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National Union of Healthcare Workers

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NATIONAL UNION OF HEALTHCARE WORKERS,

Petitioner,

and

KAISER FOUNDATION HEALTH PLAN INC.;
KAISER FOUDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP;
THE PERMANENTE MEDICAL GROUP[1]

Respondent,

and **Case 32-RC-5775**

SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS-WEST,

Intervenor.

BRIEF IN SUPPORT OF NUHW'S EXCEPTIONS TO THE REPORT AND RECOMMENDATIONS ON OBJECTIONS AND NOTICE OF HEARING

The National Union of Healthcare Workers ("NUHW"), petitioner in the above-referenced matter, hereby timely files Exceptions to then Acting Regional Director William

[1] These entities will hereafter be referred to collectively as the Employers or Kaiser.
[2] Notably, this correspondence was provided to the region with charts linking Petitioner's voluminous proffer of

Baudler's Report and Recommendation on Objections in Case Number 32-RC-5775, issued on January 14, 2011 (the "Report"). In the Report, the Regional Director ("RD") sent 30 of NUHW's objections to hearing. However, he also overruled other objections involving conduct by the Employers and Incumbent impairing the free choice of the eligible voters so as to require that the election be set aside, or in the alternative, be considered in an evidentiary hearing.

I. INTRODUCTION

The Employers ("Kaiser") and the incumbent union, SEIU UHW-W ("SEIU"), engaged in objectionable conduct in this election on a massive scale. Each of these parties separately, and often in combination, engaged in conduct to ensure that the incumbent would remain, and that any chance of a level playing field for the Petitioner, NUHW, would be destroyed. Because of this widespread misconduct, there is now a hearing underway concerning 30 objections that the Regional Director concluded raised material issues of fact and law as to whether the election involving the subject bargaining unit, the "Statewide Unit," should be set aside.

Most of the factual conduct discussed in the Report has been sent to hearing under the 30 objections discussed above. However, in determining which objections should go to hearing, the Regional Director erroneously overruled certain objections involving particularly egregious objectionable conduct, such as employer threats to bargaining unit employees and favorable access granted to SEIU supporters to use electronic assets for campaigning during the election. In these exceptions, the NUHW does not discuss each overruled objection, but rather focuses on a narrow subset that includes what the Petitioner contends are clear errors in the Report.

II. PROCEDURAL BACKGROUND

NUHW filed its election Petition on June 29, 2010, seeking to represent employees of the Employers in the Statewide Bargaining Unit that is currently represented by SEIU. Pursuant to a

stipulated election agreement, an election by mail ballot was conducted between September 13 and October 4, 2010. Petitioner filed timely Objections to Conduct of Election and/or to Conduct Affecting the Results of the Election on October 14, 2010, and timely submitted its final Offer of Proof in Support of Objections on November 19, 2010.

On January 14, 2011, the then-Acting Regional Director issued a Report and Recommendations on Objections and Notice of Hearing ("Report and Recommendations"). The RD's Report was purportedly based on a review of NUHW's extensive Offer of Proof. The Regional Director set a significant portion of the objections for a hearing (which is ongoing at the time of this writing) and recommended certain objections be overruled. Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, Petitioner files these exceptions to the Report and Recommendations with the Board in Washington, D.C. The exceptions below concern overruled objections that raise substantial and material factual issues that warrant setting aside the election. In this brief, NUHW focuses on those overruled objections where the RD failed to apply well-established Board law and/or misapplied that law to the facts presented.

III. EXCEPTIONS

1. The NUHW Excepts to the Regional Director's Recommendation that Objection Nos. 1 (second part only), 4, 13, 15, and 18 be overruled; Evidence is sufficient to show Employers' *multiple* threats to bargaining unit members statewide.

The NUHW excepts to the Regional Director's recommendation to overrule Objections Nos. 1 (second part only), 4, 13, 15, and 18, which concern threats made by the Employers that the employees in the Statewide Unit would suffer the same unlawful unilateral changes applied to employees represented by NUHW in other bargaining units. Report and Recommendations, 14, 15. All of the evidence cited below in this section related to these objections is also relevant to objections that *were* sent to hearing. In particular, this evidence is relevant to the objections

sent to hearing asserting that it was objectionable and tainted this election that the Employers, by their agents, withheld and/or cancelled scheduled annual across-the-board raises, tuition-reimbursement benefits, union-steward training programs, and other benefits for employees represented by NUHW in other Kaiser units, the "Southern California Units" (conduct found to constitute an unfair labor practice), which conduct was disseminated throughout the subject bargaining unit of Kaiser employees who reasonably feared the same thing would happen to them if they chose NUHW, and that the SEIU committed objectionable conduct when it chose to make its principal campaign message the threat to the subject bargaining unit employees that if they chose NUHW, Kaiser would treat this bargaining unit the same as it had treated other Kaiser bargaining units who chose NUHW and deny them their scheduled annual across-the-board raises, tuition-reimbursement benefits, and other benefits. Report and Recommendations, 7-12, 15-21, discussing objection Nos. 1 (first part only), 2, 3, 5, 7. **However**, the Regional Director erred by not finding that this same conduct, independently, *also* constituted evidence of objectionable *threats by the Employers* to the subject bargaining unit in the critical period before the election. Report and Recommendations, 12-15, discussing objection Nos. 1 (second part only), 4, 13, 15, 18. As shown below, Petitioner has presented sufficient evidence to establish a prima facie case in support of those objections which warrants setting these objections for hearing. *See Park Chevrolet-Geo*, 308 NLRB 1010 (1992).

In order to obtain an evidentiary hearing a party must make a proffer of evidence that raises a substantial and material issue of fact that, if resolved in the party's favor, would warrant setting aside the election. *See St. Margaret*, 991 F.2d at 1152; *J-Wood*, 720 F.2d at 313-14; *Anchor Inns*, 644 F.2d at 296. When that evidence is presented, Board regulations require the Director and the Board to give consideration to the need for an evidentiary hearing. 29 C.F.R. §

102.69(d) & (f) (1981). The objecting party's right to a hearing is established by presenting prima facie evidence of substantial material factual issues. *Pinetree Transp. Co. v. NLRB*, 686 F.2d 740, 745 (9th Cir. 1982).

Dr. Ben Chu's *Threats*

Petitioner presented evidence that Kaiser Southern California Regional President, Dr. Ben Chu, made a statement during a conference call with employees on August 3, 2010 concerning the consequences of Bargaining Unit members joining NUHW. Petitioner provided audio recordings, including of a call wherein Dr. Chu states that certain benefits are only available to unions that are a part of the Coalition National Agreement and that whether or not the NUHW unit will get the benefit depends on NUHW's acceptance into the Coalition. *See* Petitioner's Index of Audio Recordings, 1, 5, 6.

The Supreme Court has identified the distinction between an unlawful threat and a prediction in terms of invalidating an election. In *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 23 L. Ed. 2d 547, 89 S. Ct. 1918, *reh'g denied* 396 U.S. 869, 24 L. Ed. 2d 123, 90 S. Ct. 34 (1969), the Supreme Court affirmed an employer's right to freely "communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.'" *Id.* at 618 (quoting 29 U.S.C. section 158(c)). Speech is privileged if it contains no threat or promise. *Marine World USA*, 611 F.2d at 1277. At the same time, the employer's challenged statement must be evaluated in the context of the totality of the employer's conduct. *Id.* If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and

coercion, and as such without the protection of the First Amendment. *Gissel Packing*, 395 U.S. at 618.

In light of these principles, Kaiser may express opinions or predications, reasonably based in fact and permitted by law, about the possible effects of unionization under NUHW. Here, Dr. Chu's statement was only possible if Kaiser engaged again in the same illegal conduct it had undertaken vis-à-vis the Southern California units. Quite simply, the employees who heard this speech would reasonably understand the Employers' message to be that if they were to be represented by NUHW, they would automatically and immediately lose essential terms and conditions of employment.

The Southern California Regional President's statement to employees conjured up inevitable loss of benefits under NUHW, as already carried out by Kaiser against the existing three NUHW bargaining units in Southern California. It is undisputed that the Employers did illegally take away contractual pay increases and benefits after employees selected Petitioner as their representative. Dr. Chu's statement created an obvious potential for interference with free choice. While the Regional Director in his Report states that the NUHW did not present sufficient evidence about the context of Dr. Chu's statements and its direction toward the bargaining unit (*see* Report at 14), in fact NUHW specifically identified multiple bargaining unit employee witnesses who could testify as having heard either the Ben Chu audio file and/or having read the *Chronicle* and other newspaper articles that incorporated that file. In Petitioner's correspondence to the Region, it stated:

> The attached document provides a partial list of the evidence that witnesses can address in their testimony. In addition to this partial list of "witness-specific evidence," there is also a large volume of "broadly distributed evidence" that many of the witnesses can also address, such as campaign mailers, leaflets, mass email messages, videos, audio files (including the Ben Chu audio file – see Petitioner's Audio files nos. 1, 2, 5 and 6),

newspaper articles and images of websites. . . .[2]

The ominous threat in Dr. Chu's statement, and its impact on bargaining unit members, was not lost upon the incumbent union, which extensively disseminated to the bargaining unit members Dr. Chu's threat – the subject of certain objections for which the Regional Director determined a hearing will resolve, and while NUHW agrees with the RD that this evidence is relevant to SEIU's threats, given this context, the Employers' threats in the critical period independently constituted objectionable conduct.

The Employers' Spokesman Repeats Employer Threats in the *San Francisco Chronicle* and Other Newspapers

In its Offer of Proof, NUHW included four daily newspaper articles in which Kaiser stated that employees would be ineligible for scheduled raises if employees elected NUHW as their collective-bargaining agent. For example, NUHW produced an August 31, 2010 *San Francisco Chronicle* article in which the Employers' spokesman stated that employees already represented by NUHW are not eligible for the contractual raises because NUHW is not part of the Coalition of Kaiser Permanente Unions. The Regional Director found the article is "only related to the Southern California Units and thus cannot constitute evidence in support of the objections that the Employers made such threats directed to Statewide Unit employees eligible to vote in the election in this matter." Report and Recommendations, 14, 15. This conclusion is devoid of all context; the spokesman's statement is at least an implicit, objectionable threat directed to the Statewide Unit employees during the critical period.

Two of the newspapers – the *San Francisco Chronicle* and the *San Jose Mercury News* – are among the ten highest-circulating newspapers in California (the location of the subject

[2] Notably, this correspondence was provided to the region with charts linking Petitioner's voluminous proffer of evidence (including documentary evidence, videos, audio) to specified employee (and other) witnesses, and to certain objections.

bargaining unit is throughout California) and reach a combined daily audience of more than a half million readers via their print editions.[3] Furthermore, these articles were posted on the newspapers' websites, where additional readers were able to read the articles. Finally, it is important to note that the articles were published at a critically important period of time so as to maximize the influence of the Employers' threats to employees. The article in the *San Francisco Chronicle* was published just 14 days before the NLRB mailed ballots to employees, while the remaining articles were published during the week when ballots first arrived at voters' homes.

The following are the titles, dates, Bates Numbers and pertinent excerpted portions from each of the four newspapers:

NEWSPAPER	BATES NUMBER	EXCERPT FROM ARTICLE
San Francisco Chronicle (August 31, 2010)	P 00108-109	"Kaiser spokesman John Nelson said the raises for all the unionized employees are part of the national contract and since NUHW is not part of the coalition, its new NUHW members are not eligible to receive those raises."
San Jose Mercury News (Sep. 15, 2010)	P 00668-670	"Kaiser maintains that the raises are part of a national contract negotiated with labor unions and since NUHW is not part of that coalition, its members are not eligible for the raises."
Contra Costa Times (Sep. 15, 2010)	P 00676-678	"Kaiser maintains that the raises are part of a national contract negotiated with labor unions and since NUHW is not part of that coalition, its members are not eligible for the raises."
Vallejo Times-Herald (Sep. 17, 2010)	P 00671-672	"Kaiser maintains that the raises are part of a national contract negotiated with labor unions and since NUHW is not part of that coalition, its members are not eligible for the raises."

Circulation by California Daily Newspaper: Newspaper.com

NEWSPAPER	CIRCULATION	RANKING AMONG CA DAILY NEWSPAPERS
San Francisco Chronicle	312,000	4
San Jose Mercury News	229,000	10

[3] Website of Newspapers.com at http://www.newspapers.com/top10.php?state=CA Captured 2-18-11.

The Employers' threatening statements must be evaluated in the context of the totality of their conduct. *Marine World USA*, 611 F.2d at 1277. The law recognizes the economically-dependent relationship of the employees to the employer "and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear." *NLRB v. Gissel Packing Co.*, *supra*, 395 U.S. at 617, 89 S. Ct. at 1942.

The intended and actual audience for the comments made by Kaiser's spokesman *was* the Statewide Unit faced with the decision of whether to remain with the incumbent union or choose NUHW. The threat itself came out of the same agreements involving the Coalition of Kaiser Permanente Unions on which Kaiser had based its illegal decision to refuse to offer raises, benefits, and other terms and conditions of employment to Southern California Kaiser employees that would identically apply to the Statewide Unit if they also chose NUHW. The threat of reprisal was clear: Southern California Unit members were currently being denied their increase in wages and benefits because of their affiliation with NUHW; if Statewide Unit members vote in NUHW, they too will be denied raises.

An employer is obligated by the Act to make statements to employees about their union organizational activities that are "carefully phrased on the basis of 'objective fact to convey [its] belief as to demonstrably probable consequences beyond [its] control.'" *Gissel Packing Co.*, 395 U.S. at 618. Kaiser failed to do this. The employees who read the spokesman's comments in the *San Francisco Chronicle* article (widely disseminated by the incumbent union) would reasonably understand the Employers' message to be that would lose their raises and other benefits by choosing the Petitioner to represent them. This message created an "obvious potential for interference with employee free choice." *Unitec Industries*, 180 NLRB 51, 52 (1969).

Taken together, the statement by Dr. Chu and the comments by Kaiser's spokesman in the *San Francisco Chronicle* and other newspapers, combined with the context for these statements, demonstrate that this conduct constituted threats of reprisal to the Statewide Unit should these members exercise their protected section 7 rights to select NUHW as their labor organization. In sum, the evidence of these threats by the Employers was independently egregious enough to warrant setting aside the election or, in the alternative, direct an evidentiary hearing for the presentation and consideration of testimony and evidence relevant to these employer threats. If there is a factual issue as to whether these employer threats were enough to constitute objectionable conduct, alone or in combination with other conduct sent to hearing, then resolution at the hearing for all of these objections is warranted.

2. The NUHW Excepts to the Acting Regional Director's Error In Characterizing Individual Incidents as "Isolated" and "Too *De Minimus*," Whereas Taken Cumulatively the Evidence Shows a Clear Pattern of Creating an Atmosphere of Fear and Intimidation. (Objections 10, 32, 39 (in part), 41, 47, 48, 49, 62, 68, 88, and 92).

The Regional Director recommended that certain objections be overruled as having a *de minimus* affect upon the election. The objections found to be *de minimus* ranged from threats of reprisal by SEIU against NUHW supporters, an SEIU poster displayed in a manager's office, incidents of the Employers restricting access of NUHW supporters and escorting NUHW supporters from public areas, incidents of the Employers requiring employees to remove or cover clothing, stickers, and buttons bearing NUHW insignia, and employer prohibitions against employees displaying NUHW literature while allowing similar SEIU literature displays.

According to the NLRB R-Casehandling Manual (Part II, 24-311), with regard to representation proceedings and possible *de minimus* incidents, the Board applies the standard set forth in *Cambridge Tool & Mfg. Co.,* 316 NLRB 716 (1995), namely, whether the misconduct,

taken as a whole, warrants a new election because it has "the tendency to interfere with the employees' freedom of choice" and "could well have affected the outcome of the election." *Metaldyne Corp.,* 339 NLRB 443 (2003); *see also Waste Management of Pennsylvania*, 314 NLRB 376 (1994); *Mercy General Hospital*, 334 NLRB 100 (2001). Additionally, the Regional Director's Report and Recommendations sets forth the standard for whether alleged conduct merits setting aside an election or is found *de minimus*:

> However, where the alleged conduct is so *de minimus* that it is virtually impossible to find that it interfered with the results of the election, the Board will not set aside that election. In making that determination, the Board looks to a number of factors, including the number of violations, their severity, the extent of discrimination, the size of the unit, and the closeness of the election results.

Report and Recommendations, 25, 26.

Under the *Metaldyne* legal standard, the Regional Director must consider the alleged misconduct "taken as a whole" rather than in isolation. While the Regional Director stated that he considered the possible cumulative effect of the conduct taken together with the evidence proffered by Petitioner in support of certain other objections, he nevertheless recommended that certain objections be overruled as *de minimus*.

The incidents overruled as *de minimus* may upon first blush may appear "isolated" and therefore of no real affect upon the election results. However, the context of the elections provides substantial weight to each of the objections.

First, as already mentioned, prior to the commencement of this election campaign, the Employers engaged in unlawful conduct regarding three bargaining units in Southern California already represented by NUHW by denying NUHW-represented workers a required two percent (2%) raise, tuition reimbursement benefits and paid time off to attend steward training, among

other benefits. The fundamental threat of the Incumbent's campaign was that Kaiser would treat this bargaining unit the same as it had treated the three other bargaining units should it choose NUHW. Objections related to this conduct was sent to hearing. In this context, each of the so-called *de minimus* incidents provided credence to the real fear of reprisal for supporting NUHW.

Second, the Regional Director found that many of Petitioner's objections raised material issues of fact or law that could be best resolved by a hearing. That is, Petitioner raised material concerns that should be addressed with record testimony. Objections set for a hearing included evidence about unlawful employer conduct, threats made by SEIU to members of the bargaining unit about that unlawful conduct, objectionable financial assistance by the Employers, and the Employers' grant of unlawful access and assistance to the Incumbent. The objections overruled as *de minimus* are part of a statewide pattern of misconduct by the Employers and SEIU. Within this context, each of the so-called *de minimus* incidents provided independent evidence about the atmosphere of unlawful assistance and fear of reprisal by the Employers and SEIU for supporting NUHW.

Third, the overruled objections, taken collectively, show widespread misconduct, which became the central motif of the election. The misconduct took place during the critical period and fostered an atmosphere of fear and coercion that interfered with the election.

When taken as a whole and viewed objectively, the number of violations deemed *de minimus*, given their severity, and extent during the critical period, warrant an evidentiary hearing for the presentation and consideration of testimony and evidence relevant to those objections. Given the context of the election, the evidence is sufficient from which one can infer that a substantial number of employees knew of or were affected by that specific misconduct that amplified and enhanced the overarching threat of reprisal against NUHW supporters.

3. The NUHW Excepts to the Regional Director's Error In Determining that the Employers Did Not Discriminatorily Grant SEIU Enhanced Access to Bulletin Boards and Restrict NUHW from Accessing Said Bulletin Boards, and, Similarly, Granting SEIU Enhanced and Discriminatorily Favorable (versus NUHW) Use of Kaiser Electronic Assets (Email) to Campaign. (Objection Nos. 42, 43, 44, 45).

The NUHW excepts to the Regional Director's error in determining that the Employers did not engage in objectionable conduct by discriminatorily granting SEIU enhanced access to bulletin boards and restricting NUHW's access to these bulletin boards. The Regional Director similarly erred when he determined that the Employers did not objectionably grant SEIU enhanced and discriminatorily favorable, versus NUHW, use of Kaiser electronic assets (email) to campaign. Notably, already included in the hearing are numerous issues related to use of the bulletin boards and Kaiser's electronic assets during the election campaign (including, but not limited to, the content of materials on bulletin boards and in emails sent, and the use of bulletin boards by non-employee SEIU organizers in non-public areas of the hospital), but the Regional Director erred by narrowly excising from the hearing the issue of the Employers' conduct related to access to the bulletin board and electronic assets as independently objectionable.

With regard to the bulletin boards, NUHW provided mountains of evidence regarding the Employers favorably granting access to SEIU to use bulletin boards versus access granted to NUHW (with SEIU using their bulletin boards *for campaigning*, while periodically removing NUHW flyers), and, moreover, that in the critical period the Employers converted multi-use employee bulletin boards to locked, glass enclosed bulletin boards for SEIU's use for campaigning. Some of these examples are cited on pages 40-41 of the RD's Report. As one example among many, at the Walnut Creek Medical Center, the Employers removed the multi-use employee bulletin board in the staff lounge and replaced it with a locked bulletin board for SEIU's use.

In *Raley's, Inc.*, 256 NLRB 946 (1981), the Board held that the employer unlawfully favored an incumbent union, and thereby violated Section 8(a)(1) and (2), by removing a rival union's campaign literature from an employee bulletin board, while simultaneously permitting campaign literature from the incumbent union to remain on the same bulletin board. The NLRB drafted a notice that required the employer to inform employees that it would not "remove campaign literature of the Retail Clerks Union [the rival labor organization], or any other labor organization, from employee bulletin boards while allowing such literature from Independent Drug Clerks Association [the incumbent labor organization] to remain posted." *Id.* at 947. Moreover, while the RD says on page 41 that the NUHW failed to produce evidence of SEIU being granted "enhanced" access, which would constitute objectionable assistance, NUHW provided evidence of many instances, an example of which was discussed above, where the Employers converted multi-use bulletin boards to SEIU-only bulletin boards *during the critical period*, which bulletin boards were used *for campaigning*. That conduct – which impacted a primary means of campaigning – constituted objectionable conduct because it had "the tendency to interfere with the employees' freedom of choice" and could have affected the election's outcome. *Cambridge Tool & Mfg. Co.*, 316 NLRB 716, 716 (1995).

As the examples on page 42-43 of the Report demonstrate, the evidence is also overwhelming that the Employers objectionably granted SEIU enhanced and discriminatorily favorable, versus NUHW, use of Kaiser electronic assets (email) to campaign. NUHW also presented a great deal of evidence that NUHW supporters had been, including prior to the election, threatened with discipline (and disciplined) for using Kaiser's electronic assets in a manner inconsistent with Kaiser's electronic usage policy. And it was plainly inconsistent with that policy for SEIU non-employee and employee supporters to overwhelm Kaiser's proprietary

email system with campaign messages. Yet, there is scant evidence that Kaiser took reasonable means to prevent use of its electronic assets for campaigning by SEIU. The RD does not deny that this occurred, but says on page 43 that it is not grounds for setting aside the election because there is no evidence that the Employers ratified or condoned any such conduct. But NUHW presented numerous witnesses who would testify to complaining about SEIU's use of electronic assets for campaigning, and about Kaiser's feeble response. Moreover, this conduct is part and parcel of Kaiser's generally objectionable conduct related to taking insufficient to no reasonable means to prevent SEIU representatives from accessing non-public physical areas of Kaiser facilities for campaigning, and providing unlawful assistance to SEIU by furnishing the incumbent with things of value, including but not limited to Kaiser facilities, for campaigning against NUHW, which was sent to hearing (see pages 29-30, 32-36). The only difference here, without a distinction, is that this involved use of electronic property versus physical property. Thus, the Regional Director should have sent these objections to hearing.

CONCLUSION

For all these reasons, NUHW respectfully excepts to the Regional Director's recommendations concerning Objection Nos. 1 (second part only), 4, 10, 13, 15, 18, 32, 39 (in part), 41, 42, 43, 44, 45, 47, 48, 49, 62, 68, 88, and 92. By overruling these objections, without holding a hearing on them, the Regional Director prejudicially affected Petitioner's rights under the Act.

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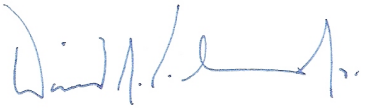
NUHW respectfully requests that the Board overrule the Regional Director's recommendations as to the aforesaid objections and that this election be set aside, or in the alternative, that these objections be considered in a hearing.

Respectfully submitted,

DATED: February 18, 2011

TUBMAN LAW GROUP



By: _____
David J. Tubman, Jr.

Attorneys for Petitioner NUHW

PROOF OF SERVICE

I declare that I am employed in the county of Alameda, California. I am over the age of eighteen years and not a party to the within action. My business address is 456 8th Street, Oakland, California 94607.

On February 18, 2011, I served the within document:

BRIEF IN SUPPORT OF NUHW'S EXCEPTIONS TO THE REPORT AND RECOMMENDATIONS ON OBJECTIONS AND NOTICE OF HEARING

on the interested party(ies) herein by sending a true copy as follows:

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[1] (BY MAIL) Each such envelope, with postage thereon fully prepaid, was placed in the United States mail at Oakland, California. I am readily familiar with this firm=s business practice for collection and processing of correspondence for mailing with the U.S. Postal Service pursuant to which practice the correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of business.

✔ [2] (BY FACSIMILE) All of the pages of the above-described document(s) were sent to the recipients listed above via electronic transfer, at the respective facsimile numbers indicated thereon. (Faxed to Michael J. Hunter only.)

✔ [3] (BY ELECTRONIC MAIL) All of the pages of the above-described document(s) were sent to the recipients listed above via electronic mail, at the respective electronic mail addresses indicated thereon.

[4] (BY OVERNIGHT COURIER) The above-described document(s) were served on the interested parties listed above, by placing a copy in a separate UPS mailer and attaching a completed UPS shipping document, with Next Day Air delivery requested, and caused said mailer to be deposited in the UPS collection box at Oakland, California.

[5] (BY HAND DELIVERY) I served the above-described documents on the interested parties listed above by personally hand delivering copies thereof to the address shown above.

[6] (BY MESSENGER/COURIER SERVICE) I served the above-described documents on the interested parties listed above by arranging for hand delivery of copies thereof by with an outside messenger service, an employee of which company picked up the documents from the offices of Siegel & LeWitter and was directed to hand deliver copies thereof to the address shown above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 18, 2011 at Oakland, California.

/s/ *Amy Kelley*
Declarant