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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

GOOD SAMARITAN HOSPITAL,
Employer,

v.

ALLEN SMITH,
Petitioner,
and

SEIU, UNITED HEALTHCARE WORKERS –
WEST,
Union.

) Case No. 31-RD-1555
)
) **SEIU, UNITED HEALTHCARE**
) **WORKERS --WEST'S BRIEF IN**
) **SUPPORT OF ITS EXCEPTIONS TO**
) **THE ADMINISTRATIVE LAW**
) **JUDGE'S REPORT AND**
) **RECOMMENDATIONS ON**
) **OBJECTIONS TO CONDUCT**
) **AFFECTING THE RESULTS OF THE**
) **ELECTION**

) ALJ: Gregory Z. Meyerson

1 **I. INTRODUCTION**

2 On March 27 and 28, 2007, a majority of workers at Good Samaritan Hospital (“employer”
3 or “Hospital”) voted in favor of keeping their Union, SEIU, United Healthcare Workers – West
4 (“Union” or “UHW”). The election was held as a result of a decertification petition filed by Allen
5 Smith on or about August 7, 2006, nearly eight months earlier.

6 After the election and Tally of Ballots, the employer and Petitioner filed objections to the
7 election. The employer filed eight objections to the election. On April 16, 2007, under Section
8 102.69 of the National Labor Relations Board’s (“NLRB”) Rules and Regulations, the employer
9 submitted evidence in support of its eight objections. The Petitioner also filed three objections.
10 Because he failed to submit any evidence in support of his objections, on August 13, 2007, the
11 Acting Regional Director dismissed his objections.

12 A hearing was held on September 5 and 6 and October 2, 2007 before Administrative Law
13 Judge (“ALJ”) Gregory Z. Meyerson. While dismissing six of the employer’s objections, ALJ
14 Meyerson nevertheless found merit to employer’s Objections 2 and 3.

15 **II. FACTUAL BACKGROUND**

16 **A. EMPLOYER’S OBJECTION 2.**

17 Of the employer’s eight objections, the ALJ found merit in only two of them. Objection 2
18 alleged that “[d]uring the Critical Period, the Union threatened, coerced and intimidated employees
19 because of their lack of support for the Union, a course of conduct calculated to erode support of
20 decertification among unit employees.” In support of its objections, the employer presented to the
21 Region a position statement and documentary evidence in support of its objections, which included
22 a declaration from the Petitioner.

23 Based on the offer of proof submitted to the Region by the employer, it is clear that
24 Objection 2 involved three specific incidents: (1) an incident allegedly involving Ms. Rodriguez
25 and the Petitioner on March 16, 2007; (2) an incident allegedly involving Ms. Rodriguez and the
26 Petitioner on March 19, 2007; and (3) an incident allegedly involving Ms. Rodriguez, Ms. Stewart
27 and the Petitioner on March 24, 2007. The ALJ, however, did not find that any of these three

1 incidents supported the employer's objection.

2 Rather, the ALJ found merit in employer's Objection 2 based on three different incidents –
3 not even mentioned in either the employer's or Petitioner's objections – which occurred as early as
4 six months prior to the election, were isolated, and involved different employees of the hospital.¹
5 The first incident, which allegedly occurred in late September 2006, lasted about four minutes and
6 involved an altercation between the Petitioner and Union representative David Ronquillo.² Tr.
7 100:19-25; 105:11-14. This four minute altercation started in a hallway outside of the door to the
8 nurses' station on the fourth floor of the hospital. Tr. 171:18-22. The Petitioner testified that Mr.
9 Ronquillo told him, "You're trying to destroy what we're doing here. You're the enemy. You're
10 destroying what we're doing here." Tr. 102:5-10. While making these statements, Mr. Ronquillo
11 "was gesturing angrily with [his] fists clenched." Tr. 102:10. When Mr. Ronquillo moved closer
12 to the Petitioner, the Petitioner put up his fists as well. Tr. 103:8. The incident ended when an
13 employee, who was also a friend of both men, separated the Petitioner and Mr. Ronquillo from
14 each other.³ Tr. 105:9-10; 106:20-22.

15 After the incident, the Petitioner saw Mr. Ronquillo passing in the hallways of the hospital
16 but had no further conversations with him. Tr. 107:17-25; 108:1. However, he continued to
17 routinely meet and talk with other Union representatives, like Claudia Rodriguez and Keisha
18 Stewart. Tr. 178:8-25. On cross examination, he conceded that the incident between him and Mr.
19 Ronquillo did not warrant filling out an incident report or calling hospital security. Tr. 170:22-24.
20 In fact, the Petitioner testified that the incident on March 24, 2007 involving Ms. Rodriguez was

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24 ¹ One of the employees was the Petitioner, another was an anti-union employee, and the final
employee was the director of the emergency room.

25 ² Although the ALJ stated that the "Union did not offer any explanation" for Mr. Ronquillo's
26 failure to testify, the Union presented evidence that Mr. Ronquillo no longer worked for the Union.

27 ³ The Petitioner also testified that vaguely recalled that there were five or six employees at the
28 nurses' station during this incident, but could not recall their names or whether or not they were in
the bargaining unit. Tr. 104:14-19. The employer did not call any of these witnesses to
corroborate the Petitioner's testimony.

1 more significant than the incident involving Mr. Ronquillo in September 2006.⁴ Tr. 170:22-24.
2 Indeed, the incident in between the Petitioner and Mr. Ronquillo was so insignificant that the
3 Petitioner did not even mention the altercation in his own objections to the election or in his
4 declaration which the employer submitted in support of its objections. Tr. 168:16-18.

5 The second incident that the ALJ relied upon involved an incident between Mr. Ronquillo
6 and the employer's director of the emergency department, Barbara Ceazan. This incident occurred
7 on September 28, 2006. At the time of the incident, Ms. Ceazan had only been the director of the
8 department for two months and had never met Mr. Ronquillo. Tr. 337:19-33. Although Ms.
9 Ceazan's testimony is completely confusing as to the events that took place, the dispute between
10 her and Mr. Ronquillo essentially involved whether or not he was permitted to access the break
11 room inside of the emergency department.⁵

12 According to Ms. Ceazan, Mr. Ronquillo was attempting to access the department's break
13 room, which Ms. Ceazan conceded that he had a right to access as the Union representative. Ms.
14 Ceazan testified that the incident started when she approached Mr. Ronquillo in the waiting area
15 and asked him who he was. Tr. 330:11-13. Mr. Ronquillo responded by giving Ms. Ceazan his
16 name, and explaining that he was with the Union and had a right to access the breakroom in the
17 emergency department. Tr. 330:11-16. Ms. Ceazan testified that Mr. Ronquillo, at one point, was
18 "almost screaming" at her, and that he was, in her opinion, "surly," "obnoxious," and "boisterous."
19 Tr. 331:6-7. Ms. Ceazan nevertheless allowed Mr. Ronquillo to access a secured area, and
20 escorted him, along with a Charge Nurse, to the employee break room. Tr. 334.

21 Although Ms. Ceazan testified that she did not believe that anyone was near her and Mr.
22 Ronquillo during their interaction, Cynthia Cabrera, who is an emergency room associate, testified
23 that she witnessed the entire incident between Ms. Ceazan and Mr. Ronquillo from a triage area as
24 she was working with a patient. Tr. 422:7-12. This contradicts Ms. Ceazan who testified that Ms.

25 _____
26 ⁴ The ALJ found that this incident, even crediting the Petitioner's testimony, did not rise to the
27 level of intimidation and coercion; and, therefore, did not constitute a grounds for setting aside the
28 election.

⁵ Even the ALJ noted how confusing Ms. Ceazan's testimony appeared to sound. Tr. 345:10-14;
346:20-21.

1 Cabrera was in Ms. Ceazan's office when the incident started. Tr. 329:14-17. Ms. Cabrera also
2 served as an observer for the Petitioner, and was a member of the Petitioner's anti-union
3 committee. Tr. 427:17-19. When asked to describe Mr. Ronquillo's demeanor, she testified that
4 he was, in her opinion, "rude and very demanding." Tr. 424:3-4. In other words, he reiterated
5 several times that he had a right to access the break room and the right to put up flyers and speak
6 with members.

7 The final incident that the ALJ relied upon in finding merit to employer's Objection 2
8 involved an incident between Michelle Collins, a Union Shop Steward, and Marcos Morgana. The
9 incident occurred about one month prior to the election. According to Mr. Morgana, Ms. Collins
10 approached him in the Radiology department where he worked. She asked him "how things are
11 going in Radiology, as far as the election coming up." Tr. 383:19-21. Mr. Morgana explained that
12 no one in Radiology was going to vote for the Union because they were upset with the Union. Tr.
13 383:22-25. Ms. Collins, according to Mr. Morgana, said that he should "persuade everybody in the
14 department to vote for the Union," but he responded that

15 "It is not going to happen because [the Radiology department employees]
16 already got the raise we needed, and they don't want to pay the \$80.00 a
17 month that we pay on a monthly basis. They are not going to go and vote
18 for the Union."

19 Tr. 385:9-14; 385:25; 386:1-2. Ms. Collins and Mr. Morgana then argued about whether or not the
20 Union was responsible for obtaining a wage raise, which Mr. Morgana doubted because his boss
21 told him differently. Tr. 385:15-17. Towards the end of the conversation, both Ms. Collins and
22 Mr. Morgana started to yell at each. Tr. 386:1-3. Mr. Morgana decided to close the door to the
23 room that they were talking in so that no one could hear them yelling at each other. Tr. 386:1-8.

24 Mr. Morgana had previously served on the Union's bargaining team during negotiations
25 with the employer. Tr. 386:11-13. Because of this history, Mr. Morgana testified that he believes
26 Ms. Collins

27 made a comment like, that [he] was a traitor, that [he] had changed sides all
28 of a sudden, and now [he] was supporting the hospital, and that [he]
shouldn't do that, and that [he] should persuade everybody in [his]
department to vote for the Union.

1 Tr. 386:14-17. He then specifically recalls that she said, “Since I’m not getting anywhere with
2 this. I know which way you are going.” And then she left. Tr. 386:18-20.

3 **B. EMPLOYER’S OBJECTION 3.**

4 The ALJ also found that employer’s Objection 3 had merit. In support of employer’s
5 objection 3, the Petitioner testified that Ms. Rodriguez approached him several weeks before the
6 election and offered him a job with the Union, purple medical scrubs, and a chance to serve as the
7 “keynote speaker” at a pro-Union Jesse Jackson rally in support of the Union if he abandoned his
8 effort to decertify the Union. According to the Petitioner’s testimony, the only other person to
9 overhear this conversation was a Spanish speaking patient who did not understand English. Tr.
10 111:24-25. In response to Ms. Rodriguez’s offer, the Petitioner testified that he “chuckled” at the
11 offer and said no. Tr.113:22-24.

12 About a week after Ms. Rodriguez allegedly offered the Petitioner a job with the Union,
13 purple scrubs, and a chance to be the “keynote speaker” at the Jesse Jackson rally, the Petitioner
14 mailed a flyer to the entire bargaining unit urging his co-workers to vote against the Union. The
15 Petitioner’s flyer is classic campaign propaganda. The themes of the flyer are that the Union has
16 not provided employees with adequate representation and that his co-workers should “GIVE THE
17 HOSPITAL A CHANCE.” Er. Exh. 9. Buried within the flyer is a statement that multiple Union
18 representatives tried to bribe him when they offered him a job and told him “they would take care
19 of [him] if [he] would stop trying to decertify the union.” *Id.*

20 The Petitioner, on cross-examination, admitted that some of the statements in the flyer were
21 simply not true; for example, he conceded that only Ms. Rodriguez tried to bribe him, not multiple
22 Union representatives, and he conceded that she did not tell him that the Union “would take care of
23 him.”⁶ Tr. 190:1-6. Notably absent from the flyer is the allegation that Ms. Rodriguez allegedly
24 offered to make him a “keynote speaker” at the Jesse Jackson rally, or that she allegedly told him
25 that she would give him a pair of purple scrubs – those allegations were added only after the Union
26

27 ⁶ Although the ALJ found that the Petitioner was “highly truthful” and did not exaggerate or
28 embellish his testimony, the Petitioner’s testimony, campaign flyers, and objections not only
contain exaggerations, embellished facts but also mistruths. *See, eg.*, Tr. 189:6-10; 190:1-6, 16-17.

1 won the election. Er. Exh. 9.

2 **III. LEGAL ARGUMENT**

3 **A. THE RECORD DOES NOT SUPPORT A FINDING THAT THE UNION**
4 **ENGAGED IN A COURSE OF CONDUCT OF THREATS, COERCION OR**
5 **INTIMIDATION AGAINST EMPLOYEES BECAUSE OF THEIR LACK OF**
6 **SUPPORT FOR THE UNION. (EXCEPTIONS 1-20)**

7 The three isolated incidents relied upon by the ALJ to support his finding with respect to
8 employer's Objection 2 were remote in time, not widely disseminated, and they did not affect a
9 significant number of bargaining unit employees. At most, given the totality of the circumstances,
10 these three isolated incidents represent nothing more than overzealous partisanship.

11 The Board considers nine factors in determining whether a party's conduct has "the
12 tendency to interfere with the employees' freedom of choice." *Cambridge Tool Mfg.*, 316 NLRB
13 716 (1995). Those nine factors are:

- 14 (1) The number of incidents; (2) the severity of the incidents and whether
15 they were likely to cause fear among the employees in the bargaining unit;
16 (3) the number of employees in the bargaining unit subjected to the
17 misconduct; (4) the proximity of the misconduct to the election; (5) the
18 degree to which the misconduct persists in the minds of bargaining unit
19 employees; (6) the extent of dissemination of the misconduct among the
20 bargaining unit employees; (7) the effect, if any, of misconduct by the
21 opposing party to cancel out the effects of the original misconduct; (8) the
22 closeness of the final vote; and (9) the degree to which the misconduct can
23 be attributed to the party.

24 *Cedars-Sinai Med. Ctr.*, 342 NLRB 596, 597 (2004). Under certain circumstances, physical as
25 well as verbal threats that are of a serious nature may constitute grounds to set aside the results of
26 an election. *See id.* In order to determine whether or not a threat is serious enough to set aside an
27 election, the Board examines

28 the nature of the threats and the surrounding circumstances such as whether
they encompass the entire bargaining unit, whether they were widely
disseminated, whether the persons making the threats are capable of carrying
them out, whether it is likely that employees acted in fear of the carrying out
of the threats, and whether the threats were rejuvenated at or near the time of
the election.

Crown Coach Corp., 284 NLRB 1010, 1010 (1987). However, mere "overbearing or exuberant
remarks to coworkers' do not overturn elections." *Cedars-Sinai*, 342 NLRB at 603 (2004) (citing

1 *Q.B. Rebuilders, Inc.*, 312 NLRB 1141, 1142 (1993)). Nor will “overzealous partisanship”
2 overturn elections. *See Am. Wholesalers*, 218 NLRB No. 23 (1975). None of the incidents the
3 ALJ relied upon, even if construed in the light most favorable to the employer and Petitioner, rise
4 to the level of severity to set aside the election.

5 In *Crown Coach*, the Board set aside an election where Union supporters directly
6 threatened specific employees with the threat of deportation if they did not support the Union or if
7 the Union lost. *Id.* at 1010-11. Between 20 and 30 employees asked their office manager whether
8 or not the Union would take such action if it lost the election. *Id.* In addition, Union supporters
9 threatened specific employees with physical harm and threatened employees that they would lose
10 their jobs if they did not support for the Union. *Id.* The Board found that the threats “occurred
11 repeatedly throughout the campaign [and] were rejuvenated near the time of the election.” *Id.* at
12 1011. In fact, just days before the election, a Union supporter told a group of eligible voters that
13 the “Immigration Service would come unless ‘we got into the Union.’” *Id.*

14 Moreover, the threats occurred in the context of an organizing campaign marred by overt
15 acts of vandalism and sabotage. For example, during the organizing campaign, car tires were
16 slashed, toilets were plugged, and buses manufactured by the employer were damaged. And on the
17 day of the election, a motorcycle parked 20 to 25 feet from the polling place and owned by an
18 employee was damaged. *Id.* at 1011. Given the totality of the circumstances, the Board set aside
19 the election.

20 Similarly, in *Cedars-Sinai*, the Board set aside an election where two active anti-Union
21 leaders received a series of anonymous telephone calls where the caller threatened that bodily harm
22 would be inflicted upon them as well as their families and pets. *Cedar-Sinai*, 342 NLRB 596-97.
23 The calls did not stop until about two weeks before the election. *Id.* at 597. A number of
24 employees testified that they had heard of the threats independently, and still others who did not
25 even know the recipients testified that they had heard of the threats. *Id.*

26 Initially the anonymous caller warned one of the anti-Union leaders to “back off” and to
27 “be careful.” *Id.* at 596. In the final call, the caller told the same anti-Union leader “to ‘think

1 about [her] family and [her] girls and back off.” *Id.* at 597. The other anti-Union leader, who is
2 described as a “pet owner and animal lover,” received between 7 and 10 anonymous calls. *Id.* In
3 one call, the caller told him to ““stop fucking with the Union’; that ‘little kittens look good in
4 frying pans’; that they would stab his dogs; and that ‘wouldn’t it be terrible if [his] Corgis were run
5 over.” *Id.*

6 In contrast to the threats and harassment in *Crown Coach* and *Cedars-Sinai*, the alleged
7 “threats” and “harassment” in the instant case pale in comparison. At most, the incidents relied
8 upon by the ALJ could be construed as overzealous partisanship. The incident between Union
9 representative David Ronquillo and the Petitioner, which occurred nearly six months before the
10 election and lasted four minutes, was so remote in time that the Petitioner did not even reference
11 the incident in his own objections to the election. In fact, he did not even mention the incident in
12 his detailed declaration, which the employer submitted in support of its objections. Furthermore,
13 the Petitioner testified that the incident between him and Mr. Ronquillo was, in his opinion, not as
14 serious as the incident involving him and Ms. Rodriguez – an incident that the ALJ refused to rely
15 on to support employer’s Objection 2.

16 The incident involving Mr. Ronquillo and the employer’s director of the emergency
17 department, Barbara Ceazan, hardly qualifies as a threat or harassment. While Mr. Ronquillo
18 might have been “surly,” “obnoxious,” and “boisterous,” that does not qualify his actions as either
19 threatening or harassing. The only bargaining unit employee who claims to have witnessed the
20 incident is an avowed anti-Union activist, and she testified that Mr. Ronquillo was merely rude.
21 The election should not be set aside because one manager and one anti-Union activist believe that
22 Mr. Ronquillo acted in a rude, surly, obnoxious, or boisterous manner nearly six months prior to
23 the election.

24 The final incident that the ALJ relied upon involved a heated exchange between Union
25 Shop Steward Michele Collins and her co-worker, Marcos Morgana. Ms. Collins attempted to
26 convince Mr. Morgana why he should support the Union, and Mr. Morgana explained to her why
27 he and no one else in his department was going to support the Union. Even if Ms. Collins called

1 Morgana a traitor and yelled at him, as he testified, it is difficult to imagine how that one word,
2 spoken in these circumstances, could be grounds to set aside the election. The employer did not
3 present any evidence to suggest that any other eligible voter heard Ms. Collins yell at Mr. Morgana
4 or call him a traitor; and, more importantly, the conversation had nothing to do with the Petitioner.

5 Indeed, the Board has refused to set aside elections involving conduct much more extreme
6 than the conduct in the instant case. *See, e.g., Bauer Welding*, 268 NLRB 1416 (1984) (refusing to
7 set aside an election where several Union supporters surrounded and cornered a bargaining unit
8 member in a dark parking lot and told him that he better have meant that he would sign a Union
9 card); *Am. Wholesalers, Inc.*, 89 218 NLRB No. 50 (1975) (refusing to set aside an election where
10 Union supporters stated that anyone who did not vote for the Union needed a bullet in the head,
11 and that if the Union did not get voted in, then one of the Union supporters was going to take the
12 building with him).

13 Contrary to the ALJ's conclusion and finding, the incidents simply do not rise to the level
14 of objectionable conduct. There is no evidence that the incidents were widely disseminated, as the
15 ALJ suggested, were long lasting, or affected a significant number of eligible voters. Rather, the
16 incidents were remote in time, isolated, and involved different employees. Finally, the ALJ's
17 assertion that the incidents involving Ms. Ceazan and Mr. Morgana "serve[d] to remind employees
18 of the Union's expressed threat to harm [the Petitioner,]" is belied by the fact that none of the
19 employees who allegedly witnessed the incidents involving Ms. Ceazan and Mr. Morgana
20 witnessed the incident between Mr. Ronquillo and the Petitioner.

21 Accordingly, the Board should not adopt the ALJ's Report and Recommendations but
22 rather should certify the results of the election.

23 **B. THERE IS NO EVIDENCE THAT THE UNION COERCED ELIGIBLE VOTERS**
24 **INTO SUPPORTING THE UNION BY ALLEGEDLY OFFERING THE**
25 **PETITIONER A JOB WITH THE UNION, PURPLE SCRUBS, AND**
26 **OPPORTUNITY TO SPEAK AT A PRO-UNION JESSE JACKSON RALLY.**
27 **(EXCEPTIONS 17-19, 21-33)**

28 The ALJ's finding that eligible voters were coerced into supporting the Union because
Union representative Claudia Rodriguez allegedly offered the Petitioner a job, purple scrubs, and

1 an opportunity to speak at a pro-Union Jesse Jackson rally is not supported by the evidence. The
2 Petitioner's testimony and his campaign flyer, at best, are riddled with embellishment and
3 exaggeration. But even if the Board determines that the Union offered the Petitioner a job with the
4 Union, purple medical scrubs and an opportunity to speak at the Jesse Jackson rally, the results of
5 the election should not be set aside.

6 The Petitioner, unlike other bargaining unit members, is a party to the election. While
7 some decertification petitioners take a passive role in the election process, the petitioner in this
8 case took an active role in the campaign. For instance, he formed an anti-Union committee, he had
9 his committee distribute campaign flyers and propaganda, and he took the extraordinary step of
10 personally paying for mail postage for flyers that his committee mailed out to over 450 employees.
11 There is no doubt that the Petitioner wanted to win the election, and utilized traditional methods of
12 campaign propaganda, which included hyperbole and rhetoric.

13 Indeed, the Petitioner conceded that some of the statements that he made in his flyer were
14 simply not true and were exaggerations. The Board has refused to get itself involved in policing
15 and monitoring propaganda statements and misrepresentations. *See Midland National Life*
16 *Insurance Co.*, 263 NLRB 127, 130 (1982) (holding that the Board is no longer willing to "probe
17 into the truth or falsity of the parties' campaign statements"). Here, it is clear that the Petitioner
18 engaged in hyperbole when he wrote his March 22, 2007 letter – timing its delivery days before the
19 election – in an effort to convince anyone who would read the flyer that the Union is bad and the
20 employer is good. Notably missing from his flyer and even his own objections to the election is
21 the allegation that the Union offered him purple scrubs and a chance to be the keynote speaker at
22 pro-Union Jesse Jackson rally. Given that the Petitioner's flyer is nothing more than pure
23 campaign propaganda, it is likely that every eligible voter took it for what it is worth – a campaign
24 flyer by a party to the election.

25 But even if the Board were to agree with the ALJ and conclude that Ms. Rodriguez offered
26 the Petitioner a job, purple scrubs, and a chance to speak at a pro-Union Jesse Jackson rally, the
27 conduct is not objectionable. Certainly, if a Union promises something of value to eligible voters

1 in return for their support during an election campaign, that conduct may constitute objectionable
2 conduct. *See Alyeska Pipeline Serv. Co.*, 261 NLRB 125 (1982) (promising eligible voters high
3 paying construction jobs but only if they voted for the Union); *Crestwood Manor*, 234 NLRB 1097
4 (1978) (promising employees that the Union would sponsor a \$100 raffle but only if the Union
5 won the election). In *Alyeska*, the Union promised *all* eligible voters that if the Union won, they
6 would have the opportunity to get higher paying jobs through the Union. *Alyeska*, 261 NLRB at
7 125. Similarly, in *Crestwood*, the Union promised *all* eligible voters a chance to participate in a
8 \$100 raffle of the Union won the election. *Crestwood Manor*, 234 NLRB at 1097.

9 In contrast to *Alyeska* and *Crestwood*, and assuming that the allegations are true, the offer
10 of a job, purple scrubs and a chance to speak at a pro-Union rally were made *only* to the Petitioner
11 outside the presence of any eligible voter. The Petitioner testified that he laughed at the offer and
12 promptly rejected it. Clearly, the offer did not coerce the Petitioner into supporting the Union; he
13 did not withdraw his petition or turn around and support the Union. Nor is there any evidence that
14 the Union promised jobs to other eligible voters if the Union won the election.

15 While recognizing that the offer was made only to the Petitioner, the ALJ found that
16 because the Petitioner sent a campaign letter to eligible voters claiming he was offered a job, then
17 *every* eligible voter was “placed on notice of the potential for financial benefits in exchange for
18 supporting the Union.” ALJ Dec. at p. 9. To this end, the ALJ held that “[r]egarding
19 dissemination of such promises, the Board has held that even where the promise is made to only
20 one employee, where the information is disseminated to a determinative number of unit members,
21 the setting aside of the election is required.” *Id.* (citing *Cedars-Sinai Med. Ctr.*, 342 NLRB 596,
22 598 (2004)).

23 However, the ALJ’s analysis is flawed for several reasons. First, the ALJ misread, and
24 misapplied *Cedars-Sinai*, as the case does not stand for the proposition that where a promise is
25 made to one person but the information is disseminated to a determinative number of unit
26 members, the election must be set aside. Second, there is no evidence that a single eligible voter
27 considered the Petitioner’s campaign flyer as anything more than another campaign flyer. Third,

28

1 there is no indication that a single eligible voter sincerely believed that the Union would offer them
2 a job, purple scrubs, or an opportunity to speak at a pro-Union rally if the Union won the election.
3 Indeed, the Union's alleged offer was directed to the Petitioner and no one else. Surely, every
4 eligible voter who heard of the did not believe that the Union had a job waiting for them too, if it
5 won the election. Finally, the offer certainly could not have been coercive given that the Petitioner
6 notified every single eligible voter that he declined the offer of a job.

7 As such, the Board should not adopt the ALJ's Report and Recommendations but rather
8 should certify the results of the election.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Union respectfully requests that the Board reject the ALJ's
11 Report and Recommendations, and certify the results of the election.

12 Dated: December 14, 2007

13
14 WEINBERG, ROGER & ROSENFELD
A Professional Corporation

15 By: Bruce A. Harland
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17 BRUCE A. HARLAND
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PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On December 14, 2007, I served upon the following parties in this action:

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copies of the document(s) described as:

SEIU, UNITED HEALTHCARE WORKERS --WEST'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S REPORT AND RECOMMENDATIONS ON OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION; and SEIU, UNITED HEALTHCARE WORKERS --WEST'S BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S REPORT AND RECOMMENDATIONS ON OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION

BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

BY FACSIMILE I caused to be transmitted each document listed herein via the fax number(s) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on December 14, 2007.



Rhonda Fortier-Bourne

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