

Writer's direct phone  
(212) 218-5521

Writer's e-mail  
pgalligan@seyfarth.com

August 20, 2009

**VIA ELECTRONIC MAIL**

Alvin P. Blyer  
Regional Director  
National Labor Relations Board, Region 29  
Two MetroTech Center, Fifth Floor  
Brooklyn, New York 11201  
Attn: David Stolzberg

Re: Cintas, 29-RC-11769

Dear Mr. Blyer:

This firm represents Cintas Corporation ("Cintas") in the above-captioned matter. Please let this letter serve as Cintas' position statement in support of its Objections filed on August 13, 2009. We are also submitting two affidavits in support of the Objections. First, we submit an affidavit from former Cintas warehouse employee Syam Ali ("Ali"), who witnessed the pro-union conduct engaged in by Service Training Coordinator Phil Avanzato ("Avanzato") during the pre-election period and Avanzato's unlawful assistance to the Petitioner Union in its collection of authorization cards to demonstrate its now tainted showing of interest. Given the extremely close election (the vote was 29-25 in favor of the Petitioner), Avanzato's conduct alone warrants a rerun election. Second, we submit an affidavit from Timothy Knoll ("Knoll"), General Manager of the Port Washington facility, outlining the job responsibilities of the Service Training Coordinators ("STC"), clearly demonstrating that the STCs are supervisors under section 2(11) of the Act. In addition, the Stipulated Election Agreement has already acknowledged the supervisory status of the STCs by excluding them as such from the petitioned for unit.<sup>1</sup>

**Phil Avanzato's Conduct Tainted A Close Election**

As the Ali Affidavit makes clear, Avanzato was actively engaged in campaigning for the Petitioner at the facility and assisted the Petitioner in collecting signed authorization cards to obtain a showing of interest. He was observed making statements in support of the Union to eligible

<sup>1</sup> The Stipulated Election Agreement specifically excluded "[a]ll sales representatives, office clerical employees, guards, and service training coordinators, route check-in coordinators, management trainees, managers, and other supervisors as defined in Section 2(11) of the Act."

voters, such as “wait until the union gets in” and “this will shake up the company.” As a supervisor, such statements from a representative of management reasonably tended to coerce employees into supporting the Petitioner and interfered with laboratory conditions. Avanzato also assisted the Petitioner in collecting signed authorization cards, making sure that Syam Ali received one to sign.

Under *Harborside Healthcare, Inc.*, 343 NLRB 906, 176 LRRM 1113 (2004), Avanzato’s pro-union conduct is objectionable. In that case, the Board stated a two-part test for assessing objectionable pro-union supervisor conduct: (1) Whether the supervisor’s pro-union conduct reasonably tended to coerce or interfere with the employees’ exercise of free choice in the election; and (2) Whether the conduct interfered with freedom of choice to the extent that it materially affected the outcome of the election. 176 LRRM at 118. The alleged objectionable conduct by a supervisor in *Harborside* included prediction of job loss, advising employees that they had to attend Petitioner meetings, and soliciting employees to sign Union authorization cards.

We know that Avanzato at least solicited employees to sign cards and encouraged them to bring the union in. His statements in support of the Union, such as “wait until the union gets in” and references to “shaking up” the company, send a clear message to eligible voters that their now pro-union supervisor believes they need a union in the facility to shake things up. The Board in *Harborside Healthcare* recognized the power of a supervisor over an employee, referring to the Supreme Court’s decision in *NLRB v. Savair Manufacturing Co.*, 414 U.S. 270 (1973) that employees “would feel obliged to carry through on their stated intention [i.e., the card] to support the union.” 176 LRRM at 1115, 1120. The Board has long recognized, “when a supervisor engages in pronoun activity, that the ‘continuing relationship’ between the supervisor and an employee creates a possibility that an employee could be ‘coerced into supporting the union out of fear of future retaliation by a union-oriented supervisor.’” *Madison Square Garden Ct LLC*, 350 NLRB No. 8, 182 LRRM 1073, 1076 (2007) (citation omitted). Here, in such a close election, Avanzato’s statements in support of the union and his open assistance to their card signing campaign made a free election impossible.

In *SNE Enterprises, Inc.*, 348 NLRB No. 69 (2006), the Board followed *Harborside* and found objectionable pro-union supervisory conduct where maintenance leads solicited employees, including employees under their direct supervision, even though the supervisors had no hire/fire authority and the *conduct ceased one month before the election*. In doing so, the Board rejected that the solicitation of cards was mitigated because it had ceased at the time the petition was filed. Instead, the Board held that “the fact that solicitation of cards all but ceased at the time the petition was filed is insufficient, without more, to negate the inherent coerciveness of the original solicitations.” *Id.*, slip op. at 3. Thus, even if Avanzato ceased engaging in pro-union conduct after the petition was actually filed, the election is still tainted because of his June 2009 conduct.

### **The Service Training Coordinators Are Supervisors Under The Act**

No legitimate question exists regarding whether the STCs meet the test for supervisory authority under the Act. A supervisor is defined as “[a]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward

or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." NLRA § 2(11). "[T]he possession of even one of [the] attributes in [Section 2(11)] is enough to convey supervisory status, provided the authority is exercised with independent judgment, not in a merely routine or clerical manner." *Union Square Theatre Management, Inc.*, 326 NLRB 70, 71 (1998).

As the Knoll Affidavit confirms, the STCs are effectively the direct day-to-day supervisors of their SSR teams, because the Service Managers are primarily responsible for customer service. Each STC is responsible for assigning work to the SSR's on a daily basis as well as evaluating, coaching and training them. Each STC has authority to issue verbal and written discipline to an SSR and is responsible for ensuring that the SSRs follow the policies and procedures of Cintas. Cintas relies on the STCs to make sure that the core business runs properly.

The STCs also have hiring responsibilities at Cintas. The Job Description for the Internal Service Training Coordinator, the position held by Avanzato, is in fact a typical job description for a direct supervisor. See Knoll Aff. Ex. 1. The first listed job requirement is "Human Resource Management," specifically "Hiring." As the Knoll Affidavit explains, the STCs participate fully and meaningfully in the hiring of SSRs, interviewing SSRs and making recommendations, as they are trained to do by Cintas. See *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982) (The authority effectively to recommend "generally means that the recommended action is taken with no independent investigation by superiors, not simply that the recommendation is ultimately followed.").

The second listed Job Requirement for STCs is to "develop, coordinate and facilitate internal formal quarterly training sessions for Service Sales Representatives." The third listed Job Requirement requires STCs to conduct quarterly training sessions for SSRs. As such, the STCs are primarily responsible for the on-going training and development of the SSRs. As part of their day-to-day evaluation of the SSRs, STCs are required to review and resolve the SSR call sheets and account receivable issues and engage in problem solving as needed by SSRs.

The STCs are responsible for disciplining SSRs for breach of Cintas policies and procedures, either found on route or otherwise. STCs are required to attend seminars entitled "Effective Performance Management" and "Progressive Discipline." When the STC determines that written discipline is appropriate for an SSR, he or she is required to complete a "Partner Disciplinary Documentation" form.

Critically, STCs are required to "Coach and Motivate" the SSRs. As such, the STCs implement Cintas' service related policies and procedures and ensure SSR compliance with those policies and procedures. Critically, the STCs are expected to go "on route" with each SSR on a weekly or bi-weekly basis and evaluate the SSRs each time they go on route. They provide evaluations on the evaluation forms, rating the SSRs on a scale of 1 to 3. The STCs also conduct one-on-one meetings with each SSR in their team on a weekly basis.

Regarding scheduling and assignment of work, the STCs meet with their team of SSRs at start of each day to adjust routes based on sick calls or vacation, as well as customer variations. After going on route with the SSRs, the STCs then help the SSRs resolve their paperwork and ensure that they are in compliance with DOT and licensing. STCs are also responsible for overseeing all truck maintenance and safety requirements, as well as implementing all post accident systems and procedures. Regarding assigning and scheduling, STCs are expected to use their own independent judgment to ensure the most effective customer service. In *Oakwood Healthcare, Inc.*, 348 NLRB No. 37 (2006), the Board held that “[i]f a person on the shop floor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible’ [] and carried out with independent judgment.” *Id.*, slip op. at 6.

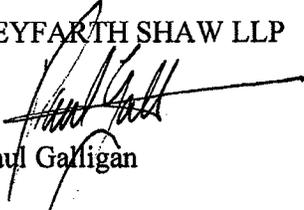
STCs are expected to use their independent judgment and discretion in all of their supervisory functions, such as hiring, disciplining, assigning, scheduling, evaluating and training and are themselves evaluated on their judgment and discretion. In fact, the STC Job Description lists Initiative and Decision Making as key “Personal Requirements.”

### Conclusion

Given that as an STC, Avanzato was clearly a supervisor under section 2(11) of the Act and by his conduct, as observed by at least one employee, he destroyed laboratory conditions and tainted the election. Cintas requests that the Region sustain the Objections to the Election and conduct a rerun election to determine the true wishes of the petitioned for unit.

Respectfully submitted,

SEYFARTH SHAW LLP



Paul Galligan

Enclosures

cc: William Schurgin, Esq. (Seyfarth Shaw, Chicago Office)  
Timothy Knoll, Cintas