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9 UNITED STATES OF AMERICA

10 BEFORE THE NATIONAL LABOR RELATIONS BOARD

11 GOOD SAMARITAN HOSPITAL

12 Employer,

13
14 ALLEN V. SMITH

15 Petitioner,

16 and

17 SERVICE EMPLOYEES INTERNATIONAL
UNION

18 Union.
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**EMPLOYER'S ANSWERING BRIEF IN
RESPONSE TO SEIU'S EXCEPTIONS TO
THE ADMINISTRATIVE LAW JUDGE'S
REPORT AND RECOMMENDATIONS ON
OBJECTIONS TO CONDUCT AFFECTING
THE RESULTS OF THE ELECTION**

CASE NO. 31-RD-1555

21 **EMPLOYER'S ANSWERING BRIEF IN RESPONSE TO SEIU'S EXCEPTIONS TO THE**
22 **ADMINISTRATIVE LAW JUDGE'S REPORT AND RECOMMENDATIONS ON**
23 **OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION**
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I. INTRODUCTION

Service Employees International Union, Local 399's (the "Union") exceptions to Administrative Law Judge Gregory Z. Meyerson's (the "ALJ") Report And Recommendations On Objections To Conduct Affecting The Results Of The Election are fundamentally flawed in several respects.

First, pursuant to Section 102.46 (b)(1)(iii) and (iv) of the Board's Rules and Regulations, each exception "(iii) shall designate by precise citation of page the portions of the record relied upon; and (iv) shall concisely state the grounds for the exception." The Union failed to provide either a citation to any portion of the record in support of each objection or a concise statement of the grounds for the exception. Therefore, it is entirely unclear to Good Samaritan Hospital (the "Hospital" or the "Employer") upon exactly what evidence and argument the Union is basing each exception. In fact, the Union's brief submitted in support of its exceptions does not support or relate to the majority of the Union's exceptions in any way.¹ The Union's exceptions should be dismissed based upon the Union's failure to comply with Section 102.46(b)(1) of the Board's Rules and Regulations as the Hospital is prejudiced by its inability to appropriately respond to the Union's exceptions and the Board has not been adequately noticed regarding the Union's alleged support for its exceptions.

Second, the majority of the Union's exceptions are based solely upon the Union's disagreement with the ALJ's credibility findings.² Absent a showing by a clear preponderance of all of the relevant evidence that the ALJ's credibility resolutions are incorrect, the Board will not overturn an ALJ's credibility findings. Given the Union's utter lack of support for its exceptions, the Board has no basis on which to overturn the ALJ's credibility findings. Therefore, all of the Union's exceptions which except solely to the ALJ's credibility finding must be dismissed.

¹ Because the Union's supporting brief does not address the majority of its exceptions, the Hospital has attached as Exhibit A to this brief, a chart detailing the various flaws to each of the Union's exceptions.

² The Union's exceptions numbers 2-6; 9-11; 16-24; 26; 28 and 30 are solely exceptions to the ALJ's credibility determinations in favor of the Hospital's witnesses or against the Union's witnesses.

1 Third, the Union argues that evidence regarding several incidents of objectionable conduct
2 should not have been considered by the ALJ because the evidence was not also submitted in the
3 Hospital's position statement in support of its objections.³ The Union provides absolutely no legal
4 authority for this extreme position. As more thoroughly set forth below, evidence regarding each of
5 these incidents was submitted at the hearing in support of the Hospital's objection Number 2, filed
6 by the Hospital on April 4, 2007. The Hospital is simply baffled by the argument that a party is
7 precluded from submitting evidence at a hearing on objections that supports the objections
8 themselves, but was not included in the party's position statement in support of its request for a
9 hearing.

10 Fourth, the Union makes several exceptions to the ALJ's legal findings.⁴ However, the
11 Union fails to support these objections with any applicable legal authority and fails to even attempt
12 to provide legal authority to support the majority of these exceptions. Most notably, in setting forth
13 its arguments against the ALJ's findings that Union Representative Claudia Rodriguez's
14 ("Rodriguez") attempt to bribe Allen Smith, the petitioner ("Smith" or the "Petitioner"), and Union
15 Representative David Ronquillo's ("Ronquillo") attempt to physically attack the Petitioner do not
16 constitute objectionable conduct, the Union surprisingly ignores the extreme closeness of the
17 election. The Union's failure to comment on the closeness of the election despite mentioning it as
18 one of the factors considered in determining whether conduct is objectionable speaks volumes.

19 The closeness of the election is a substantial factor in determining whether conduct was
20 sufficient to constitute objectionable conduct. See Avis Rent-a-Car, 280 NLRB 580, 581 (1986);
21 Pepsi-Cola Bottling Co. of Petersburg, 291 NLRB 578, 579 (1988); Harsco Corp., 336 NLRB No. 9
22 (2001). In the March 27 and 28, 2007 election, in a bargaining unit of 458 hospital employees, the
23 Union which has represented the employees for over 9 years was able to hang on to a majority by
24

25 ³ The Union's exceptions numbers 1 and 14 rely upon the unsupported argument that the evidence
26 should be excluded because it was not supplied by the Hospital in support of its position statement.

27 ⁴ The Union's exceptions to the ALJ's legal findings are exceptions numbers 7, 8, 12, 13, 15, 24, 27,
28 29, 31, 32 and 33.

1 only two votes.⁵ As determined by the ALJ, given the closeness of the election, the conduct need
2 not have been as severe, need not have affected as many bargaining unit employees, and need not
3 have been disseminated to as many employees to constitute objectionable conduct. In fact, given
4 the closeness of the election, the Union Representatives' conduct need only have influenced one
5 employee's vote in order to have affected the outcome of the election.

6 Finally, the Union makes several factual arguments that are completely contrary to the
7 evidence in the record. Specifically, the Union's exception number 25 includes facts that are not
8 supported by the record. In fact, it is unclear what the Union is even trying to assert in its exception
9 number 25.⁶ In summary, the Union has failed to present any argument or any evidence for why the
10 ALJ's determinations and recommendations should not be followed by the Board.

11 II. ARGUMENT

12 A. The Board Cannot Overrule the ALJ's Credibility Findings

13 The majority of the Union's exceptions rely solely upon the Union's disagreement with the
14 ALJ's credibility findings. The Union's exceptions that rely solely upon the Union's disagreement
15 with ALJ's credibility findings are: 2, 3, 4, 5,6, 9, 10,11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 28
16 and 30. However, the Union has provided no evidence to support these exceptions and has, as
17 mentioned above, failed to provide citations to the record in support of these exceptions in violation
18 of Section 102.46 (b)(1) of the Board's Rules and Regulations. As such, the Board cannot reverse
19 the ALJ's credibility findings.

20 "The Board will not ordinarily reverse an Administrative Law Judge's demeanor-based
21 credibility finding because of the Administrative Law Judge's unique opportunity to observe the
22 witnesses as they testify." McCrorry and Co., Inc., 223 NLRB 486, **14 (1976)(holding that the
23 only exception to this rule is "where the great weight of the evidence in the record is against the
24 Administrative Law Judge's credibility resolution"). "Absent a showing by a clear preponderance

25 ⁵ Out of approximately 458 employees in the bargaining unit, 398 employees voted in the election.
26 The final tally of votes from the election was 200 against decertification and 198 in favor of
decertification.

27 ⁶ See Exhibit A, row 25.

1 of all of the relevant evidence that these credibility resolutions are incorrect, the Board will not
2 overrule an Administrative Law Judge's credibility findings." Cement Transport, Inc., 200 NLRB.
3 841, fn. 2 (1972). The Board typically does not overrule the ALJ's findings because the ALJ, and
4 not the Board, had the opportunity to observe the witnesses' demeanor and to ask the witnesses
5 questions in order to determine their credibility.

6 The Union has provided no legal support, argument or evidence that would establish by "a
7 clear preponderance of all of the relevant evidence that these credibility resolutions are incorrect."
8 In addition, Judge Gregory Meyerson, a well respected ALJ,⁷ was extremely careful to support each
9 and every one of his credibility findings with evidence and support from the record.⁸ Therefore, the
10 ALJ's credibility findings cannot be reversed.

11 B. The ALJ Properly Considered All Evidence Submitted at Hearing Supporting the Hospital's
12 Objection Number 2

13 The Union's exceptions numbers 1 and 14 rely upon the puzzling assertion that certain
14 evidence should have been excluded from the hearing because it was not supplied by the
15 Hospital in support of its position statement submitted after the filing of its objections. The Union
16 provides absolutely no legal authority for such a proposition. The evidence submitted regarding
17 these incidents of harassment by Union Representatives of employees was submitted in direct
18 support of the Hospital's Objection Number 2 which states:

19 During the Critical Period, the Union threatened, coerced and
20 intimidated employees because of their lack of support for the Union,
21 a course of conduct calculated to erode support of decertification
among unit employees.

22 (Hospital's Objections To Conduct Affecting The Results Of The Election filed on April 4, 2007)

23 ⁷ In fact, Judge Gregory Meyerson's recommendations and credibility findings pursuant to a hearing
24 on objections have never been reversed by the Board. See, e.g. California Gas Transport, Inc., 181
25 LRRM 1114, 1118, fn 4 (2006)(affirming Judge Meyerson's finding that employer engaged in
objectionable conduct); Wilshire at Lakewood, 175 LRRM 1522, 1524 (2004) (affirming Judge
Meyerson's credibility findings); International Baking Co., 175 LRRM 1250, 1251 (2004).

26 ⁸ See chart attached as Exhibit A. Exhibit A lists all of the Union's objections that except solely to
27 the ALJ's credibility findings and lists the support and evidence that the ALJ relied upon in making
each credibility determination.

1 The Hospital filed a position statement with the Region on April 16, 2007 pursuant to
2 Section 102.69 of the Board's Rules and Regulations. In the position statement, the Hospital
3 submitted evidence in support of its objections in order to convince the Region to order a hearing on
4 the Hospital's objections. Nothing in Section 102.69 of the Board's Rules and Regulations, or
5 elsewhere, indicates that a party is precluded from entering at hearing evidence which was not
6 submitted in its position statement in support of its objections.
7

8 In fact, the Union made this very argument during the hearing on the Hospital's objections
9 and the argument was summarily rejected by the ALJ:

10 (Hospital's Counsel) Ms. Arnold: Okay, and where were you when that confrontation
11 happened?

12 (Witness: Marcos Morgana) A: I was working my regular shift, and I was going --

13 (Union's counsel) MR. HARLAND: I am going to object to this line of questioning. The
14 Employer -- I don't know what objection it fits into. I guess it fits into No. 2... But, the
15 Employer was asked to provide the Region with its offer of proof in support of this
16 objection. I don't believe they ever mentioned an incident involving Michelle Collins.

17 MS. ARNOLD: I believe that offer of proof is just a minimum in order to allow us to go to
18 a hearing, where we are allowed to offer additional proof for the objection that we have
19 raised, which clearly indicates an issue with access, people approaching bargaining unit
20 members on working time.

21 JUDGE MEYERSON: Mr. Harland, I think that is true. I think what Ms. Arnold is saying
22 is accurate. **I think that if the testimony supports a particular objection, it can be
23 legitimately brought up at the hearing. Now, when you brief this, if you can direct me
24 to some case authority that stands for a different proposition, I will be happy to
25 reconsider my ruling,** but for the time being, I am going to permit Ms. Arnold to question
26 this witness as she was doing, so, your objection is overruled. You might want to restate
27 your question.

28 MS. ARNOLD: Thank you.

(Tr.⁹ 381:2-382:2) (emphasis added).

⁹ For ease of reference, the transcript from the hearing in case number 31-RD-1555 is cited as "Tr."

1 The Union was put on notice that it would need to provide some legal authority for such an
2 extreme position. The Union has failed to provide any such authority either in its original closing
3 brief or in its brief filed in support of its exceptions. As such, the Union's argument must be
4 rejected and the ALJ's reliance upon all the evidence submitted by the Hospital in support of
5 Objection Number 2 must be affirmed.

6 C. Given The Closeness of The Election, The ALJ's Recommendation Sustaining Objection
7 Number 2 and 3 Should be Followed

8 Given the closeness of the election, any objectionable conduct need not be as severe or have
9 affected as many employees in order to warrant setting aside the election. Avis Rent-a-Car, 280
10 NLRB 580, 581 (1986). In fact, if the Board determines that just one vote was likely to be swayed
11 by the Union's conduct, the result of the election must be set aside and a new election must be run.
12 Pepsi-Cola Bottling Co. of Petersburg, 291 NLRB 578, 579 (1988)(in an election separated by only
13 one vote, the Board held that pro union employees' electioneering in the no-electioneering zone
14 interfered with the conduct of the election and that the election should be set aside, "especially when
15 the election results were so close").

16 The purpose of the secret ballot election is to provide employees a free and uncoerced
17 opportunity to select or reject a bargaining representative. Thus, conduct by the union that occurs
18 any time after the filing of the decertification petition and that creates an "atmosphere incompatible
19 with freedom of choice" invalidates the election. Goodyear Tire & Rubber Co., 138 NLRB 453
20 (1962); Metropolitan Life Ins. Co., 90 NLRB 935 (1950).

21 In evaluating conduct affecting the outcome of an election, an objective test is applied based
22 on the totality of the circumstances. Harsco Corp., 336 NLRB No. 9 (2001). As set forth in the
23 Board's Outline of Law and Procedure in Representation Cases, Chapter 24-300, the Board
24 generally considers nine, one of which is the closeness of the final vote. Avis Rent-a-Car, 280
25 NLRB 580, 581 (1986). The Board must overturn any election where the conduct "reasonably
26 tends to interfere with the employees' free and uncoerced choice in the election." Id.

27 All of the conduct submitted by the Hospital in support of its Objection Numbers 2 and 3
28 violated the National Labor Relations Act by destroying the "laboratory conditions" required. The

1 totality of the Union's conduct prior to and during the election mandates that the election results be
2 set aside and a new election be conducted. It is evident that the Union's misconduct could have
3 easily swayed the vote of one employee. Based on the close margin in this election, fundamental
4 fairness requires that the Union not be allowed to benefit from its own unlawful campaign tactics.

5 D. The Record Supports the ALJ's Finding Sustaining the Hospital's Objection Number 2 that
6 Union Representatives' Repeated Harassment of the Petitioner and Other Bargaining Unit
7 Employees Constitutes Objectionable Conduct

8 During the sixth months prior to the March 27 and 28, 2007 decertification election, Union
9 Representatives and agents harassed numerous bargaining unit employees whom they believed
10 supported the decertification efforts, but mostly targeted Smith – an articulate, educated and well
11 respected employee. Smith's uncontroverted testimony, which was credited by the ALJ, establishes
12 that Ronquillo verbally attacked him and threatened him at the end of September 2006, in the
13 presence of additional bargaining unit employees. (Report¹⁰ at 6) Smith testified that he was on the
14 fourth floor of the Hospital in the nurses' station working on a patient's chart when a nursing
15 assistant approached him and asked him if he would speak with Ronquillo. (Tr. 100:19-101:25)
16 Smith complied with the request and walked out of the nurses station to the hallway right outside of
17 the nurses station to speak with Ronquillo. (Tr. 102:2-5)

18 Smith testified "before I could even say anything, [he] noticed my face and says: **You're**
19 **trying to destroy what we're doing here. You're the enemy. You're destroying what we're**
20 **doing here. And he was gesturing angrily with fists clenched.**" (Tr. 102:7-10) Smith further
21 testified that **Ronquillo raised his voice, got into a combative posture as if he were going to**
22 **fight Smith and that Ronquillo approached him and was within 6 inches of him.** In response,
23 Smith got in a defensive stance as Ronquillo continued to yell at him. The Nursing Assistant,
24 Demaris Huerra ("Huerra"), a bargaining unit employee, physically separated Smith and Ronquillo
25 by placing one hand on each of their chests. Ronquillo walked toward Smith, with Smith walking

26 _____
27 ¹⁰ For ease of reference, the ALJ's November 30, 2007 Report and Recommendation On Objections
28 is cited herein as the "Report"

1 backwards down the hallway away from the nurses station for about 20 feet with Huerra separating
2 them. (Tr. 102:10-106:4)

3 Huerra and about 5 to 6 other employees, some of whom were bargaining unit employees,
4 witnessed Ronquillo's threats and Smith's forced march backward to avoid fisticuffs. (Tr. 104:6-
5 105:2; 105:19-106:9) Clearly Ronquillo's threatening behavior toward Smith sent a loud and clear
6 message to Smith and the bargaining unit employees who witnessed the harassing behavior that the
7 Union would not hesitate to harass and even physically harm any employee who supported the
8 decertification or voted against the Union. The ALJ determined that "Ronquillo was obviously
9 trying to instigate a physical altercation with Smith," and that "[t]his action, taken by a union agent
10 against the Petitioner in the presence of other bargaining unit employees, would clearly have had a
11 significant impact on other unit employees." (Report at 7)

12 The Union presented absolutely no evidence to contradict Smith's credible testimony
13 regarding Ronquillo's threatening behavior. The Union's submission that Ronquillo "is no longer
14 with the union" after he was abruptly pulled out of the Hospital in the middle of the campaign does
15 not explain why he was not called to testify. A simple subpoena would have sufficed but clearly the
16 Union would not have been well served by his testimony. Accordingly, the evidence clearly
17 establishes that the Union engaged in coercive behavior toward bargaining unit employees by
18 making physical threats to Smith. In fact, the ALJ determined that Smith was a credible witness,
19 credited his testimony regarding Ronquillo's threatening conduct and stated that the Union did not
20 offer any explanation for Ronquillo's failure to testify. (Report at 6)

21 The Union's argument that Ronquillo's threats and attempt to physically attack Smith was
22 merely "overzealous partisanship" and is insufficient to set aside an election is outrageous.
23 Harassment and threatening conduct by union representatives are grounds for setting aside an
24 election, even when only one employee is threatened and in situations much less severe than an
25 attempted physical attack. Crown Coach Corp., 284 NLRB 1010 (1987)(in determining whether to
26 set aside an election based on threats or harassment, the Board evaluates the nature of the conduct,
27 the surrounding circumstances, whether they were widely disseminated, whether it is likely that
28 employees acted in fear, and the temporal closeness of the conduct to the election); Cedars-Sinai

1 Medical Center, 342 NLRB 596 (2004). For example, in Cedars-Sinai, the Board held that
2 anonymous threatening telephone calls to one antiunion employee were sufficient to require setting
3 aside the election, despite the Union's margin of victory of 68 votes.¹¹ Id.

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

14 As in Cedars-Sinai, the SEIU bargaining unit employees here clearly had knowledge of the
15 ongoing harassment against Petitioner and other pro-decertification employees, including the
16 attempted physical attack by Ronquillo. In fact, in this case, the misconduct was disseminated to a
17 much larger and certainly determinative group of bargaining unit employees, the events occurred
18 closer in time to the election, more bargaining unit members were subjected to the harassment, the
19 harassment occurred over a longer time span, and the election was lost by a much closer margin.

20 The cases cited by the Union in its brief filed in support of its exceptions do not support its
21 position that Ronquillo's attempt to physically attack the Petitioner was insufficient to set aside the
22 election. The first case cited by the Union, Bauer Wedding, 268 NLRB 1416 (1984) is inapposite.
23 The case involved non union representatives asking an employee in a parking lot whether he
24 supported the union. The case did not involve bribery or a threat of physical violence and the
25 results of the election were not nearly as close as this election. The ALJ held that the conduct,
26 while coercive, did not constitute objectionable conduct primarily because there was no evidence

27 ¹¹ Out of a bargaining unit of 1,481 employees.

1 that the employees involved were agents of the Union. Id. at **34. The conduct held by the ALJ to
2 be objectionable in this case was all conducted by Union Representatives and a Union Steward.

3 The only other case cited by the Union is support of its contention that these incidents did
4 not rise to the level of objectionable conduct is American Wholesalers, Inc., 218 NRLB 292
5 (1975)(erroneously cited by the Union as 89 218 NRLB No. 50). Again, this case is inapposite.
6 American Wholesalers, Inc. also involved the inappropriate conduct of other bargaining unit
7 employees, not Union Representatives, did not include any attempted physical violence or threat of
8 physical violence and involved an election that was separated by more than 20 votes in a bargaining
9 unit of only 109 voters. Id. at 292. Clearly an actual attempt to physically attack the Petitioner
10 done by a Union Representative in an election as close as two votes was objectionable conduct.
11 Essentially, the Union was unable to cite to any cases where a threat of physical violence was not
12 considered objectionable conduct in a close election.

13 E. The Record Supports the ALJ's Finding Sustaining the Hospital's Objection Number 3 that
14 Union Representative Rodriguez Attempted to Bribe Smith

15 The Union's entire argument regarding Rodriguez's attempt to bribe Smith is based on its
16 disagreement with the ALJ's credibility findings. As set forth above, the Board cannot overturn the
17 ALJ's credibility findings absent a showing by a clear preponderance of all of the relevant evidence
18 that the ALJ's credibility resolutions are incorrect. The Union has failed to point to any evidence
19 suggesting that the ALJ's credibility findings should be reversed. In addition, the Union's argument
20 regarding the dissemination of information regarding the bribe completely ignores the closeness of
21 the election as a factor in determining whether the bribe was objectionable conduct.

22 On March 16, 2007, Smith was in front of the Hospital in the circular driveway pushing a
23 patient in a wheelchair. Rodriguez approached him and offered him a bribe in exchange for
24 withdrawing his support for the decertification campaign. Rodriguez told Smith to withdraw his
25 support for the decertification petition, and not to be an observer at the election. (Tr. 110:24-
26 112:20) Smith testified that **"she proceeded to say that SEIU, we have a job for you after this**
27 **whole thing is over, considering that I met the criteria. The icing on the cake, she offered me -**
28 **- she said she would give me some purple scrubs and allow me to be a keynote speaker with**

1 **Reverend Jesse Jackson.**" (Tr. 112:14-18) Smith testified that "meeting the job criteria" meant
2 that he could have a job with SEIU if he did the things she asked of him such as withdrawing his
3 support for the decertification petition. (114:2-8)¹²

4 Ms. Rodriguez's contradicting testimony on this incident is incredulous.¹³ While she
5 testified generally that she never attempted to bribe Smith, when asked specific questions regarding
6 the incident, she did not deny certain aspects of the conversation. Rodriguez did not deny that she
7 told Smith that she wanted to take a picture of him next to Jesse Jackson, that she told Smith to wear
8 purple scrubs (signifying Union support) at the Jesse Jackson rally, that she offered him a speaking
9 position at the rally or that she pressed him to "come to our side." (497:12-498:10) In direct
10 contradiction to this testimony, Rodriguez claims that other than her verbal attack of Smith in front
11 of the nuns, she "cannot recall" having a single conversation with Smith where she said anything
12 but hello and goodbye to him. (Tr. 489:17-22) However, in other parts of her testimony, Rodriguez
13 does admit to having had conversations with Smith and admits to having identified him as an anti-
14 union employee. (Tr. 489:3-16; 515:12-18) The ALJ properly credited Smith's testimony and
15 determined that Rodriguez was not a credible witness stating that her "testimony was confusing and
16 inconsistent at best." (Report at 7-8)

17 Rodriguez's offer of a bribe to Smith clearly constituted coercive conduct and is, on its own,
18 grounds for setting aside the election. The "value" of the bribe or lack thereof is of no significance.
19 A union's offer of benefits to potential members during an election campaign is objectionable and is
20 grounds for setting aside an election. Alyeska Pipeline Service Co., 261 NLRB 125 (1982); See
21 also Crestwood Manor, 234 NLRB 1097 (1978) (invalidating an election based on a promise of a
22 \$100 raffle in the event of a union victory).

23 In Alyeska, the union promised employees that if they voted for the union they would have a
24

25 ¹² Subsequent to the attempted bribe, on March 19, 2007, at the Jessie Jackson Rally, Rodriguez
26 made a snide comment to Smith regarding his Good Samaritan Hospital shirt and his decision not to
wear purple scrubs in support of the Union saying "nice scrubs." (123:18-125:15).

27 ¹³ Moreover, her demeanor, contradictions and self-serving lack of recollection in so many areas so
28 colors her testimony that her entire testimony in these proceedings should be disregarded.

1 "golden opportunity" to possess union membership cards and be in an extremely favorable priority
2 position for hiring-hall jobs and high-paying construction jobs in Alaska. Id. at 126. Despite a
3 landside victory by the union of 22 votes to 5, the Board ordered a new election holding that the
4 statements by the union that union members would be in a favorable position for hiring constituted
5 unlawful promises and interfered with the employees' freedom of choice in the election. Id. at 127.
6 The Board relied on the fact that the party in "making the coercive statement has the power to
7 effectuate the promise or the threat, as the case may be." Id. In this case, the Union had the power
8 to effectuate its promise of giving Mr. Smith a job at the SEIU and a key note speaker position at
9 the Jessie Jackson rally.

10 Clearly the Union's offer of a job with SEIU, new scrubs and a keynote speaker position
11 with a national political figure was an attempt to coerce the Petitioner to withdraw his support for
12 decertification and to campaign on behalf of SEIU and the election should be set aside based upon
13 the coercive conduct directed to this one bargaining unit employee. In fact, the bribe offered to
14 Smith was even more concrete and more valuable than the vague promise of a "favorable position"
15 in hiring made by the union on Alyeska.

16 In addition to coercing the Petitioner, however, the incident was also coercive to other
17 employees, as determined by the ALJ. (Report at 9) Information regarding the bribe incident was
18 widely disseminated and discussed amongst bargaining unit employees. There is no dispute that
19 essentially every single bargaining unit employee received a flyer regarding the incident. The letter
20 states "In a surprise move, [the union representatives] tried to 'bribe' me by offering me a job with
21 them and told me that they would take care of me if I would stop trying to decertify to union." ER's
22 Ex. 9.

23 Smith testified that on approximately March 22, 2007 he sent out a letter, ER's Ex. 9, about
24 the bribe incident to approximately 400 out of the 458 bargaining unit employees. (Tr. 116:15-
25 118:25) Mr. Smith also testified that he spoke with at least five bargaining unit employees about
26 the bribe incident, in addition to mailing out the letter. (Tr. 119:8-24) Morgana and Wayne
27 Chapman ("Chapman"), bargaining unit employees, both testified that they received the letter
28 regarding the bribe. (Tr. 392:18-393:5; 362:4-14) Morgana further testified that he heard rumors

1 about the bribe from other employees and that he discussed the bribe with a couple of people in his
2 department who were bargaining unit employees. (395:19-396:24)

3 The dissemination of the flyer regarding the bribe is confirmed by both Rodriguez and
4 Union Representative Keisha Stewart ("Stewart"). (Tr. 517:10-17; 558:2-5; 605:21-25) Stewart
5 admitted "everyone was talking about it" and that it was widely discussed amongst employees. (Tr.
6 627:3-628:21; 629:2-8) She further admitted that several bargaining unit employees spoke to her
7 and Ms. Stewart about the letter. (Tr. 558:2-559:7; 605:21-606:25; 629:14-17)

8 The dissemination of information regarding this bribe incident to each and every bargaining
9 unit employee clearly put the entire bargaining unit on notice of the potential for financial benefits
10 in exchange for supporting the union, as determined by the ALJ. (Report at 9) Thus, in addition to
11 being coercive toward the Petitioner, the bribe clearly created an "atmosphere incompatible with
12 freedom of choice" and invalidated the election because the other bargaining unit employees could
13 reasonably conclude that they would be entitled to similar benefits if they supported the union. See
14 Cedars-Sinai Medical Center, 342 NLRB at 598 (holding that the dissemination to a determinative
15 number of bargaining unit members of threats made to just one bargaining unit member required the
16 setting aside of the election); Metropolitan Life Ins. Co., 90 NLRB 935, 938 (1950)(holding that the
17 dissemination to bargaining unit employees of a letter from the employer stating that if the union
18 won the election the employer would contest the election in the courts was sufficient to destroy the
19 laboratory conditions of the election and require the election be set aside, despite the fact that the
20 letter did not contain any actual promise or threat to bargaining unit members).

21 In its brief, the Union fails to cite to a single case to support its argument that the
22 dissemination of information regarding a bribe to one employee could not affect other bargaining
23 unit employees. In an election where the change of only one vote would result in a different
24 outcome, the ALJ properly held that the attempted bribe of the petitioner and the subsequent
25 dissemination of the information to virtually all bargaining unit employees could reasonably have
26 affected the outcome of the election.

27 III. CONCLUSION

28 The Hospital respectfully submits that the ALJ's recommendation sustaining the Hospital's

1 objections numbers 2 and 3 be followed and that each of the Union's exceptions be denied.

2 DATED: December 21, 2007

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

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By: _____
MARTA M. FERNANDEZ
Attorneys for Employer GOOD SAMARITAN
HOSPITAL

EXHIBIT A

EXHIBIT A

<u>Number</u>	<u>Union's Reference to Decision</u>	<u>The Union's Exception Taken</u>	<u>Employer's Response</u>
1.	Pages 5-7	The ALJ's consideration of evidence regarding incident involving the Petitioner and Union organizer David Ronquillo, given that such conduct was not offered in support of either the employer's or Petitioner's objections.	The Union has failed to provide any legal authority for its proposition that all evidence submitted at hearing on an objection must be clearly identified in the party's position statement.
2..	Page 5	The ALJ's finding that Mr. Ronquillo was removed from the campaign by the Union.	<p>The Union misstates the ALJ's Report. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings and has again failed to even appropriately identify the specific findings of the ALJ to which it excepts, in violation of Section 102.46(b)(1)(ii) of the Board's Rules and Regulations.</p> <p>Nowhere in his Report does the ALJ find that Mr. Ronquillo was removed from the campaign by the Union. (See Report at 5)</p> <p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The Union failed to cite to any evidence contrary to the finding that Mr. Ronquillo was removed from the campaign by the Union.</p>
3.	Page 6	The ALJ's finding that the Union did not offer any explanation for not calling Mr. Ronquillo as a witness.	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The Union failed to cite to any evidence that the Union offered an explanation for not calling Mr. Ronquillo as a witness.</p>

4.	Page 6	<p>The ALJ's finding that Mr. Ronquillo approached the Petitioner and said, "You're the enemy. You're destroying the what we're doing here"; that Mr. Ronquillo gestured angrily with his fist clenched, raised his voice, and got into a "combative posture" six inches from the Petitioner's face; and that this incident occurred in the presence of five or six employees, some of whom were bargaining unit members.</p>	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he credited Smith's version of the incident, stating that Mr. Ronquillo did not testify at the hearing, Ronquillo was involved in a similar previous incident (Report¹ at 5-6) and that Smith "impressed me with his intelligence and sincerity. . . He had a good memory for details, and I did not get the impression that he was either exaggerating or embellishing his testimony . . . I was left with the perception that his personal sense of morality would not permit him to engage in any outright fabrication." (Report at 7)</p> <p>Whereas the Union fails to provide any citation to evidence in support of its exception, the Hospital points the Board to Mr. Smith's testimony regarding the incident: Tr. 102:7-10; Tr. 102:10-106:4.</p>
5.	Page 6.	<p>The ALJ's finding that Mr. Ronquillo was removed from the campaign by the Union.</p>	<p>The Union misstates the ALJ's Report. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings and has again failed to even appropriately identify the specific findings of the ALJ to which it excepts, in violation of Section 102.46(b)(1)(ii) of the Board's Rules and Regulations.</p> <p>Nowhere in his Report does the ALJ find that Mr. Ronquillo was removed from the campaign by the Union. (See Report at 6)</p>

¹ For ease of reference, the ALJ's November 30, 2007 Report and Recommendation On Objections is cited herein as the "Report."

			<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The Union failed to cite to any evidence contrary to the finding that Mr. Ronquillo was removed from the campaign by the Union.</p>
6.	Page 6	The ALJ's finding that Mr. Ronquillo was "almost screaming" at Ms. Ceazan during the September 28, 2006 incident.	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he credited Ms. Ceazan's description of the incident indicating that Mr. Ronquillo failed to testify in contradiction to Ms. Ceazan's testimony.</p> <p>Whereas the Union fails to provide any citation to evidence in support of its exception, the Hospital points the Board to Ms. Ceazan's testimony that Mr. Ronquillo was "almost screaming" at her: Tr. 330:11-16.</p>
7.	Page 6, 15-16	The ALJ's finding and legal conclusion that "oral and physical threats" allegedly made by Ronquillo toward the Petitioner, alleged "oral harassment" by Ronquillo toward Ms. Ceazan, and alleged harassment by Michelle Collins toward Marcos Morgana constitutes objectionable conduct.	The Union has presented no evidence or credible legal authority that the ALJ erred in finding that such repeated and continued oral and physical threats and oral harassment constitute objectionable conduct.
8.	Pages 6, 15-16	The ALJ's finding and conclusion that the September 2006 incident between Ronquillo and the Petitioner "was very significant"	The Union has presented no evidence or credible legal authority that the ALJ erred in finding that the incident was significant.
9.	Page 7	The ALJ's finding that Ronquillo "sought out" the Petitioner and in the presence of other bargaining unit members and addressed him as the enemy.	The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.

			<p>The ALJ was careful to explain why he credited Smith's version of the incident, stating that Mr. Ronquillo did not testify at the hearing, Ronquillo was involved in a similar previous incident (Report at 5-6) and that Smith "impressed me with his intelligence and sincerity. . . He had a good memory for details, and I did not get the impression that he was either exaggerating or embellishing his testimony . . . I was left with the perception that his personal sense of morality would not permit him to engage in any outright fabrication." (Report at 7)</p> <p>Whereas the Union fails to provide any citation to evidence in support of its exception, the Hospital points the Board to Mr. Smith's testimony regarding the incident and specifically regarding the fact that Ronquillo sought him out: Tr. Tr. 100:19-101:25; Tr. 102:2-5; 102:7-10; Tr. 102:10-106:4.</p>
10.	Page 7	<p>The ALJ's finding that Ronquillo assumed a combative posture with his fist [sic] clenched, standing only 6 inches from the Petitioner, and that "only the separation of the two men by a bargaining unit employee prevented a fist fight."</p>	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he credited Smith's version of the incident, stating that Mr. Ronquillo did not testify at the hearing, Ronquillo was involved in a similar previous incident (Report at 5-6) and that Smith "impressed me with his intelligence and sincerity. . . He had a good memory for details, and I did not get the impression that he was either exaggerating or embellishing his testimony . . . I was left with the perception that his personal sense of morality would not permit him to engage in any outright fabrication." (Report at 7)</p>

			Whereas the Union fails to provide any citation to evidence in support of its exception, the Hospital points the Board to Mr. Smith's testimony regarding the incident: Tr. 102:10-106:4.
11.	Pages 7, 15-16	The ALJ's finding that Ronquillo was trying to instigate a physical altercation with the Petitioner.	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he credited Smith's version of the incident, stating that Mr. Ronquillo did not testify at the hearing, Ronquillo was involved in a similar previous incident (Report at 5-6) and that Smith "impressed me with his intelligence and sincerity. . . He had a good memory for details, and I did not get the impression that he was either exaggerating or embellishing his testimony . . . I was left with the perception that his personal sense of morality would not permit him to engage in any outright fabrication." (Report at 7)</p> <p>Whereas the Union fails to provide any citation to evidence in support of its exception, the Hospital points the Board to Mr. Smith's testimony regarding the incident which supports the ALJ's finding that Ronquillo was trying to instigate a physical altercation: Tr. 102:7-10; Tr. 102:10-106:4.</p>
12.	Pages 7, 15-16	The ALJ's finding and conclusion that Ronquillo's actions "had a significant impact on other unit employees."	<p>The Union again misstates the ALJ's Report.</p> <p>The ALJ actually found "I think it <u>likely</u> that the altercation between Ronquillo and Smith was widely disseminated, had the <u>potential</u> to be long lasting, and to affect a significant number of bargaining unit employees" (Report at 7) and that "Such conduct in the presence of other bargaining unit employees</p>

			<p>would <u>likely</u> have a significant impact on many potential voters." (Report at 15-16) (emphasis added).</p> <p>The Union has presented no evidence or credible legal authority that the ALJ erred in these findings and has again failed to even appropriately identify the specific findings of the ALJ to which it excepts, in violation of Section 102.46(b)(1)(ii) of the Board's Rules and Regulations.</p> <p>*Note that each of the Union's exceptions also fails to "(iii) [] designate by precise citation of page the portions of the record relied upon; and (iv) [] concisely state the grounds for the exception," in violation of Section 102.46(b)(1)(iii) and (iv) of the Board's Rules and Regulations.</p>
13.	Pages 7, 15-16	The ALJ's finding and conclusion that other bargaining unit members assumed that if Ronquillo "was bold enough to verbally and physically attack" the Petitioner, then "the Union would not hesitate to seek to harm other less prominent who also opposed the Union."	<p>The Union again misstates the ALJ's Report.</p> <p>The ALJ actually found that "Others would <u>likely</u> assume that if a union agent was bold enough to verbally and physically attack the principal sponsor of the decertification, that the Union would not hesitate to seek to harm others less prominent who also opposed the Union" (Report at 7) (emphasis added). The Hospital is unclear as to what portion of pages 15-16 the Union is referring.</p> <p>The Union has presented no evidence or credible legal authority that the ALJ erred in these findings and has again failed to even appropriately identify the specific findings of the ALJ to which it excepts, in violation of Section 102.46(b)(1)(ii) of the Board's Rules and Regulations.</p>
14.	Pages 7, 15-16	The ALJ's finding [sic] consideration of evidence regarding incident involving Marcos Morgana and Michelle Collins, given that such	The Union has failed to provide any legal authority for its proposition that all evidence submitted at hearing on an objection must be clearly

		conduct was not offered in support of either the employer's or Petitioner's objections.	identified in the party's position statement.
15.	Pages 7, 15-16	The ALJ's finding and conclusion that the incident involving Ms. Collins and Mr. Morgana was significant and served "to remind employees of the Union's expressed threat to harm" the Petitioner.	The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.
16.	Pages 7, 15-16	The ALJ's finding and conclusion that the alleged altercation between Ronquillo and the Petitioner was likely widely disseminated, had the potential to be long lasting, and to affect a significant number of bargaining unit members."	<p>The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.</p> <p>The Union also excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he credited Smith's version of the incident, stating that Mr. Ronquillo did not testify at the hearing, Ronquillo was involved in a similar previous incident (Report at 5-6) and that Smith "impressed me with his intelligence and sincerity. . . He had a good memory for details, and I did not get the impression that he was either exaggerating or embellishing his testimony . . . I was left with the perception that his personal sense of morality would not permit him to engage in any outright fabrication." (Report at 7)</p> <p>Whereas the Union fails to provide any citation to evidence in support of its exception, the Hospital points the Board to Mr. Smith's testimony regarding the incident and the fact that bargaining unit employees were present: Tr. 100:19-101:25; 102:2-5; 102:7-10; Tr. 102:10-106:4; 104:6-105:2; 105:19-106:9.</p>
17.	Page 7	The ALJ's finding that the Petitioner was "highly credible" and that his	The Union excepts to the ALJ's credibility finding. The Union has

		testimony was "high truthful."	<p>failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he credited Smith's testimony stating that Smith "impressed me with his intelligence and sincerity. . . He had a good memory for details, and I did not get the impression that he was either exaggerating or embellishing his testimony . . . I was left with the perception that his personal sense of morality would not permit him to engage in any outright fabrication." (Report at 7)</p>
18.	Page 7	The ALJ's finding that the Petitioner neither exaggerated nor embellished his testimony.	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he credited Smith's testimony stating that Smith "impressed me with his intelligence and sincerity. . . He had a good memory for details, and I did not get the impression that he was either exaggerating or embellishing his testimony . . . I was left with the perception that his personal sense of morality would not permit him to engage in any outright fabrication." (Report at 7)</p>
19.	Page 7	The ALJ's finding that the Petitioner's "personal sense of morality would not permit him to engage in any outright fabrication."	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he credited Smith's testimony stating that Smith "impressed me with his intelligence and sincerity. . . He had a good memory for details, and I did not get the impression that he was</p>

			<p>either exaggerating or embellishing his testimony . . . I was left with the perception that his personal sense of morality would not permit him to engage in any outright fabrication." (Report at 7)</p>
20.	Page 7	The ALJ's finding that Mr. Morgana was credible.	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he credited Mr. Morgana's testimony, stating "Another agent of the Union, whose conduct was placed in question by witnesses, and who failed to testify in rebuttal, was Michelle Collins, the Union Steward. As with Ronquillo, the Union offered no reason for her failure to testify. No evidence was offered to suggest that she was either no longer employed by the Hospital or no longer the union steward. In any event, the testimony of Marcos Morgana concerning Collins' actions remains un rebutted and is, therefore, credited." (Report at 6)</p>
21.	Page 7	The ALJ's failure to find that Claudia Rodriguez's testimony was credible.	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he felt that Claudia Rodriguez was not credible. He stated "Unfortunately, I did not get the same sense of truthfulness when hearing the testimony of union business agent Claudia Rodriguez. She was highly agitated, hostile, and defensive when testifying, especially under cross-examination by counsels for the Petitioner and Employer. Further, she employed selective memory when testifying. While she</p>

			<p>seemed capable of recalling those details that supported her version of events, her memory apparently failed when responding to questions, the answer to which would likely not favor her. . . . unlike Smith, I had the impression that she would alter her testimony as necessary in order to achieve her goals." (Report at 7-8)</p> <p>Whereas the Union fails to provide any citation to evidence in support of its exception, the Hospital points the Board to citations that support the ALJ's finding that Ms. Rodriguez was not a credible witness: Tr. 497:12-498:10; 489:17-22; 489:3-16; 515:12-18; 533:20-534:21; 535:20-23.</p>
22.	Page 8	<p>The ALJ's finding that Ms. Rodriguez offered the Petitioner a job with the Union, purple scrubs, and a place as the keynote speaker at a Jesse Jackson rally if he abandoned the decertification effort.</p>	<p>The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.</p> <p>The Union also excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he credited Smith's version of the incident and not Rodriguez's, stating that Smith "impressed me with his intelligence and sincerity. . . He had a good memory for details, and I did not get the impression that he was either exaggerating or embellishing his testimony . . . I was left with the perception that his personal sense of morality would not permit him to engage in any outright fabrication. Unfortunately, I did not get the same sense of truthfulness when hearing the testimony of union business agent Claudia Rodriguez. She was highly agitated, hostile, and defensive when testifying, especially under cross-examination by counsels</p>

			<p>for the Petitioner and Employer. Further, she employed selective memory when testifying. While she seemed capable of recalling those details that supported her version of events, her memory apparently failed when responding to questions, the answer to which would likely not favor her. . . . unlike Smith, I had the impression that she would alter her testimony as necessary in order to achieve her goals." (Report at 7-8)</p> <p>Whereas the Union fails to provide any citation to evidence in support of its exception, the Hospital points the Board to Mr. Smith's testimony regarding the incident and Rodriguez's inconsistent and uncredible testimony regarding the incident: Tr. 110:24-112:20; 112:14-18; 114:2-8; 497:12-498:10.</p>
23.	Page 7	The ALJ's finding that Ms. Rodriguez's testimony was confusing and inconsistent.	<p>The Union has again failed to even appropriately identify the specific findings of the ALJ to which it excepts, in violation of Section 102.46(b)(1)(ii) of the Board's Rules and Regulations. The finding by the ALJ that "Rodriguez' testimony was confusing and inconsistent at best" was on Page 8 of the Report, not Page 7.</p> <p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The ALJ was careful to explain why he felt that Claudia Rodriguez was not credible. He stated "Unfortunately, I did not get the same sense of truthfulness when hearing the testimony of union business agent Claudia Rodriguez. She was highly agitated, hostile, and defensive when testifying, especially</p>

			<p>under cross-examination by counsels for the Petitioner and Employer. Further, she employed selective memory when testifying. While she seemed capable of recalling those details that supported her version of events, her memory apparently failed when responding to questions, the answer to which would likely not favor her. . . . unlike Smith, I had the impression that she would alter her testimony as necessary in order to achieve her goals." (Report at 7-8)</p> <p>He also stated that "[u]nder direct examination by union counsel, she specifically denied having any such conversation with Smith, denied offering him a job, denied offering him purple scrubs, denied offering him a place as a keynote speaker at the rally, and denied offering him anything of value in return for Smith's abandoning the decertification effort. However, when questioned on cross-examination, she could not recall whether she had ever had a conversation with Smith in the circular driveway when he was with a wheelchair patient, could not recall whether she had offered him a position on the podium with Jesse Jackson, and could not recall whether she had offered him purple scrubs." (Report at 8)</p> <p>Whereas the Union fails to provide any citation to evidence in support of its exception, the Hospital points the Board to citations that support the ALJ's finding that Ms. Rodriguez was not a credible witness: Tr. 497:12-498:10; 489:17-22; 489:3-16; 515:12-18; 533:20-534:21; 535:20-23.</p>
24.	Page 7 & fn. 8	The ALJ's finding that Ms. Rodriguez had apparent authority to make job offers on behalf of the Union.	The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.

			<p>The ALJ was careful to set forth both his factual and legal reasoning at Page 8, fn. 8. The Union presented no factual evidence or legal authority in contradiction to the ALJ's well reasoned finding.</p>
25.	Pages 7, 16	<p>The ALJ's finding that the Petitioner's version of events is supported by the fact that, several weeks after the alleged offer but days before the election, he and the anti-Union committee circulated, mailed and posted campaign propaganda to the employees that referenced the alleged offer.</p>	<p>The Union has again failed to even appropriately identify the specific findings of the ALJ to which it excepts, in violation of Section 102.46(b)(1)(ii) of the Board's Rules and Regulations. The Hospital is unclear to what finding the Union is even referring. Nowhere in the Report does the ALJ find that the Petitioner circulated flyers several weeks after the bribe. In fact, the Petitioner testified that the bribe was made on March 16, 2007 and the flyer was distributed on March 22, 2007, less than a week later. (Tr. 110:24-112:20; 116:15-118:25) In fact, page 7 of the Report do not even reference the flyers and page 16 says nothing of the flyers supporting Smith's credibility.</p> <p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.</p>
26.	Pages 7-8	<p>The ALJ's finding that Ms. Rodriguez's subsequent actions establishes the veracity of the Petitioner's allegations.</p>	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal</p>

			authority that the ALJ erred in these findings.
27.	Pages 8, 16	The ALJ's finding and conclusion that the possibility of a job offer with the Union, purple scrubs and the opportunity to speak at a Jesse Jackson rally were items of considerable value.	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.</p>
28.	Page 8	The ALJ's finding that the alleged offer was widely disseminated to bargaining unit members through campaign propaganda.	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.</p> <p>There can be no doubt that information regarding the bribe was widely disseminated to bargaining unit employees. Whereas the Union fails to provide any citation to evidence in support of its exception, the Hospital points the Board to citations that support the ALJ's finding that information regarding the bribe was widely disseminated to bargaining unit employees: Tr. 116:15-118:25; 119:8-24; 392:18-393:5; 362:4-14; 395:19-396:24; 517:10-17; 558:2-5; 605:21-25; 627:3-628:21; 629:2-8; 558:2-559:7; 605:21-606:25; 629:14-17.</p>
29.	Page 8	The ALJ's legal conclusion that the Board has held that "even where the promise is made to only one employee, where the information is disseminated to a determinative number of unit employees, the setting aside of the election is required."	<p>The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.</p> <p>The Union has again failed to even appropriately identify the specific</p>

			findings of the ALJ to which it excepts and has failed to identify the correct citation, in violation of Section 102.46(b)(1)(ii) and (iii) of the Board's Rules and Regulations. The ALJ finding was on Page 9 of the Report, not Page 8.
30.	Page 8	The ALJ's finding that although the promise of a job offer was allegedly made only to the Petitioner, "virtually every bargaining unit member was placed on notice of the potential for financial benefits in exchange for supporting the Union."	<p>The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility finding either in its exceptions or in its brief in support thereof.</p> <p>There can be no doubt that information regarding the bribe was widely disseminated to bargaining unit employees. Whereas the Union fails to provide any citation to evidence in support of its exception, the Hospital points the Board to citations that support the ALJ's finding that information regarding the bribe was widely disseminated to bargaining unit employees: Tr. 116:15-118:25; 119:8-24; 392:18-393:5; 362:4-14; 395:19-396:24; 517:10-17; 558:2-5; 605:21-25; 627:3-628:21; 629:2-8; 558:2-559:7; 605:21-606:25; 629:14-17.</p> <p>The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.</p> <p>The Union has again failed to even appropriately identify the specific findings of the ALJ to which it excepts and has failed to identify the correct citation, in violation of Section 102.46(b)(1)(ii) and (iii) of the Board's Rules and Regulations. The ALJ's finding was on Page 9 of the Report, not Page 8.</p>
31.	Pages 8, 16	The ALJ's finding and conclusion that eligible voters "were coerced into supporting the Union" because the Petitioner was allegedly offered a job,	The Union excepts to the ALJ's credibility finding. The Union has failed to cite to any evidence which contradicts the ALJ's credibility

		purple scrubs, and an opportunity to speak at the Jesse Jackson rally if he abandoned the decertification effort.	<p>finding either in its exceptions or in its brief in support thereof.</p> <p>The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.</p> <p>The Union has again failed to even appropriately identify the specific findings of the ALJ to which it excepts and has failed to identify the correct citation, in violation of Section 102.46(b)(1)(ii) and (iii) of the Board's Rules and Regulations. The ALJ's finding on Page 16 of the Report was that "the attempt by Rodriguez to get Smith to abandon the decertification effort in return for receiving something of value, principally the financial inducement of a job with the Union would <u>likely</u> have influenced a significant number of voters." (Report at 16) (emphasis added).</p>
32.	Page 16	The ALJ's conclusion that the alleged objectionable conduct reasonable [sic] could have prevented employees from freely and fairly exercising their choice in the election.	The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.
33.	Page 16	The ALJ's conclusion that the alleged job offer to Petitioner "would likely have made certain voters also consider abandoning the decertification effort and, thus, coerced them in their exercise of freedom of choice in the election."	The Union excepts to the ALJ's legal findings. The Union has presented no evidence or credible legal authority that the ALJ erred in these findings.

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 **EMPLOYER'S ANSWERING BRIEF IN RESPONSE TO SEIU'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S REPORT AND RECOMMENDATIONS ON OBJECTIONS TO THE CONDUCT AFFECTING THE RESULTS OF THE ELECTION** was served on the 21st day of December, 2007, upon the following parties:

VIA E-FILING & FEDERAL EXPRESS

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

VIA HAND-DELIVERY

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