

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

EAST-WEST UNIVERSITY,)	
)	
Employer,)	
v.)	Case No. 13-RC-22017
)	
UNITED ADJUNCT FACULTY)	
ASSOCIATION AT EAST-WEST)	
UNIVERSITY, IEA-NEA,)	
)	
Petitioner.)	

**PETITIONER’S MEMORANDUM IN SUPPORT OF
REGIONAL DIRECTOR’S SUPPLEMENTAL DECISION TO
OVERRIDE EMPLOYER’S OBJECTION**

Now comes United Adjunct Faculty Association at East-West University, IEA-NEA, in support of the Regional Director’s Supplemental Decision to overrule the Employer’s Objection to the election issued on April 21, 2011.

The Employer’s Objection entails one flier distributed by the union during the election campaign which the Employer claims “directly misstates the facts for the express purpose of unfairly influencing the vote.” In support of its Objection, the Employer also submitted an email written by a former adjunct, Suzan Spitzberg, to Dr. M.W. Khan, Chancellor of East-West University. Spitzberg’s email was in response to two letters from the Chancellor stating that he would prefer to deal directly with employees and she retorted that management had failed her in two instances. The Employer argues that the email mischaracterizes the incidences in an attempt to “slant certain events in order to influence the election” and that the “misstatements go beyond campaigning to falsehoods.”

As the Board correctly states, in determining whether to set aside an election, the truth or falsity of campaign propaganda and literature is not examined. *Midland National Life Insurance Co.*, 263 NLRB 127, 130 (1982). Indeed, the Board has held that a union flyer stating, “The National Labor Relations Board of the United States of America wants the workers... to have a union” was not objectionable. *TEG/LVI Env’tl. Servs.*, 326 NLRB 1469, 160 LRRM 1111, 1999-00 (1998), *enforced* 221 F.3d 196, 2000 U.S. App. LEXIS 25304 (D.C. Cir. 2000) *cert. denied*, 532 U.S. 943 (2000). Thus, in this instance, the union’s statements on the flier regarding the employer’s conduct and the union’s campaign objectives are not objectionable.

Furthermore, the standard for third-party interference as grounds for setting aside an election is held to a higher standard than the conduct of the parties themselves. Unless third-party conduct creates a general atmosphere of fear or reprisal making a free election impossible, the Board will only set aside an election where the objecting party demonstrates that the third party was acting as an agent or under apparent authority of the opposing party. For example, in

Foxwood Resort Casino, 532 NLRB 771, 184 LRRM 1249 (2008), the Board refused to set aside an election where a unit employee and member of the union organizing committee allegedly was keeping a list of eligible voters and tracking whether and how they voted. The Board rejected the employer's argument that the employee was an agent of the union because any employee could freely call herself a member of the organizing committee, the committee was not the union's primary line of communication, and there was no evidence that the union condoned or was even aware of the employee's activities.

Therefore, in the instant case, not only was Spitzberg's email unobjectionable with respect to its content, it was written free of any union influence. The union was unaware of her email and the only means by which it surfaced was on the employer-issued email accounts.

United Adjunct Faculty Association
at East West-University

By: /s/ Laurie M. Burgess
Laurie M. Burgess

Dated: August 1, 2011

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