking place.²⁵ Using the police as agents to coerce employees can also be unlawful surveillance, especially if the police were called on the employer’s behalf when no property was threatened.²⁶

In this case, the property line was obvious. On public property the grass was cut in a different manner and the street was painted in a different manner. Joe McDermott lied or misled Tomeka and Genesis about where the property line was in order to interfere with their union activities. Then he proceeded to call the police multiple times, despite the police telling Tomeka and Genesis that they were doing nothing wrong and that they had a right to handbill cars. Utilizing the police despite their being no cause to do so intentionally chilled the employees and interfered with their legitimate section 7 activity. Then, Joe McDermott parked about fifteen feet away in plain sight and gave the employees further reason to feel their activities were being surveilled. Also, managers, including Margo Vachon and “Jennifer” from HR pretended to be employees in order to spy and surveil the organizing and handbilling that Tomeka and Genesis were doing. All

²¹ Promedica Health Systems, 343 NLRB 1351, 1352 (2004), quoted in W. D. Manor Mech. Contrs., Inc., 357 N.L.R.B. 1526, 1539, 2011 NLRB LEXIS 685, *62-63, 192 L.R.R.M. 1441, 2010-11 NLRB Dec. (CCH) P15,504, 357 NLRB No. 128 (N.L.R.B. December 7, 2011)

²² U.S. Coachworks, Inc., 334 NLRB 955, 958 (2001), quoted in W. D. Manor Mech. Contrs., Inc., 357 N.L.R.B. 1526, 1539, 2011 NLRB LEXIS 685, *62-63, 192 L.R.R.M. 1441, 2010-11 NLRB Dec. (CCH) P15,504, 357 NLRB No. 128 (N.L.R.B. December 7, 2011)

²³ Loudon Steel, Inc., 340 NLRB 307, 313 (2003), quoted in Wal-Mart Stores, Inc., 350 N.L.R.B. 879, 887, 2007 NLRB LEXIS 329, *37-38, 183 L.R.R.M. 1261, 2006-7 NLRB Dec. (CCH) P17,423, 350 NLRB No. 71 (N.L.R.B. August 20, 2007)

²⁴ Rogers Electric, Inc., 346 NLRB No. 53, slip op. at 2 (2006); See also Eddyleon Chocolate Co., 301 NLRB 887, 888, (1991) (unwarranted summoning of police and threat to close plant accompanying observation of open union handbilling)

²⁵ Shamrock Foods Co., 2018 NLRB LEXIS 221, *4, 211 L.R.R.M. 1797, 2018-19 NLRB Dec. (CCH) P16,434, 366 NLRB No. 117 (N.L.R.B. June 22, 2018)

²⁶ In Re of Bibb Mfg. Co., 82 N.L.R.B. 338, 342-343, 1949 NLRB LEXIS 951, *11-13, 23 L.R.R.M. 1557, 82 NLRB No. 38 (N.L.R.B. March 24, 1949); Trump Int'l Hotel Las Vegas, 2016 NLRB LEXIS 544, *102-104 (N.L.R.B. July 22, 2016)

of this activity by the employer is far beyond any reasonable justification or regular curiosity as to what is going on near their property line. It also reveals an intent to surveil in order to intimidate.

Joe Dennis let Tanya know that he knew where the Union meeting was and further that he knew that there were wings and beer there. He asked if she was going there, and attempted to “fish” about who was going there by saying that he would go, but he didn’t see anyone he knew. The next day he again brought up the Union meeting, and specifically told her that he went so far as to go to the parking lot and look inside, “play[ing] peekaboo” as Tanya Tate described it.

Jeff Essenbauch followed Marcus Durrell across the plant, and specifically waited for him to get out of the aisle. When Marcus looked directly at him, Jeff looked up at the ceiling but did not walk away. Jeff specifically kept following him and watched his conversation with Tavaris Paine and continued to watch him afterwards. When specifically approached about following him, Jeff did not deny it, or deny the fact that the following was Union related. Jeff left Marcus no doubt as to why he was being followed across the plant after he had clocked out.

In another context, Tim McQueen’s comment to Justine Jackson could be construed as an innocent conveying of knowledge, knowledge of where she worked and what specific machine she worked on. However, the context of the comment has to be analyzed when using the impression of surveillance test. Tim McQueen had just engaged in a captive audience meeting, with a threat to decrease work to Auburn if it unionized. Further, Tim McQueen was also a high level manager, with no specific reason to know exactly where Justine Jackson worked. Tim McQueen was letting Justine Jackson know that he and others, were watching her.

Supervisors increased their supervision on numerous union supporters after the beginning of the union drive

Brenyetta Talley testified to being visited around ten times a day, by both AJ Wood and Marva Terrell after the Union campaign started. Marcus Durrell testified to being watched and followed by Jeff Essenbauch and Paul Nealy on a daily basis in additives, his work area. Tanya Tate testified to an increased management presence around her after memorial day. They keep “popping up on your line” as she said. Prior to the organizing campaign, they might come around once, in the morning. Justine Jackson testified that Andrea McAllister comes out on the floor way more than she used to. Tavaris Paine noticed that Paul Nealy starting switching shifts to be present on 3rd shift and Margo switched to 2nd shift apparently to “answer questions about the union.” Tavaris said that they are standing in areas where they do not normally stand.

This is a case in which only a 10(j) injunction will resolve the violations which have taken place

The 7th Circuit has recognized four criteria to determine whether a 10(j) injunction is the proper remedy, and they are “(1) no adequate remedy at law, (2) irreparable harm absent an injunction that exceeds the harm suffered by the other party as a result of the injunction, (3) a

reasonable likelihood of success on the merits, and (4) harm to the public interest stemming from the injunction that is tolerable in light of the benefits achieved by the relief.”²⁷ The 9th Circuit illustrated the dangers of waiting too long when it quoted the second circuit in saying “if an employer faced with a union demand for recognition based on a card majority may engage in an extensive campaign of serious and pervasive unfair labor practices, resulting in the union's losing an election, and is then merely enjoined from repeating those already successful violations until final Board action is taken, the Board's adjudicatory machinery may well be rendered totally ineffective.”²⁸ As the 9th Circuit stated later, “to permit illegal employer conduct to go unaddressed while the Board's corrective machinery grinds toward resolution would subvert the underlying purposes of section 10(j) and allow those who commit unfair labor practices to reap the benefits of that conduct.”

The Board should order a bargaining order under Joy Silk and/or Gissel

As the Court stated in Gissel, the Board has long had a “policy of issuing a bargaining order, in the absence of a [Section] 8(a)(5) violation or even a bargaining demand, when that was the only available, effective remedy for substantial unfair labor practices.”²⁹ Under Gissel, there are two categories of cases that render a fair election impossible. Category I cases involve “outrageous” and “pervasive” unfair labor practices and Category II cases involve unfair labor practices that cannot be erased through traditional remedies. Category I violations include “grants of significant benefits, threats of plant closure or loss of employment, and discharge or other serious adverse action in retaliation for protected union or concerted activities.”³⁰ This particular case includes two unlawful terminations, and three plant closure threats which have been disseminated plant-wide. In other words, GE Aviation’s actions in this case qualify for as a Category I violation in need of a bargaining order under Gissel. Even without the Category I violations under Category II the general menacing atmosphere of surveillance and increased supervision will chill and affect the employees ability to make a free uncoerced decision in an election. Imagine if ones political preference in a general election led to “increased supervision,” by increasing the number of police units patrolling certain neighborhoods and streets? Imagine if one were followed home by the police for being active in a political party. Could anyone argue that the election could be uncoerced and free?

The Board should consider bringing back the Joy Silk standard. In this case, the Union’s demand for recognition was rejected outright, without any pretense of doubting that the Union had a majority, much less a “good faith” doubt. Furthermore, the Company has continued its anti-union

²⁷ NLRB v. Electro-Voice, Inc., 83 F.3d 1559, 1566-67 (7th Cir. 1996)

²⁸ Seeler v. Trading Port, Inc., 517 F.2d 33, 37-38 (2d Cir. 1975), quoting Scott ex rel. NLRB v. Stephen Dunn & Assocs., 241 F.3d 652, 657 (9th Cir. 2001)

²⁹ North Texas Investment Group, 370 NLRB No. 122 (2022), quoting NLRB v. Gissel Packing Co., 395 U.S. 575, 614 (1969)

³⁰ M. J. Metal Products, Inc., 328 NLRB 1184, 1184 (1999), affd. 267 F.3d 1059 (10th Cir. 2001); State Materials, Inc., 328 NLRB 1317, 1317 (1999).

campaign after the demand for recognition, showing that any doubt was certainly not in good faith but rather that the Company intended to dissipate the Union's majority through coercion.

In Furr's, Inc., the employer sought the device of an election, not to give the free opportunity for employees to vote but to take advantage of the leniency of the law to spread fear and misinformation.³¹ The managers took the election period as an opportunity to attend a union meeting, interrogate their employees, make threats of unemployment and cuts in working hours.³² Under the Joy Silk doctrine the Board ordered a bargaining order because the "respondent sought through the device of its campaign and the filing of the RM petition to destroy the Union's majority and defeat it in an election, and thereby violated Section 8(a)(5) and (1) of the Act."³³ As the Board stated in Trader's Oil "in these circumstances, we are convinced that the Respondent was not motivated by a good-faith doubt of the Union's majority but that the real reason the Respondent delayed recognition of, and bargaining with, the Union...was to gain time within which to undermine the Union and dissipate its majority."³⁴

In conclusion, I hope that this position statement convinces you that the GE Aviation has committed serious "hallmark" unfair labor practices which require immediate attention through the use of a 10(j) injunction and a Gissel bargaining order. Under the Joy Silk doctrine, which was always a more faithful construction of the act, the employer lacked a good faith doubt to refuse negotiations with the IUE-CWA and to refuse voluntary recognition. As shown by their behavior, and lack of evidence of a good faith doubt, GE Aviation wishes to use the supposed leniency of labor law in the election window to dissipate the Union's majority.

Please contact me if you have any questions,

Respectfully submitted

/s/ Casey Whitten-Amadon
IUE-CWA Staff Attorney
2701 Dryden Rd.
Dayton OH, 45439
Cwhitten-amadon@cwa-union.org

³¹ Furr's, Inc., 157 N.L.R.B. 387, 388, 1966 NLRB LEXIS 946, *2-3, 61 L.R.R.M. 1388, 1966 NLRB Dec. (CCH) P20,251, 157 NLRB No. 38 (N.L.R.B. March 7, 1966)

³² *Id.*

³³ Furr's, Inc., 157 N.L.R.B. 387, 399, 1966 NLRB LEXIS 946, *45, 61 L.R.R.M. 1388, 1966 NLRB Dec. (CCH) P20,251, 157 NLRB No. 38 (N.L.R.B. March 7, 1966)

³⁴ Traders Oil Co. of Houston, 119 N.L.R.B. 746, 750, 1957 NLRB LEXIS 26, *11-12, 41 L.R.R.M. 1180, 119 NLRB No. 109 (N.L.R.B. December 13, 1957)