

1 JEFFER, MANGELS, BUTLER & MARMARO LLP  
MARTA M. FERNANDEZ (Bar No. 120540)  
2 BARBRA A. ARNOLD (Bar No. 235898)  
1900 Avenue of the Stars, Seventh Floor  
3 Los Angeles, California 90067-4308  
Telephone: (310) 203-8080  
4 Facsimile: (310) 203-0567

5 Attorneys for Employer GOOD SAMARITAN HOSPITAL

6  
7  
8 UNITED STATES OF AMERICA  
9 BEFORE THE NATIONAL LABOR RELATIONS BOARD  
10 REGION 31

11 GOOD SAMARITAN HOSPITAL

12 Employer,

13  
14 ALLEN V. SMITH

15 Petitioner,

16 and

17 SERVICE EMPLOYEES INTERNATIONAL  
18 UNION

19 Union.

CASE NO. 31-RD-1555

**GOOD SAMARITAN HOSPITAL'S BRIEF  
SUBMITTED IN SUPPORT OF ITS  
EXCEPTION TO ADMINISTRATIVE LAW  
JUDGE GREGORY Z. MEYERSON'S  
REPORT AND RECOMMENDATIONS ON  
OBJECTIONS**

1                                   **I.       CASE STATEMENT AND SUMMARY OF EXCEPTIONS**

2           Few representation elections in the United States have been as close as the one against  
3 Service Employees International Union, Local 399 (the "Union"), which took place at Good  
4 Samaritan Hospital (the "Hospital" or the "Employer"), on March 27 and 28, 2007.<sup>1</sup> In a bargaining  
5 unit of 458 hospital employees, the Union which has represented the employees for over 9 years  
6 was able to hang on to a majority by only **two votes**.<sup>2</sup> After a lengthy trial, Administrative Law  
7 Judge, Gregory Z. Meyerson (the "ALJ") found that the election was tainted by the unlawful  
8 conduct of the Union's Representatives, which prevented a free and fair election, and on that basis  
9 has recommended the election be set aside. The Hospital concurs with these findings and excepts to  
10 the ALJ's findings on only one objection.

11           On August 7, 2006, Hospital employee Allen V. Smith ("Smith" or the "Petitioner") filed a  
12 Decertification Petition ("Petition") with the National Labor Relations Board (the "Board").  
13 Immediately after the decertification petition was filed, the Union began its underhanded efforts to  
14 delay and manipulate the decertification election. During the critical period, the Union realized that  
15 its hold on its membership was waning and engaged in a barrage of unlawful campaign conduct.  
16 These unlawful tactics were implemented by, among others, Union business representatives Claudia  
17 Rodriguez ("Rodriguez") and Keisha Stewart ("Stewart").

18           The Union engaged in a concerted effort of harassment and unlawful campaign tactics  
19 directed toward pro-decertification employees, targeting the Petitioner in particular. Most notably,  
20 and as the ALJ found, Rodriguez attempted to bribe the Petitioner in hopes of enticing him to come  
21 over to the Union's side. In response to the bribe, the Petitioner disseminated a flyer detailing the  
22 bribery attempt. In retaliation for the flyer, Rodriguez verbally attacked and humiliated Smith in  
23 front of a patient and Smith's co-workers just three days before the election in a public and  
24 deliberate attempt to neutralize the dissemination of information regarding the Union's misconduct.

25 <sup>1</sup> In fact, based upon the NLRB's records on all elections throughout the country in the last seven years, there have been  
26 only 8 elections out of 577 with a bargaining unit of more than 300 employees with results as close as this election.

27 <sup>2</sup> Out of approximately 458 employees in the bargaining unit, 398 employees voted in the election. The final tally of  
28 votes from the election was 200 against decertification and 198 in favor of decertification.

1 Information regarding this verbal attack was widely disseminated throughout the Hospital to  
2 bargaining unit members.

3 In his November 30, 2007 decision, the ALJ sustained two of the Hospital's objections and  
4 recommended that the election be set aside. The ALJ sustained the Hospital's Objection Number 2  
5 relating to the Union's threatening, coercive and intimidating conduct toward bargaining unit  
6 employees and the Hospital's Objection Number 3 relating to Rodriguez's attempt to bribe the  
7 Petitioner.

8 The ALJ nonetheless overruled the Hospital's Objection Number 4 relating to Rodriguez's  
9 retaliatory verbal attack on the Petitioner. While the Hospital obviously concurs with the ALJ's  
10 well reasoned findings on Objection Numbers 2 and 3, the Hospital excepts to the ALJ's overruling  
11 of the Hospital's Objection Number 4. Rodriguez's verbal attack arose out of and was an extension  
12 of Rodriguez's unlawful bribery attempt, the subject of the sustained Objection Number 3, and  
13 therefore, was also objectionable conduct and provides an independent basis for setting aside the  
14 election. Rodriguez's egregious verbal attack on the Petitioner was done in front of bargaining unit  
15 members only three days before the election and, as the ALJ found, word of the incident was widely  
16 spread to the entire bargaining unit. Logic dictates that Rodriguez's egregious conduct that arose  
17 out of prior objectionable conduct, as determined by the ALJ, was sufficiently severe to coerce and  
18 intimidate bargaining unit members, especially considering its proximity to the election, the  
19 closeness of the election and the retaliatory nature of the conduct.

20 In fact, despite overruling the objection, the ALJ credited the Petitioner's version of the  
21 incident, stating that the Union's witnesses were entirely uncredible and unbelievable. (Report<sup>3</sup> at 9-  
22 10) The ALJ also held that "[t]here is no question that this incident was widely disseminated  
23 among bargaining unit employees." (Report at 10) Based upon the egregious nature of this event  
24 and the ALJ's findings that the incident did occur just as the Petitioner testified, Employer's  
25 Objection Number 4 should also be sustained and should stand as an independent basis for

26  
27 <sup>3</sup> For ease of reference, the ALJ's November 30, 2007 Report and Recommendation On Objections is cited herein as the  
28 "Report"

1 overturning the election.

## 2 II. FACTUAL BACKGROUND

### 3 A. Rodriguez's Attempt to Bribe the Petitioner – Sustained Objection Number 3

4 On March 16, 2007, Smith was in front of the Hospital in the circular driveway pushing a  
5 patient in a wheelchair. Rodriguez approached him and offered him a bribe in exchange for  
6 withdrawing his support for the decertification campaign. Rodriguez told Smith to withdraw his  
7 support for the decertification petition, and not to be an observer at the election. (Tr.<sup>4</sup> 110:24-  
8 112:20) Smith testified that:

9 **she proceeded to say that SEIU, we have a job for you after this**  
10 **whole thing is over, considering that I met the criteria. The icing**  
11 **on the cake, she offered me -- she said she would give me some**  
12 **purple scrubs and allow me to be a keynote speaker with**  
13 **Reverend Jesse Jackson.**

14 (Tr. 112:14-18) Smith testified that "meeting the job criteria" meant that he could have a job with  
15 SEIU if he did the things she asked of him such as withdrawing his support for the decertification  
16 petition. (Tr. 114:2-8)<sup>5</sup>

17 In sustaining the Hospital's Objection Number 3, the ALJ credited Smith's testimony stating  
18 "I am of the opinion that his testimony was highly truthful." (Report at 7) In contrast, the ALJ  
19 determined that Rodriguez was *not* truthful in her testimony regarding the bribe incident stating "I  
20 had the impression that she would alter her testimony as necessary in order to achieve her goals."  
21 (Report at 8) The ALJ ultimately found that Rodriguez had offered the Petitioner an unlawful bribe  
22 which placed virtually every bargaining unit member "on notice of the potential for financial  
23 benefits in exchange for supporting the Union. In this way, the voters were coerced into supporting  
24 the Union, which coercion interfered with their freedom of choice in the election." (Report at 9)

25 <sup>4</sup> For ease of reference, the transcript from the hearing in case number 31-RD-1555 is cited as "Tr."

26 <sup>5</sup> Subsequent to the attempted bribe, on March 19, 2007, at the Jessie Jackson Rally, Rodriguez made a snide comment  
27 to Smith regarding his Good Samaritan Hospital shirt and his decision not to wear purple scrubs in support of the Union  
28 saying "nice scrubs." (123:18-125:15).

1 B. Rodriguez's Verbal Attack on Smith – Objection Number 4

2 On March 24, 2007, just three days before the election, Rodriguez verbally attacked Smith  
3 in front of two nuns, a patient and a visitor, in direct retaliation for Smith revealing the attempted  
4 union bribe to other bargaining unit members.

5 Smith testified that on March 24, 2007, he was pushing a wheelchair bound patient  
6 accompanied by her visitor, both of whom were nuns, to the elevator near the 6 South Nurses  
7 Station where he saw Rodriguez inside the break room. (Tr. 121:16-127:17) Smith testified:

8 **"Rodriguez said: Come here, come here. She started yelling at**  
9 **me from the break room, as I was passing by with the patient and**  
10 **the helper. . . . She followed me, in my word, chased, because I**  
11 **was picking up speed. I didn't want to be bothered, to the**  
12 **elevator – yelling at me. Q What was she saying? A How dare**  
13 **you. How dare you put my name on that flyer. How dare,**  
14 **screaming, yelling, that type of -- it was clearly in response to the**  
15 **flyer that I sent out." (Tr. 127:18-128:8, ER's Ex. 9)**

16 Smith further testified that Rodriguez blocked him and the patient by standing in front of the  
17 elevator. She was yelling and screaming at him saying "how dare you" and "what do you think  
18 you're doing?" (Tr. 128:9 –129:2) Smith responded that he was with a patient and they could talk  
19 about it later. (Tr. 129:3-5) Smith testified that Rodriguez blocked the elevator for 25 seconds and  
20 that he missed the first elevator because of Rodriguez's conduct. He then backed up into the second  
21 elevator that came. After the incident, Smith apologized to the visitor explaining to her that it had  
22 nothing to do with her. (Tr. 128:9-131:2) Smith then discussed the incident with several bargaining  
23 unit employees, reported the incident to supervisors and Human Resources and filled out an incident  
24 report. (Tr. 131:3-136:2; ER's Exs. 10-12)

25 Smith's testimony was fully corroborated by the visitor, Sister Socorro. Sister Socorro  
26 testified that she was visiting the patient, Sister Rivero, and Mr. Smith "was giving physical therapy  
27 to our Sister." (Tr. 310:23-312:20) She further testified that she, Mr. Smith and Sister Rivero

28 **were waiting for the elevators, then two ladies approached him, and**  
29 **especially one of them started to tell him, you know -- I don't**  
30 **remember exactly the words, but I remember the tone of the voice**  
31 **of this lady. She was kind of [angry] of him. She raised her voice,**  
32 **and she was kind of humiliating him. (Tr. 313:15-21)**

1 When asked why she recalled the incident so clearly, Sister Socorro testified "You know, I was  
2 very, very surprised, the way he react, because he was very humbled. He didn't answer anything to  
3 the ladies. **Usually when somebody raises their voice and says things humiliating, someone will**  
4 **answer back, but he didn't. He didn't say a word. So, I remembered that."** (Tr. 314:3-10)

5 Sister Socorro further testified that the conversation lasted for about 5 minutes and that  
6 Rodriguez's comments were humiliating, angry and "not nice" and that Rodriguez raised her voice  
7 at Smith. She also testified that Smith was very calm throughout the entire incident and that he  
8 apologized to Sister Socorro for Rodriguez's conduct. (Tr. 314:10-316:6) On cross examination,  
9 Sister Socorro indicated that Rodriguez's voice was humiliating and described the confrontation as a  
10 one sided argument, stating that Smith did not respond to Rodriguez and remained calm throughout  
11 the incident and after the incident. (Tr. 316:24-319:10) As a caregiver herself, Sister Socorro  
12 testified that it is part of a caregiver's job to remain calm when with a patient and that she was very  
13 impressed by Smith's ability to stay calm despite Rodriguez's attack. (Tr. 322:23-323:9) Sister  
14 Socorro's testimony completely corroborates Smith's testimony.

15 Contrary to the testimony of Smith and Sister Socorro, Rodriguez had a completely different  
16 and utterly unbelievable version of the event. She testified that the confrontation lasted only  
17 "seconds," denied following Smith down the hallway and stated that she just happened to run into  
18 Smith at the elevators by coincidence. Rodriguez essentially testified that she simply made one  
19 passing comment to Smith as she just happened to be walking by him near the elevators. (Tr.  
20 458:20-459:9; 493:13-20; 494:1-495:16).<sup>6</sup> Rodriguez's transparent attempt to minimize the  
21 confrontation that was clearly a "humiliating" and lengthy confrontation casts serious doubt on her  
22 credibility not only regarding this incident but regarding all of her testimony. In fact, Rodriguez  
23 goes so far as to state that if a witness testified that she had said something humiliating, raised her

24 <sup>6</sup> In fact, Rodriguez contradicts her own testimony regarding the incident. Upon direct examination she states that after  
25 the confrontation "we went back to the break room on the Sixth Floor, Six South." (Tr. 459:5-9). However, just  
26 minutes later on cross examination, she responds "I don't recall" when asked whether she was in the break room on the  
27 Sixth Floor before the incident and claims that "they were passing by, and we were just over there by the entrance to the  
28 elevator." (Tr. 493:18-25). Clearly realizing that admitting to having left the break room for the specific purpose of  
following Smith down the hallway contradicted her earlier testimony that the incident lasted only seconds, Rodriguez  
made an obvious attempt to change her story.

1 voice to Smith, embarrassed Smith or that the incident lasted about five minutes and was not just a  
2 passing remark, that witness would be lying. (Tr. 533:20-534:21; 535:20-23). It hardly bears  
3 stating that Sister Socorro was a highly credible witness and had no reason in the world to lie about  
4 what she clearly recalled as a memorable and upsetting event many months later. In fact, the ALJ  
5 credited Sister Socorro's testimony stating:

6 **Smith's version is supported by the testimony of Sister Maria**  
7 **Socorro, a totally neutral individual** who was at the time of the  
8 even in question visiting a patient whom Smith was treating. (Report  
at 9-10)

9 Again, the ALJ credited Smith's testimony stating "I credit Smith's version of the incident  
10 with Rodriguez in front of the elevators." (Report at 10) He further found Rodriguez and Stewart's  
11 testimony regarding the event highly incredible. (Report at 9-10) The ALJ found that "Rodriguez's  
12 actions and statements toward Smith in the presence of patients and guests of the Hospital were  
13 rude, boorish, and unprofessional." The ALJ also found that "[t]here is no question that this  
14 incident was widely disseminated among bargaining unit employees." (Report at 10). Nonetheless,  
15 the ALJ overruled Employer's Objection Number 4 stating "I do not believe that this incident rises  
16 to the level of objectionable conduct."

### 17 III. ARGUMENT

#### 18 A. Rodriguez's Verbal Attack of the Petitioner In Retaliation for Disseminating Information 19 Rises to the Level of Objectionable Conduct

20 Employer's Objection Number 4 should be sustained. Harassment and threatening conduct  
21 by union representatives are grounds for setting aside an election. Crown Coach Corp., 284 NLRB  
22 1010 (1987)(in determining whether to set aside an election based on threats or harassment, the  
23 Board evaluates the nature of the conduct, the surrounding circumstances, whether they were widely  
24 disseminated, whether it is likely that employees acted in fear, and the temporal closeness of the  
25 conduct to the election). For example, in Cedars-Sinai, the Board held that anonymous threatening  
26 telephone calls to one antiunion employee were sufficient to require setting aside the election,  
27  
28

1 despite the Union's margin of victory of 68 votes.<sup>7</sup> Cedars-Sinai Medical Center, 342 NLRB 596  
2 (2004).

3 In Cedars-Sinai, Barnes, one of the most active antiunion employees received between 7 to  
4 10 anonymous and threatening phone calls in the span of about a month. The phone calls stopped  
5 about 2 weeks before the election. Id. at 597. While the phone calls were directed only at Barnes,  
6 Barnes discussed the phone calls with several co-workers and there was evidence that the threats  
7 were widely discussed outside of Barnes' conversations with his co-workers. Id. The Board held  
8 that while the threats were directed only at Barnes, "[t]hese threats would tend to cause the  
9 employees who had heard about them to reasonably assume that the [Union] was willing to  
10 physically harm any employee - - or the loved ones of any employ - - who opposed it or voted  
11 against it in the election." Id. at 598. Because at least 34 unit employees, a determinative number  
12 of employees, had heard about the threats, the threats were sufficient to set aside the election. Id.

13 The Board in Cedars-Sinai also held that the fact that the threats ceased two weeks prior to  
14 the election did not diminish the effect of the threats on the bargaining unit employees because the  
15 employees were still discussing the threats. Id. Here, Rodriguez's harassment against the Petitioner  
16 occurred only three days prior to the election, the Petitioner discussed it with bargaining unit  
17 employees shortly thereafter and a flyer detailing the incident was disseminated by the Petitioner  
18 and other bargaining unit employees to essentially the entire bargaining unit just one day prior to  
19 the election. (Tr. 136:9-137:20; 362:15-364:19; 390:19-391:23; 394:15-24; ER's Ex. 12)<sup>8</sup> In fact,  
20 both Rodriguez and Stewart admit that they saw the flyer detailing the verbal attack circulating  
21 throughout the Hospital prior to the election. (Tr. 459:10-25; 604:19-605:1). In addition, Stewart  
22 admitted that other bargaining unit employees were in the vicinity when she and Rodriguez chased  
23 Smith down the hallway yelling after him. (Tr. 557:18-559:18; 606:1-11-607:4) The ALJ held that

24 <sup>7</sup> Out of a bargaining unit of 1,481 employees.

25 <sup>8</sup> Smith testified that he distributed the flyer throughout the hospital to bargaining unit members and in places where  
26 bargaining unit members had access. (Tr. 137:5-20). Morgana testified that he passed the flyer out to everybody in  
27 Radiology, to approximately 60 bargaining unit employees, and that he went to all the floors in the Hospital and posted  
28 the flyers in all 12 break rooms in the Hospital. (Tr. 391:5-23; 394:15-24). Chapman testified that he saw the flyer  
posted in at least two of the break rooms in the Hospital. (Tr. 363:10-25).

1 "[t]here is no question that this incident was widely disseminated among bargaining unit  
2 employees," and that "the flyer was obviously distributed shortly before the election." (Report at  
3 10-11)

4 As in Cedars-Sinai, the SEIU bargaining unit employees here clearly had knowledge of the  
5 ongoing harassment against the Petitioner, learned of the verbal attack against the Petitioner shortly  
6 before the election and discussed the incident amongst themselves just prior to the election. In fact,  
7 in this case, the misconduct was disseminated to a much larger and certainly determinative group of  
8 bargaining unit employees, the events occurred closer in time to the election, more bargaining unit  
9 members were subjected to the harassment, the harassment occurred over a longer time span, and  
10 the election was lost by a much closer margin.

11 In addition, Rodriguez's verbal attack of the Petitioner was done in direct retaliation for the  
12 Petitioner's refusal of Rodriguez's bribe and his dissemination of information regarding the bribe to  
13 other bargaining unit members. By retaliating against the Petitioner in this way, Rodriguez was  
14 sending a clear message to all other bargaining unit members that they could not oppose the Union  
15 in any way or even refuse a bribe without suffering harassment and retaliation. Clearly, Rodriguez's  
16 conduct which arose out of her prior objectionable conduct, as determined by the ALJ, also  
17 constituted harassment and coercion of the Petitioner and other bargaining unit members.

#### 18 IV. CONCLUSION

19 Based upon the foregoing, the Hospital respectfully requests that the Board sustain its  
20 Exception regarding the Hospital's Objection Number 4 and determine that the Hospital's Objection  
21 Number 4 is an independent basis for directing a new election.

22  
23 DATED: December 14, 2007

JEFFER, MANGELS, BUTLER & MARMARO LLP  
MARTA M. FERNANDEZ  
BARBRA A. ARNOLD

24  
25  
26 By: \_\_\_\_\_  
27 MARTA M. FERNANDEZ  
Attorneys for Employer GOOD SAMARITAN  
28 HOSPITAL

RE: Good Samaritan Hospital/Service Employees International Union  
Case No: 31-RD-1555

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing **GOOD SAMARITAN HOSPITAL'S BRIEF SUBMITTED IN SUPPORT OF ITS EXCEPTION TO ADMINISTRATIVE LAW JUDGE GREGORY Z. MEYERSON'S REPORT AND RECOMMENDATIONS ON OBJECTIONS** was served on the 14th day of December, 2007, upon the following parties:

**VIA E-FILING**

Executive Secretary  
National Labor Relations Board  
1099 14th Street, N.W.  
Washington, D.C. 20570

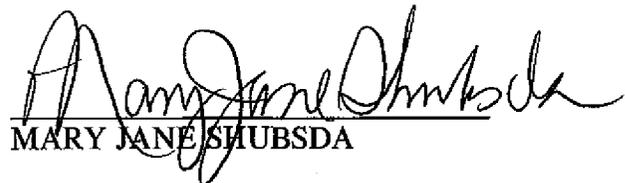
**VIA HAND-DELIVERY**

James McDermott, Regional Director  
National Labor Relations Board, Region 31  
11150 W. Olympic Boulevard, Suite 700  
Los Angeles, CA 90064-1824

**VIA U.S. MAIL**

Bruce Harland, Esq.  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, California 94501-1091  
Fax: (510) 337-1023

Patrick W. Jordan, Esq.  
Jordan Law Group  
1010 B Street, Suite 320  
San Rafael, CA 94901  
Fax: (415) 459-9871

  
MARY JANE SHUBSDA