

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.

KAISER FOUNDATION HEALTH PLAN,  
INC.; KAISER FOUNDATION  
HOSPITALS; SOUTHERN CALIFORNIA  
PERMANENTE MEDICAL GROUP, AND  
THE PERMANENTE MEDICAL GROUP,  
INC.,

Employers,

and

NUHW (NATIONAL UNION OF  
HEALTHCARE WORKERS),

Petitioner,

and

SERVICE EMPLOYEES  
INTERNATIONAL UNION, UNITED  
HEALTHCARE WORKERS—WEST

Intervenor/Incumbent.

Case No. 32-RC-5775

INTERVENOR SEIU UHW-WEST'S REPLY BRIEF IN SUPPORT OF  
MOTION FOR REMAND TO REGIONAL DIRECTOR

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Intervenor SEIU-UHW West submits the following in brief response to Petitioner's opposition to its motion to remand this matter to the Regional Director. The essence of petitioner's argument is that it is entitled, notwithstanding the agreement of the non-objecting parties to a new election, to continue to litigate every outstanding objection even though the relief available, a new election, is already available. It is respectfully submitted that petitioner's arguments are not well taken.

As an initial matter, it should be noted that petitioner simply misreads Section 11391.2 of the NLRB Casehandling Manual when it asserts in its Opposition that this provision refers only to "a procedural step *before* the objections are actually set for hearing before a hearing officer." (*Id.* at 6, emphasis in original). Section 11391.2 applies throughout the objections process. If it were restricted to the period before a hearing were set, it would hardly require a waiver of the right to file a request for review of a regional director's supplemental decision, to file objections to a regional director's report, or, in stipulated election cases at this stage of the objections process, to a Board decision.

There is simply no due process "right" to have every objection litigated and ruled upon in situations where the available remedy, a new election, is readily available. This has been memorialized in Section 11391.3 of the Casehandling Manual, permitting "partial resolution" of Objections. This specifically permits setting aside an election on the basis of one or more

objections “thereby making it unnecessary to resolve the remaining objections.”

Petitioner also seeks to distinguish this matter from the procedural process outlined in *Presbyterian University Hospital* 317 NLRB 235, n.1 (1995). Petitioner incorrectly states that “nothing in the footnote suggests that case involved objections against two separate parties, one set of which were completely overruled, while the others were sustained (in Part).” Pet.

Opposition at 7. In fact, that is exactly what happened in the situation described in *Presbyterian University Hospital*. In that case, both the Hospital and the Pennsylvania Nurses Association filed election objections. Two of the employer’s objections were sustained, and the rest overruled, while all of the union’s objections were overruled. The employer filed exceptions to the decision overruling some of its objections. The union stipulated that the election be set aside, and waived its right to a Board decision on the objections. The Executive Secretary thereupon notified the employer that its exceptions were moot, and the Regional Director thereafter issued an order directing a second election.

The petitioner also asserts that it should be permitted to litigate a moot case because “[a]n accurate and complete *Lufkin* notice is critical to a new election.” Pet. Opposition at 8. It should be noted in the first instance that the petitioner filed a 143 page brief before the ALJ/Hearing Officer in this matter, and never requested a *Lufkin* notice. The only relief it requested was that its objections be sustained and the election set aside.

The petitioner quotes, at page 8 of its Opposition, the following language from *Lufkin*

*Rule Co.*, 147 NLRB 341 (1964):

The primary purpose of the notice is to provide official notification to all eligible voters, *without detailing the specific conduct involved*, as to the reason why the elections were set aside.

(Id. At 343, n. 2 Emphasis added). The petitioner would now insist on litigating its remaining objection so that specific conduct by the Employer can find its way into a *Lufkin* notice.

Incredibly, after failing during the initial election to assert that the unfair labor practice charges ultimately disposed of in *Southern California Permanente Medical Group; and Kaiser Foundation Hospitals*, 356 NLRB No. 106 (2011) constituted blocking charges, the petitioner now would have it that an election in a separate unit cannot go forward during the posting period of that case. (Pet. Opposition at 11, n. 10). This is absurd.

It is respectfully submitted that the non-objecting parties having indicated their willingness to proceed to an election, this matter should be remanded to the Regional Director to schedule a new election.

Dated: August 5, 2011

Respectfully submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By:   
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Attorneys for Intervenor, SEIU-UHW

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**PROOF OF SERVICE**  
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On August 5, 2011, I served upon the following parties in this action:

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copies of the document(s) described as:

**INTERVENOR SEIU UHW-WEST'S REPLY BRIEF IN SUPPORT OF  
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1 [X] **BY MAIL** I placed a true copy of each document listed herein in a sealed envelope,  
2 addressed as indicated herein, and caused each such envelope, with postage thereon fully  
3 prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar  
4 with the practice of Weinberg, Roger & Rosenfeld for collection and processing of  
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6 is deposited in the United States Postal Service the same day as it is placed for collection.


7 [] **BY PERSONAL SERVICE** I placed a true copy of each document listed herein in a  
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9 hand to the offices of each addressee.

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11 herein in a sealed envelope, addressed as indicated herein, and placed the same for  
12 collection by Overnight Delivery Service by following the ordinary business practices of  
13 Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice  
14 of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery  
15 Service correspondence, said practice being that in the ordinary course of business,  
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17 offices for next day delivery the same day as Overnight Delivery Service correspondence is  
18 placed for collection.

19 [] **BY FACSIMILE** I caused to be transmitted each document listed herein via the fax  
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21 [X] **BY E-MAIL** I caused to be transmitted each document listed herein via the e-mail  
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23 I certify under penalty of perjury that the above is true and correct. Executed at Alameda,  
24 California, on August 5, 2011.

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26 \_\_\_\_\_  
27 Rhonda Fortier-Bourne

28 125072/631466